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**2019-2 (2<sup>ND</sup> READING): TO AMEND ORDINANCE 2017-23, WHICH ENACTED APPENDIX A, ZONING, BY AMENDING ARTICLE 18, SECTION 1806, THAT ESTABLISHED THE OCEAN BOULEVARD ENTERTAINMENT OVERLAY DISTRICT (OBEOD), TO CORRECT A SCRIVENER'S ERROR IN NOMENCLATURE, AND TO PROVIDE SEVERABILITY.**

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**Applicant/Purpose:** Staff / to amend Ordinance 2017-23 to correct a scrivener's error & to provide a severability clause.

**Brief:**

- Ordinance 2017-23 established the Ocean Boulevard Entertainment Overlay District.
- The district is bounded on the west by the back property lines of the parcels on the east side of Kings Highway (except the Pavilion and Family Kingdom areas where the boundaries run to Kings Highway), on the north by 16<sup>th</sup> Avenue N, on the south by 6<sup>th</sup> Avenue S, & on the east by the Atlantic Ocean.
- As originally adopted, ordinance included the word "material" instead of "merchandise" in Section 3.D. on page 4.
- This amendment also adds a severability clause as new Section 6.

**Issues:**

- The purpose of the District remains to:
  - Establish a family friendly entertainment & retail land use.
  - Encourage compatible land uses.
  - Ensure higher quality development & business uses & function in order to protect property values & provide safe & efficient pedestrian/vehicle access.
- There is no change to the original prohibited uses in the OBEOD:
  - Smoke shops and tobacco stores.
  - Retailing of alternative nicotine, alternative nicotine delivery product, vapor product, e-cigarette, tobacco paraphernalia or cannabis products.
  - Retail merchandising of tobacco products of more than an incidental nature.
  - Retail merchandising or display of sexually oriented merchandise.
  - Providing space for a "barker" for a business not located at the premises.

**Public Notification:** Normal meeting notification.

**Alternatives:** To not accept these corrections.

**Financial Impact:** None.

**Manager's Recommendation:**

- I recommend 1<sup>st</sup> reading (1/8/19).
- I recommend 2<sup>nd</sup> reading & approval (1/22/19).

**Attachment(s):** Proposed ordinance.

CITY OF MYRTLE BEACH  
COUNTY OF HORRY  
STATE OF SOUTH CAROLINA

ORDINANCE TO AMEND ORDINANCE 2017-23, WHICH ENACTED APPENDIX A, ZONING, BY AMENDING ARTICLE 18, SECTION 1806, THAT ESTABLISHED THE OCEAN BOULEVARD ENTERTAINMENT OVERLAY DISTRICT (OBEOD), TO CORRECT A SCRIVENOR'S ERROR IN NOMENCLATURE, AND TO PROVIDE SEVERABILITY.

Section 1. Purpose and intent.

The City of Myrtle Beach finds that:

- A. Without debate, the City's economic engine is tourism.
- B. Sustaining tourism is essential to maintain our standard of living, the funding of our amenities for our citizens and for the preservation of property values.
- C. Tourism is threatened by perceived unseemliness or unsafety in any particular area.
- D. The perception of unseemliness or unsafety is, to large degree, a product of atmosphere.
- E. The atmosphere of a location is comprised of many factors, one of which is whether a location is suitable and safe for children, and families.
- F. One component of atmosphere for a location is the proliferation of retail offerings of businesses in that area, that are not family attractive.
- G. Certain retail offerings create an atmosphere that is repulsive to mothers and fathers in the care of their children, in that retail outlets are promoting crudity and sexually explicit apparel, drug paraphernalia, and consumables that mimic and promote drug and substance consumption.
- H. The purpose of the Ocean Boulevard Entertainment Overlay District (OBEOD) is to establish a family friendly entertainment and retail land use, and encourage compatible land uses, ensure higher quality development and business uses and function in order to protect property values and provide safe and efficient pedestrian and automobile access.
- I. These retail restrictions and criteria can encourage quality development and economic growth while continuing to provide for a wide range of economic development opportunities throughout the City for those uses which are incompatible with the OBEOD.
- J. The displacement of CBD consumables, smoke shops and tobacco stores is necessary and in the interests of the public health, safety and general welfare because there is the substantial likelihood of the establishment and operation of expanded retail offerings of CBD consumables, smoke shops and tobacco stores in the OBEOD.
- K. The continued operation and expansion of these family adverse retail offerings in the overlay would result in undesirable impacts to the public economy of the overlay.
- L. Among these impacts are increased potential for CBD consumables and tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses.

- 1 M. This overlay contains amendments consistent with good zoning and planning practices  
2 to address such negative impacts of smoke shops and tobacco stores while providing a  
3 reasonable number of locations and zones for such shops/stores to locate within the city  
4 of Myrtle Beach.
- 5 N. The OBEOD is intended to encourage mixed-use within the same structure or block  
6 and/or high intensity commercial development, which provides a wide array of  
7 entertainment and retail options, without the current family unfriendly environment  
8 promoting unhealthy tobacco use, crudity and the stigma of drug use and paraphernalia.
- 9 O. In the event of a conflict between the entitlements, regulations or standards  
10 established in the OBEOD, and the equivalent provisions in the underlying zoning  
11 districts, the provisions of the OBEOD shall govern.
- 12 P. Families are the center of all communities, the building blocks of our city and the basis  
13 of a sustained tourism economy. The Council is determined to see a “family friendly  
14 lens” placed over all policies, strategies and initiatives undertaken and supported by  
15 the Council.

16  
17 Section 2. Boundaries.

18 The boundaries of the OBEOD are as indicated in the attachment to Ordinance 2017-23.

19  
20 Section 3. Definitions:

21 **ALTERNATIVE NICOTINE PRODUCT.** A product or device not consisting of or containing  
22 tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking,  
23 absorbing, dissolving, inhaling, snorting, sniffing, or by any other means.

24  
25 **ALTERNATIVE NICOTINE PRODUCT** does not include cigarette, smokeless tobacco, other  
26 tobacco products, or any other product approved by the United States Food and Drug  
27 Administration as a non-tobacco product for sale as a tobacco cessation product, as a tobacco  
28 dependence product, or for other medical purposes, which is being marketed and sold solely  
29 for that approved purpose.

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31 **BARKER.** A person who stands in front of a business, theater, sideshow, etc., and calls out to  
32 passersby to attract customers.

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34 **BUSINESS OPERATOR.** Any person who owns, leases, operates or manages or is employed by a  
35 business establishment.

36  
37 **CANNABIS PRODUCT.** A product originating from the species Cannabis Sativa L., excluding  
38 marijuana as defined by South Carolina law in 44-53-110 (27(a)), and shall include all forms of  
39 Cannabis or low-THC Cannabis products (CBD) to be consumed or applied.

40  
41 **CANNABIS DISPENSING BUSINESS.** A business offering for sale CBD, Cannabis or Derivative  
42 Cannabis Products.

43  
44 **CBD.** Cannabidiol, a chemical compound from the species Cannabis Sativa L., of the family  
45 Cannabaceae.

46  
47 **E-CIGARETTE.** Any electronically actuated device or inhaler meant to simulate cigarette  
48 smoking that uses a heating element to vaporize a liquid solution, popularly referred to as  
49 “juice,” and that causes the user to exhale any smoke, vapor, or substance other than that  
50 produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains

1 nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco  
2 products and tobacco paraphernalia.

3  
4 **SMOKE OR SMOKING.** The carrying, smoking, burning, inhaling, or exhaling of any kind of  
5 lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted tobacco product in  
6 any manner or in any form and shall also include the inhaling, exhaling, burning or carrying any  
7 alternative nicotine product or vapor product as defined in this chapter.

8  
9 **SMOKE SHOP AND TOBACCO STORE.** Any premises with more than an incidental display, sale,  
10 distribution, delivery, offering, furnishing, or marketing of alternative nicotine, alternative  
11 nicotine delivery product, vapor product, e-cigarette, single cigarette tobacco, tobacco  
12 products, or tobacco paraphernalia; provided however the incidental retail of commonly  
13 available packaged packs, cartons or boxes of cigarettes and cigars are not regulated herein.  
14 Incidental retail means accounting for less than ten (10) % of the retail offerings.

15  
16 **TOBACCO AND TOBACCO RELATED PRODUCTS.** Items, including but not limited to cigarettes  
17 and any product containing, made, or derived from nicotine or tobacco that is intended for  
18 human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed,  
19 or ingested by any other means, including by vaping, or any component, part, or accessory of  
20 a tobacco product; cigars; pipe tobacco, cheroots; stogies; perique; granulated, plug cut, crimp  
21 cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist  
22 tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and  
23 sweepings of tobacco; dipping tobaccos; and other kinds and forms of tobacco. Tobacco  
24 excludes any tobacco product that has been approved by the United States Food and Drug  
25 Administration for sale as a tobacco cessation product, as a tobacco dependence product, or  
26 for other medical purposes, and is being marketed and sold solely for such an approved purpose.

27  
28 **TOBACCO PARAPHERNALIA.** Any paraphernalia, equipment, device, or instrument that is  
29 designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting,  
30 sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other  
31 controlled substances as defined in South Carolina Code of Laws 44-53-110 (33). et seq. Items  
32 or devices classified as tobacco paraphernalia include but are not limited to the following:  
33 pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette  
34 juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and  
35 matches shall be excluded from the definition of tobacco paraphernalia. It further includes  
36 items designed or manufactured and which may be used in ingesting, inhaling, or otherwise  
37 introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or  
38 amphetamines, tobacco or tobacco related products into the human body, such as—

- 39 (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without  
40 screens, permanent screens, hashish heads, or punctured metal bowls;
- 41 (2) water pipes;
- 42 (3) carburetion tubes and devices;
- 43 (4) smoking and carburetion masks;
- 44 (5) roach clips: meaning objects used to hold burning material, such as a marijuana  
45 cigarette, that has become too small or too short to be held in the hand;
- 46 (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- 47 (7) chamber pipes;
- 48 (8) carburetor pipes;
- 49 (9) electric pipes;
- 50 (10) air-driven pipes;

- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.
- (16) rolling papers

**VAPOR PRODUCT.** Any non-combustible product, which may or may not contain nicotine that employs a heating element, power source, electronic circuit, or other electronic chemical or mechanical means, regardless of shape or size that can be used to produce vapor from a solution or any other form. **VAPOR PRODUCT** includes any electronic cigarette, hookah, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe or similar product or device, as well as any vapor cartridge or other container that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. **VAPOR PRODUCT** does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

**MERCHANDISE.** Without limitation, any article, object, substance, compound, elixir, preparation, banner, button, clothing (including hats), figurine, game, greeting card, magnet, photograph, postcard, novelty item, poster, sculpture, souvenir, sticker, towel, apparel or similar item, whether or not the item is offered for sale.

**SEXUALLY ORIENTED MERCHANDISE.** Any merchandise which graphically or by symbol or symbols depicts, describes, portrays, pictures by way of realistic, naturalistic or cartoonish representation human or animal sexual activities or specified anatomical parts. This shall include any depiction or description, by pictorial representation or language, of any sexual intercourse; masturbation; sadomasochistic abuse; sexual penetration with an inanimate object; sodomy; bestiality; uncovered genitals, buttocks, or female breast; defecation or urination; covered genitals in an obvious state of sexual stimulation or arousal; or the fondling or other erotic touching of genitals, the pubic region, buttocks or female breasts, or merchandise of that subject.

Section 3. The following retail business uses are prohibited in the OBEOD:

- A. Smoke shops and tobacco stores.
- B. Retail merchandising or of alternative nicotine, alternative nicotine delivery product, vapor product, e-cigarette, tobacco paraphernalia or cannabis products.
- C. Retail merchandising of tobacco or tobacco products of more than an incidental nature.
- D. Retail merchandising or display of sexually oriented ~~material~~ merchandise, as defined herein. Any display of sexually oriented merchandise qualifies the retail operation as a sexually oriented business, which must be located in a permitted zone.
- E. Providing space for a “barker” for a business not located at the premises.

Section 4. Amortization.

Retail stores offering space for the prohibited retail business uses that are operating on the effective date of the ordinance codified in this overlay are hereby declared immediately nonconforming as of the date of second reading, and shall be amortized as to the nonconformity, and must cease the nonconforming portion of their retail offerings no later than December 31, 2018.

1 Section 5. Business license impacts.

2 A. Only businesses that discontinue the incompatible retail uses are subject to business  
3 license renewal.

4 B. After the date of amortization, continued nonconforming shall result in business license  
5 suspension until conformity is achieved, or revocation of the business license.  
6

7 Section 6. Severability  
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9 It is hereby declared to be the intention of the City Council that the words, phrases, clauses,  
10 sentences, paragraphs and sections of this ordinance are severable and if any phrase clause  
11 sentence paragraph or section of this ordinance shall be declared unconstitutional by the valid  
12 judgment or decree of any court of competent jurisdiction such unconstitutionality shall not  
13 affect any of the remaining words, phrases clauses, sentences, paragraphs and sections of this  
14 ordinance since the same would have been enacted by the City Council without the  
15 incorporation in this ordinance of any such unconstitutional phrase clause sentence paragraph  
16 or section, and the remainder shall not be affected thereby and shall remain in full force and  
17 effect.  
18

19 This ordinance shall become effective upon adoption.  
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22  
23 ATTEST:

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BRENDA BETHUNE, MAYOR

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25  
26 JENNIFER STANFORD, CITY CLERK  
27

28 1<sup>st</sup> Reading: 1-8-19

29 2<sup>nd</sup> Reading: 1-22-19