

## MEMORANDUM

**TO:** Chris Anderson, City Planner

**FROM:** Joseph J. Langel & Timothy A. Sullivan

**DATE:** February 20, 2018

**SUBJECT:** E-cig Accessory Use Issue  
File No. 4033-0182

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You asked our office for an opinion regarding the following:

### FACTS

The subject property is located in the H-1 Highway 10 Business District. Baker White currently operates two separate businesses in a multi-tenant building located at 6111 Highway 10: an e-cigarette retail store and, next door, a related business that, at least in part, produces and packages e-cigarette liquid to be sold at the E-cigarette store.

The owners of Baker White submitted a building permit to convert a separate 1,600 square foot unit in the building into a facility for manufacturing “tasting sticks” for the various flavors of e-cigarette liquid they produce. This unit is not adjacent to the other two units currently occupied by Baker White. These “tasting sticks” are not intended to be sold via retail, but rather would be provided to the businesses who sell their e-cigarette liquid, including the e-cigarette store in the building, as a means of permitting customers to taste the product prior to purchase.

Looking at the Baker White website ([bakerwhite.com](http://bakerwhite.com)), it lists their address as 6111 Highway 10 NW, Suite 300, Ramsey, MN 55303. Their website indicates they have been producing “premium e-liquid” since 2013. The website lists a number of Baker White’s accomplishments, including: “Building an ISO 14644-1:1999 Class 6 clean room equipped with laboratory grade manufacturing equipment,” and “Building an analytical laboratory to rest raw materials like PG, VG, Nicotine, and flavoring compounds to ensure they meet our strict manufacturing tolerances.” It is unclear whether these clean room and laboratory facilities are located at the subject property or elsewhere.

The website also lists a “store,” which contains links to other locations where their e-liquids can be purchased. These include stores in Illinois, Minnesota, Missouri, Ohio, and South Dakota. It also includes information for businesses interested in carrying their brands, and directs inquires for wholesale information to the 6111 Highway 10 address.

## **ISSUE**

Is the proposed use of the new space a permitted “accessory use” under the Zoning Ordinance?

## **ANALYSIS**

### **A. Zoning Standards for the H-1 Highway 10 Business District**

The H-1 Highway 10 Business District lists the following nine permitted uses:

- (1) Indoor/Outdoor commercial recreation areas;
- (2) Governmental and public utility buildings and structures;
- (3) Animal clinics;
- (4) Adult uses – principal and adult uses – accessory;
- (5) Enclosed retail sales and rental activity;
- (6) Offices, personal and professional services;
- (7) Commercial carwashes (drive through and mechanical);
- (8) Motor vehicle repair; and
- (9) Bands, on and off sale liquor, and restaurants housed within a multitenant building.

The H-1 Highway 10 Business District lists only one permitted conditional use: Motor vehicle, implement, and recreation equipment sales and service.

The H-1 Highway 10 Business District lists the following six permitted accessory uses:

- (1) Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 30 percent of the gross floor space of the principal use unless otherwise approved by the city council;
- (2) Open and outdoor areas for display of goods and rental;
- (3) Temporary seasonal sales;
- (4) Motor vehicle implement and recreational indoor storage when accessory to sales and service;
- (5) Additional accessory use: Outdoor storage for materials and equipment accessory to the principal use under certain delineated conditions; and
- (6) Seasonal outdoor storage of marine boats under certain delineated conditions.

## **B. Application of Zoning Standards to Baker White Businesses.**

The e-cigarette store is a permitted enclosed retail use.

The use of the adjacent unit by Baker White is less clear. If they are merely using it as company headquarters, then it would likely be a permitted office use. If they are using it as a clean room and laboratory to manufacture and wholesale e-liquid, then it is not a permitted use. More facts are needed, specifically whether the clean room and laboratory are located in this facility, whether the wholesale operation occurs in the building, and what other specific business activities are being conducted in the unit.

The proposed use of the third unit for the manufacture of “tasting sticks” does not appear to be a permitted use. This use is likely best classified as light manufacturing, which the Zoning Code defines as meaning “the processing and fabrication of certain materials and products where no process involved will produce noise, vibrations, air pollution, fire hazard or noxious emissions which will disturb or endanger neighboring properties.” Light manufacturing is not a permitted primary, conditional, or accessory use in the H-1 Highway 10 Business District. Notably, light manufacturing is also likely the best way to classify the production of e-liquids in the clean room and laboratory described on the Baker White website.

Further, even if the “tasting stick” operation could somehow be classified as an accessory use to their other primary uses, the Zoning Code requires accessory commercial buildings or structures to occupy no less than 30% of the gross floor space of the principal use. It is unclear whether the proposed 1,600 sq. foot facility would fall within these guidelines, as the total floor space of the principal use would need to exceed 5,300 sq. ft.

## **CONCLUSION**

There is a lot of information that will be needed to fully analyze whether the existing and proposed uses by Baker White are in conformity with the zoning code. Based upon the information we have reviewed, it does not appear that the proposed “tasting stick” manufacturing use is permitted, either as a principal, conditional, or accessory use, within the H-1 Highway 10 Business District. There are also questions as to whether Baker White’s current use of the property adjacent to the e-cigarette store is permitted in the zoning district. If they are engaging in wholesale or light manufacturing, such are not be permitted.