



February 29, 2024

TECHNICAL STAFF REPORT

TO: The Prince George's County Planning Board

FROM: Chad Williams, LEED AP BD+C, Master Planner

SUBJECT: Legislative Drafting Request LDR-49-2024
Nonresidential Base Zones—Permitted Uses—Cigar Lounge/Club

The Planning Department's legislative team has reviewed the proposed legislative amendment to the Zoning Ordinance and presents the following evaluation and findings leading to a recommendation of **NO POSITION**, as described in the Recommendation section of this technical staff report.

I. EVALUATION CRITERIA

Proposed legislative amendments to the Zoning Ordinance are reviewed under the requirements of Section 27-3501, Legislative Amendment, of the Prince George's County Zoning Ordinance. Staff have considered the following in reviewing this proposed legislative amendment:

- A. The Prince George's County Zoning Ordinance;
- B. The *Plan Prince George's 2035 Approved General Plan*;
- C. The current Area Master Plans, Sector Plans, and Functional Master Plans for Prince George's County; and
- D. The Prince George's County Climate Action Plan.

II. COMPLIANCE WITH LAW, ASSESSMENT OF TECHNICAL DRAFTING CONVENTIONS, AND PROPOSED AMENDMENTS

Section 27-3501(c)(2)(A) states in part that "**the Council's Legislative Counsel shall prepare the proposed amendment in consultation with the Planning Director,...**" Such consultation did not occur with LDR-49-2024 and the proposed bill as drafted contains numerous drafting errors including errors of omission.

Pursuant to Section 27-3501(c)(2)(C), this Technical Staff Report "**shall contain an independent, non-substantive assessment of the technical drafting conventions of the proposed legislative amendment, in order to ensure consistency with the legislative style and conventions of the current Zoning Ordinance.**" As such, staff have determined that LDR-49-2024 was not drafted in

a manner consistent with the legislative style and conventions of the current Zoning Ordinance.

Errors present in LDR-49-2024 as drafted include:

- A. Inconsistent references to the proposed new use – in the title it is called “Cigar Lounge/Club.” Other places, it is called “Cigar Club/Lounge.”
- B. Concerns with the proposed definition (see below).
- C. Lack of conformance to the new Zoning Ordinance use table convention – when a new principal use type is proposed to be added, it must be added to all four principal use tables in the Ordinance for consistency and clarity.
- D. Incorrect use-specific standards references are found in the principal use table – the phrase “See sec.” is not the convention of the new Ordinance; just the section number itself should be listed.
- E. The reference on Page 4, Lines 18-19 to “any applicable Historic Sites and District Plan, a National Register Site, or an Historic District” is better expressed by naming the County’s Historic Sites and Districts Plan, because that plan incorporates and identifies the County’s National Register Sites and Historic Districts.
- F. There is no need to reference “lights prohibited pursuant to Section 27-61503 of this Code” on Page 4, Lines 22-23 because those lights are already prohibited by that Section. This is redundant language.
- G. When a new principal use type is proposed to be added to the Zoning Ordinance, parking requirements must also be added; therefore, the parking schedule in Section 27-6305, Off-Street Parking Space Standards, should be part of every proposed legislative amendment seeking to add a new principal use type.

Given the number of errors present in the proposed LDR, staff have taken the step of redrafting LDR-49-2024 as a proposed alternate bill. and proposes the Planning Board include the proposed alternate bill in its recommendation to the Council.

III. POLICY ANALYSIS

- A. **Purpose:** LDR-49-2024 is a proposal to define a new principal use type called “cigar club/lounge,” permit this use in the CN (Commercial, Neighborhood), CS (Commercial, Service), and CGO (Commercial, General and Office) zones of the County, and establish regulations governing the use in furtherance of the public safety, health, and welfare of the residents of Prince George’s County.
- B. **Impacted Property:** This proposed legislative amendment would impact all property zoned CN, CS, and CGO in Prince George’s County.
- C. **Policy Analysis:** LDR-49-2024 would add a new cigar club/lounge use and permit this use by-right in the CN, CS, and CGO zones subject to several proposed use-specific standards.

Staff believe this bill is unnecessary, as “cigar club/lounge” is already permitted in the County. When a “cigar club/lounge” incorporates the incidental sale of food or beverage products in a food or beverage area that does not exceed 49 percent of the gross floor area of the establishment, it would be considered “tobacco shop, electronic cigarette shop, or retail tobacco business.” When a “cigar club/lounge” serves food or beverage products over 49 percent of the gross floor area, it would be considered a “restaurant.” Restaurants may allow tobacco use in the bar and dining area pursuant to Section 19-131 of the County Code.

However, one thing this bill would do in defining “cigar club/lounge” separately is limit the zones in which indoor cigar smoking would be permitted; perhaps this is the intent of the sponsor, to deliberately limit the locations where cigar club/lounge/indoor cigar smoking would be permitted to the CN, CS, and CGO zones and preclude, for example, locations in the Transit-Oriented/Activity Center base zones or the RMF-20 and RMF-48 residential multifamily zones (where restaurants are permitted). However, if the sponsor is proposing this use because it is believed the use is not currently permitted in the County, this is mistaken.

The proposed definition for “cigar club/lounge” raises more questions than it resolves, primarily around the interpretation of the phrase “premium tobacco products.” Staff do not know what “premium tobacco products” means and what, exactly, qualifies as “premium.” This makes interpretation and enforcement of this proposed use particularly challenging. For example, if a “cigar club/lounge” offers only cigars made from “normal” or “regular-grade” tobacco products, does this mean the use is no longer permitted and should be shut down via code enforcement?

The reference in the definition to Section 19-131 reinforces staff’s evaluation that this new use is unnecessary, since that section authorizes tobacco product use in eating and drinking establishments under certain circumstances. It supports the conclusion that “cigar club/lounge” is already permitted in the Zoning Ordinance under the “restaurant” principal use type.

Although staff have concerns about the relationship of cigars to the public health of County residents, staff defer to the Prince George’s County Health Department for any comments they may wish to provide on this bill should it be presented and referred for comment as this is not a Planning Department specialty.

IV. COMPLIANCE WITH EVALUATION CRITERIA

Section 27-3501(c)(2)(B) requires that the Planning Director issue a Technical Staff Report on any proposed legislative amendment to the Zoning Ordinance within 14 calendar days of the transmittal of the proposed amendment by the Clerk of the Council. This Section also requires, at minimum, analysis of the extent to which the proposed legislative amendment complies with six criteria.

- A. This proposed legislative amendment meets the requirements of Section 27-3501(c)(2)(B) as follows:

- (i) **Is consistent with the goals, policies, and strategies of Plan Prince George’s 2035 (or any successor General Plan), area master plans, sector plans, functional master plans, and any other applicable approved plans;**

LDR-49-2024 is generally consistent with key goals of Plan 2035 and current area master plans and sector plans pertaining to economic prosperity. Specifically, the economic prosperity goal is **“Create a diverse, innovative, and regionally competitive economy that generates a range of well-paying jobs and strategically grows the tax base”** and Policy 6 states **“Promote entrepreneurship, small business development, and innovation”**. Encouragement of cigar clubs/lounges will both help grow the tax base and expand the base with commercial tax revenues and will help promote small business in the County.

As pertains to the County’s currently effective area master plans and sector plans, these plans themselves implement the County’s General Plan and establish goals, policies, and strategies intended to support the General Plan in a more localized and targeted manner. In general, these plans support targeted growth at identified growth locations, focusing on transit centers, preserving the natural environment and agricultural areas, providing recommendations to strength infrastructure, identifying new needed projects to accommodate growth, and encouraging economic growth.

To the extent the County’s area master plans and sector plans themselves implement Plan 2035, LDR-49-2024 is generally consistent with these plans.

- (ii) **Addresses a demonstrated community need;**

Staff have no information as to any community need for cigar clubs or lounges that may be addressed by this bill, particularly since cigar clubs/lounges are already permitted under the current Zoning Ordinance as described above. Lacking information on a demonstrated community need, staff are unable to determine compliance or noncompliance to this criterion by proposed LDR-49-2024.

- (iii) **Is consistent with the purpose and intent of the zones in this Ordinance, or would improve compatibility among uses and ensure efficient development within the County;**

LDR-49-2024 is consistent with this criterion in that it would provide for a commercially-oriented recreation/entertainment principal use in the County’s three Commercial zones.

- (iv) **Is consistent with the implementation of the strategies and priority recommendations of the Prince George’s County Climate Action Plan;**

The 2022 Prince George’s County Climate Action Plan contains twenty-six priority recommendations intended for rapid implementation with key near-term actions, and numerous strategies focused on the long-term vision to guide the County’s climate mitigation and adaptation efforts over time. The strategies are contained in Chapter VI, Taking Action: Strategies to Achieve a Low-Carbon, Resilient Prince George’s County,

while the recommendations are described with detailed action steps in Chapter VII, Next Steps.

The twenty-six priority recommendations are divided into three action areas:

1. Operational actions to bring about transformational change;
2. Mitigating the cause of climate change by reducing greenhouse gas emissions; and
3. Adapting to coming climate impacts.

Staff cannot identify any impact that LDR-49-2024 would have on the Prince George's County Climate Action Plan or climate change in Prince George's County.

(v) Is consistent with other related State and local laws and regulations; and

LDR-49-2024 is consistent with other related State and local laws and regulations. The bill incorporates a reference to Subtitle 19, Pollution, of the County Code and is consistent with that Subtitle.

(vi) Would avoid creating significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

LDR-49-2024 mostly complies with this criterion. There may be a very slight and localized negative impact on air quality because of this bill, but such impact would not pose a significant adverse impact on the natural environment.

- B. Finally, Section 27-3501(c)(2)(D) requires the Planning Board to make a recommendation on the proposed amendment in accordance with the Legislative Amendment Decision Standards that guide the District Council's final decision on the approval of a proposed legislative amendment.

Analysis of the Legislative Amendment Decision Standards is contained in a separate subsection of this Technical Staff Report below.

V. PLANNING BOARD PUBLIC HEARING

Section 27-3501(c)(2)(D) requires the Prince George's County Planning Board to hold a public hearing and make comments on the proposed legislative amendment within 30 days of the date of the transmittal of the Clerk of the Council. Said public hearing must be noticed by electronic mail at least 21 days prior to the public hearing, sent to every community organization in the County registered pursuant to Section 27-3407(b)(3), and to any person or organization registered pursuant to Section 27-3402(d).

Notice for the public hearing on LDR-40-2024 was sent on February 28, 2024, as required by the Zoning Ordinance. The Planning Board public hearing will be held on March 21, 2024, thus meeting the notice requirement of the Zoning Ordinance.

VI. ANALYSIS OF LEGISLATIVE AMENDMENT DECISION STANDARDS

LDR-49-2024 has been reviewed for consistency with Section 27-3501(d), Legislative Amendment Decision Standards, of the Zoning Ordinance. Staff find the following:

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the County Council sitting as the District Council and is not controlled by any one factor. Within each zone listed in the Classes of Zones (Section 27-4102), the (D)istrict (C)ouncil may regulate the construction, alteration, and uses of buildings and structures and the uses of land, including surface, subsurface, and air rights. The provisions for each zone shall be uniform for each class or kind of development throughout the zone, and no legislative amendment may create different standards for a subset of properties within a zone, unless such standards are necessary to implement development policies within the applicable Area Master Plan, Sector Plan, development policies of the General Plan, or other approved development district; however, any differentiation of a subset of properties within a zone shall be reasonable and based upon the public policy to be served.

Planning Staff take no position as to the legislative discretion of the District Council. However, staff find that LDR-49-2024 meets the criteria that the provisions for each zone shall be uniform for each class or kind of development throughout the zone. The proposed amendments contained in LDR-49-2024 would be consistently applied to each affected zone across the County.

Additionally, staff find that LDR-49-2024 does not create different standards for subsets of properties within a zone and there is no need to determine whether any such differentiation is reasonable and based upon public policies to be served.

Staff recommend the Planning Board find that LDR-40-2024 is consistent with the Legislative Amendment Decision Standards specified in Section 27-3501(d) of the Zoning Ordinance.

VII. RECOMMENDATION

Based upon the foregoing evaluation and analysis, the Planning Department's legislative team recommend that the Planning Board adopt the findings of this report and recommend **NO POSITION** on LDR-40-2024.

Attachment