

Public Hearing: YES NO

Department: Planning & Sustainability

SUBJECT:

COMMISSION DISTRICT(S): All Districts

Application of the Director of Planning and Sustainability for text amendments to the Zoning Ordinance, Chapter 27, to create Section 4.2.60 (Supplemental Regulations) to address Small Box Discount Retailers, to amend Section 9.1.3 (Defined Terms) to create definition for Small Box Discount Retailers, and for other purposes; and to amend Section 4.1.3 Use Table pertaining to Small Box Discount Retailers. This text amendment is County-wide.

PETITION NO: D1. TA-21-1244279 (2020-1543)

PROPOSED USE: N/A

LOCATION: County-wide.

PARCEL NO. : N/A

INFO. CONTACT: Brandon White, Current Planning Manager

PHONE NUMBER: 404-371-2155

PURPOSE:

Application of the Director of Planning and Sustainability for text amendments to the Zoning Ordinance, Chapter 27, to create Section 4.2.60 (Supplemental Regulations) to address Small Box Discount Retailers, to amend Section 9.1.3 (Defined Terms) to create definition for Small Box Discount Retailers, and for other purposes; and to amend Section 4.1.3 Use Table pertaining to Small Box Discount Retailers. This text amendment is County-wide.

RECOMMENDATION:

COMMUNITY COUNCIL: (June 2022) CC-1: No Quorum; CC-2: Approval; CC-3: Approval; CC-4: Approval; CC-5: Approval. (April 2022) CC-1: Approval; CC-2: Approval; CC-3: Approval w/conditions; CC-4: Full Cycle Deferral; CC-5: Approval w/conditions. (February 2022) CC-1: No Action Taken; CC-2: Full Cycle Deferral; CC-3: Approval; Cycle Deferral; CC-4: Full Cycle Deferral; CC-5: Full Cycle Deferral. (October 2021) CC-1: No Quorum; CC-2: Deferral; CC-3: Deferral; CC-4: Deferral; CC-5: Deferral. (August) CC-1: No Quorum; CC-2: Deferral; CC-3: Deferral; CC-4: Deferral; CC-5: Deferral. (June 2021) CC-1: No action taken; CC-2: Deferral; CC-3: Deferral; CC-4: Deferral; CC-5: Deferral. (February 2021) CC-1: Approval; CC-2: No action taken; CC-3 Deferral; CC-4 Deferral; CC-5 Deferral. (December 2020) CC-1: Approval; CC-2: No action taken; CC-3: No action taken; CC-4: Deferral; CC-5: No action taken.

PLANNING COMMISSION: (July 12, 2022) Pending. (May 3, 2022) Full Cycle Deferral. (March 1, 2022) Full Cycle Deferral. (November 4, 2021) Two-Cycle Deferral. (September 9, 2021) Two-Cycle Deferral. (July 8, 2021) Full Cycle Deferral. (March 2, 2021) Two-Cycle Deferral. (Jan. 7, 2021) Full-Cycle Deferral.

PLANNING STAFF: Board's discretion.

STAFF ANALYSIS: See enclosed staff report for further details.

PLANNING COMMISSION VOTE: (July 12, 2022) Pending. (May 3, 2022) Full Cycle Deferral 7-0-0. Gwendolyn McCoy moved, Edward Patton seconded for a Full Cycle Deferral to the July 2022 zoning agenda, per Staff recommendation. **(March 1, 2022) Full Cycle Deferral 7-0-1.** Vivian Moore moved, Jon West seconded for a full cycle deferral, per Staff recommendation to the May 2022 zoning agenda. Tess Snipes abstained; Jana Johnson was not present for this vote. **(November 4, 2021) Two-Cycle Deferral 8-0-0.** Jon West moved,

Gwendolyn McCoy seconded for a 2-cycle deferral to the March 2022 zoning agenda. **(September 9, 2021): Two-Cycle Deferral 8-0-0.** Jana Johnson moved, Jon West seconded for a Two-Cycle Deferral to the January 2022 zoning cycle. Edward Patton was not present for this vote. (July 8, 2021) Full Cycle Deferral 6-0-0. Jon West moved, Edward Patton seconded for a Full Cycle Deferral, per Staff recommendation. Jana Johnson was not present for this vote. (March 2, 2021) Two-Cycle Deferral 9-0-0. J. Johnson moved, J. West seconded for a two-cycle deferral to the July 2021 zoning agenda with the condition that the small discount box store study from Georgia State University be sent to all Community Council, Planning Commission and Board of Commission members and made available to the public once it has been received. (Jan. 7, 2021) Full-Cycle Deferral 8-0-0. P. Womack, Jr. moved, J. West seconded for a full-cycle deferral to the March 2021 zoning agenda.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: (June 2022) CC-1: No Quorum. CC-1 Board members in attendance recommended approval with the amendment that the separation distance be increased between small box discount retailers (SBDR) to one mile, applicable to both freestanding SBDRs as well as SBDRs in shopping centers; **(CC-2) Approval 6-0-0; CC-3: Approval 7-0-0.** CC-3 Board members made the following comments: 1) Clarify the definition - What is the standard for “price lower than...” and, 2) Increase distance separation to one (1) mile; **CC-4: Approval 11-0-0; CC-5: Approval 9-0-0.** CC-5 Board members voted for approval with the following conditions: Under "Item B3", it is recommended that a high-quality surveillance equipment be used that meets or exceeds what is needed by the Dekalb County Police to clearly identify suspects to bring charges; and, 2) under "Item B4" that there be a 6-foot tall solid wooden or opaque fencing to screen the dumpster area from the public view. **(April 2022) CC-1: Approval 7-0-0.** The board made the following comments: 1) Define “price lower than...”; and what is the standard for this? 2) Refine the definition. 3) Extend distance separation to one (1) mile. **CC-2: Approval 9-0-1; CC-3: Approval w/conditions 7-3-0.** Approval w/ a condition that the separation distance between small box retailers & other uses identified in the text amendment shall be one mile. Comments included: Small box retailers provide affordable shopping opportunities for some members of the communities such as younger shoppers but tend to be detrimental to the overall image of the community, tend to be poorly organized and secured, and therefore should be located at least one mile from each other and from the land uses identified in the text amendment. However, they thought that the proposed regulations would improve the appearance and operation of small box retailers. **CC-4: Full Cycle Deferral 10-0-0.** Full cycle deferral to allow time to fully review the proposed amendments; **CC-5: Approval w/conditions 6-0-2.** Approved w/removal of NS-Neighborhood Shopping from permitted zoning districts, and prohibition of LED ribbon lights, flashing lights, neon lights. **(February 2022) CC-1: No Action Taken** based on Staff's recommendation for FCD. However, the following points/questions were noted: 1) Should GSU Andrew Young Policy school weigh in on this instead of the criminal justice staff; 2) Small box establishments may need to be evaluated in context with check cashing establishments and other places that are prevalent near them; 3) A distance requirement may need to be considered; 4) Regulations may need to vary depending on context specific factors; and, 5) Zoning may not be appropriate remedy for public safety issues related to small box establishments. **CC-2: Full Cycle Deferral 10-0-0; CC-3: Approval 9-0-0.** The Council supports regulation of small box discount retailers even if such regulation cannot address all of the issues identified in the GA State study. **CC-4: Full Cycle Deferral 10-0-0** to allow sufficient time to read the consultant's report in detail so that a more informed recommendation could be made; **CC-5: Full Cycle Deferral 10-0-0.** **(October 2021) CC-1: No Quorum;** members present voted for Full Cycle Deferral 2-0-0; **CC-2 Full Cycle Deferral 7-0-0; CC-3 Full Cycle Deferral 8-0-0; CC-4 Full Cycle Deferral 10-0-0; CC-5 Full Cycle Deferral 8-0-0.** **(August 2021) CC-1 No Quorum;** Members present voted for Deferral 2-0-0; **CC-2: Deferral 7-0-0; CC-3: Deferral 8-0-0; CC-4: Deferral 11-0-0; C-5: Deferral 8-0-0.** **(July 2021) CC-1: No quorum, no action taken; CC-2 Deferral 9-0-1; CC-3: Deferral 11-0-0; CC-4: Deferral 12-0-0; CC-5: Deferral 8-0-0.** **(February 2021) CC-1: Approval 2-0-0** of proposed time-table; **CC-2: No action taken; CC-3: Deferral 8-0-0** with the understanding that the moratorium will be extended and the text amendment will be placed on the May BOC agenda; **CC-4: Deferral 11-0-0** to allow more community input; **CC-5: Deferral 9-0-0.** **(December 2020) CC-1: Approval 5-0-0; CC-2: No action taken** but feedback was provided to Staff; **CC-3: No action taken; CC-4: Deferral 12-0-1; CC-5: No action taken** but feedback was provided to Staff.



DeKalb County Department of Planning & Sustainability

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Decatur, GA 30030**

(404) 371-2155 / plandev@dekalbcountyga.gov

Planning Commission Hearing Date: July 12, 2022

Board of Commissioners Hearing Date: July 28, 2022

TEXT AMENDMENT ANALYSIS

AGENDA NO.: D1 **ZONING CASE NO.:** TA-21-1244279 **COMMISSION DISTRICTS:**
Countywide

APPLICANT: Department of Planning & Sustainability

SECTIONS OF ZONING ORDINANCE AFFECTED BY AMENDMENTS: CHAPTER 27, SECTION 4.2.60 (SUPPLEMENTAL REGULATIONS) TO ADD REGULATIONS TO ADDRESS SMALL-BOX DISCOUNT RETAIL STORES; SECTION 9.1.3 (DEFINED TERMS) TO CREATE A DEFINITION FOR SMALL-BOX DISCOUNT RETAIL STORE; TO AMEND SECTION 4.1.3 (USE TABLE) PERTAINING TO SMALL-BOX DISCOUNT RETAIL STORES; AND TO AMEND SECTION 4.2.28 (FUEL PUMPS ASSOCIATED WITH LARGE RETAIL, CONVENIENCE STORES, GAS STATIONS, SERVICE STATIONS) TO ESTABLISH DISTANCE SEPARATION STANDARDS BETWEEN SMALL-BOX DISCOUNT RETAIL STORES AND CONVENIENCE STORES.

REASON FOR REQUEST:

The moratorium passed by the DeKalb County Board of Commissioners in December 2019 and subsequently extended in January 2020, October 2020, January 2021, April 2021, August 2021, October 2021, January 2022, and May 2022 temporarily prohibits the establishment of any new, small box discount stores in the unincorporated areas of DeKalb County. The initial moratorium—and subsequent extensions—initiated the process of studying the effects of small box discount retail stores on the health, safety, and welfare of County residents and businesses. Staff contracted with Analytic Trial Consultants, LLC to perform the requisite study. The report, along with supplemental documents, have been made available to the Board of Commissioners, Planning Commission, the five community councils, and the public via the Planning & Sustainability webpage.

Based on the report’s findings, staff has begun addressing aspects that are suitable for inclusion into the *Zoning Ordinance*. The proposal introduces an official land use term, “small-box discount retail store” along with a definition as provided in the original moratorium resolution. Similar to other retail uses, this use is proposed as a permissible use in all mixed-use districts and commercial zoning districts (NS, C-1, C-2, and OD), excluding office and industrial districts (OI, OIT, M, M-2), subject to supplemental regulations.

The third part of the text amendment proposal consists of supplemental regulations that will comprise a new section, Section 4.2.60. Because these stores are typically found in distinct environments: shopping centers and standalone buildings, the proposal includes supplemental regulations based on these distinctions. One subsection shall apply to all small-box discount retail stores, another subsection shall apply to standalone stores, and the last subsection shall apply to stores within shopping centers and multi-tenant buildings.

It is the desire of the Board of Commissioners to adopt a legal and suitable set of regulations during this zoning cycle. Thus, this is likely the last opportunity for Planning Commission contributions. Staff submits this draft for consideration without a recommendation.

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 27, AND FOR OTHER PURPOSES.**

WHEREAS, the DeKalb County Board of Commissioners is authorized to adopt ordinances regulating land use for the public health, safety, and welfare;

WHEREAS, the Board of Commissioners recognizes that small box discount retail stores provide a valuable service to the residents and patrons of unincorporated DeKalb County but also exhibit negative relationships with public health, safety, and welfare;

WHEREAS, the Board of Commissioners approved a Resolution imposing a moratorium on applications related to the establishment or expansion of currently existing small box discount stores to study the effects of small box discount stores on the health, safety, and welfare of the County's residents and businesses, and to consider appropriate action to address those effects;

WHEREAS, county staff hired Analytic Trial Consultants, LLC to conduct a study of small box discount retail stores in unincorporated DeKalb County to evaluate the effects of those stores on public health, safety, and welfare;

WHEREAS, the study found that small box discount retail stores in unincorporated DeKalb County exhibit some negative relationships with public health, safety, and welfare; and

WHEREAS, the Board of Commissioners seeks to ameliorate those negative relationships with public health, safety, and welfare via the following text amendments to Chapter 27 of the Code of DeKalb County,

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 27 of the Code of DeKalb County, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By amending section 27-9.1.3, by amending the use table in section 27-4.1.3, by adding section 27-4.2.60, and by adding section 27-4.2.28(I) as follows:

Sec. 9.1.3. Defined Terms.

Small-box discount retail store: a retail store that is 16,000 square feet or less in size, which offers, for sale, a variety of convenience shopping goods and continuously offers the majority of the items in its inventory for sale at a price lower than traditional retail stores. Small box discount store does not include stores that contain a pharmacy, sell gasoline or diesel fuel, or primarily sell specialty food items including meats, seafood, cheese, or oils and vinegars.

Sec. 4.1.3. - Use table.

KEY:	SA - Special administrative permit from director of planning												
	SP - Special land use permit from BoC (SLUP)												
	P - Permitted use												
	Pa - Permitted as an accessory use												
Use	OI	OIT	NS	C-1	C-2	OD	M	M-2	MU-1	MU-2	MU-3	MU-4,5	See Section 4.2
Retail warehouses/wholesales providing sales of merchandise with no outdoor storage				P	P	P	P		P	P	P	P	
Shopping center			P	P	P	P			P	P	P	P	
Small-box discount retail store			P	P	P	P			P	P	P	P	✓
Specialty store			P	P	P	P			P	P	P	P	
Sporting goods or bicycle sale			P	P	P	P			P	P	P	P	

Thrift, secondhand, antique store				P	P		P						
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Sec. 4.2.60 Small-Box Discount Stores.

A. *Purpose and Findings.* Small box discount retail stores provide a valuable service to the residents and patrons of unincorporated DeKalb County but also exhibit some negative relationships with public health, safety and welfare. The county hired Analytic Trial Consultants, LLC, to study the relationships between small box discount retail stores and the public health, safety, and welfare in unincorporated DeKalb County. That study, dated _____, which is attached and incorporated herein by reference, found that small box discount retail stores in unincorporated DeKalb County exhibit some negative relationships with public health, safety, and welfare, especially when located in proximity to convenience stores. The Board of Commissioners seeks to ameliorate those negative relationships via the regulations contained in this ordinance.

B. The following regulations shall apply to all small box discount retail stores:

1. The use of bars, chains, roll down doors, or similar security elements over windows and doors is prohibited. No more than ten percent (10%) of window space may be covered by signs.
2. The entire premises, including areas designated for dumpsters and waste management equipment, shall be adequately illuminated from sunset to sunrise. A photometric lighting plan must be provided by the owner and approved by the planning director.
3. The entire premises, including the interior and exterior of the building, shall be monitored by surveillance cameras at all times.
4. Dumpsters and waste management equipment shall be enclosed by a fence, which shall be secured and locked when not in use.
5. A customer service phone number for reporting customer complaints related to business operations and property maintenance shall be posted and displayed inside and outside the establishment.
6. Currently existing small box discount retail stores must come into compliance with these regulations within one hundred and eighty (180) days of the effective date of this ordinance.

C. In addition to the regulations set forth in subsection (B), the following regulations shall apply to new, stand-alone small box discount retail stores established after {Note to clerk to please insert the effective date of this ordinance}:

1. No new, stand-alone small box discount retail store shall be permitted within one-half mile (i.e., 2,640 feet) of any existing small box discount retail store, or within one mile (i.e., 5,280 feet) of any currently existing convenience store. For purposes of this

subsection, distance shall be measured from the nearest property line of the subject property to the nearest property line of any property on which an existing small box discount retail store or convenience store is located. This provision shall not apply to any currently operating small box discount retail store relocating to a new building or new property within one thousand feet (1,000') of its current location.

2. At least thirty percent (30%) of any façade facing a public street shall include windows or doors made of glass or similar translucent material. No more than ten percent (10%) of window or door space shall be covered by signs.
3. A photometric (lighting) plan must be provided for new development, redevelopment, or change of tenancy.
4. New, stand-alone small box discount retail stores must comply with all applicable code provisions, including but not limited to the design standards set forth in article 5 of chapter 27 of this code.
5. A minimum of ten percent (10%) of sales floor area must be dedicated to the sale of fresh meats, fruits, vegetables, and dairy products.

D. The following regulations shall apply to new, small box discount retail stores located in shopping plazas or multi-tenant buildings established after {Note to clerk to please insert the effective date of this ordinance}:

1. No new, small box discount retail store in a shopping plaza or multi-tenant building shall be permitted within one-half mile (i.e., 2,640 feet) of any existing small box discount retail store, or within one mile (i.e. 5,280 feet) of any currently existing convenience store. For purposes of this subsection, distance shall be measured from the nearest property line of the subject property to the nearest property line of any property on which an existing small box discount retail store or convenience store is located. This provision shall not apply to any currently operating small box discount retail store relocating to a new building or new property within one thousand feet (1,000') of its current location.
2. No small box discount retail store shall be an anchor establishment within a shopping plaza.
3. Small box discount retail stores must co-locate with large, retail, anchor establishments of no less than 30,000 square feet or within planned, mixed-use developments.
4. A minimum of ten percent (10%) of sales floor area must be dedicated to the sale of fresh meats, fruits, vegetables, and dairy products.

Sec. 27-4.2.28. Fuel pumps associated with large retail, convenience stores, gas stations, service stations.

- I. No new convenience store shall be permitted within one mile (i.e., 5,280 feet) of any currently existing small box retail discount store.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ___ day of _____, 2022.

ROBERT J. PATRICK
 Presiding Officer
 Board of Commissioners
 DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ___ day of _____, 2022.

MICHAEL L. THURMOND
 Chief Executive Officer
 DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
And Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

ANDREW BAKER
Director of Planning and Sustainability
DeKalb County, Georgia