

A grayscale photograph of a street scene. In the foreground, there are several cars parked on the side of the road. In the background, there is a long, single-story building with a flat roof and several windows. The overall scene is somewhat blurry and has a high-contrast, grainy appearance.

Ordinance No. 3106 “Smoke Shops” Proposed Amendment

Prepared by

Upper Darby Township Planning & Zoning

Community & Economic Development

Background: Ordinance 3106 “Smoke Shops”

➤ **Enacted by Upper Darby Township Council on December 1, 2021**

Section One

- Created nail salon zoning and made it so that no barber shop, beauty shop or nail salon can be within 300 feet of each other

Section Two

- Added a definition for Hookah Bar & Smoke Shop/Smoking Parlor
- Smoke Shops are permitted by Special Exception in C-1, C-2, C-3 & C-4
- Set Special Exception Requirements
 - i.e. distance, parking, ventilation, alcohol

Accomplishments of Ordinance No. 3106

- Added a definition and clear requirements for Hookah Lounges
- Defined what materials are considered part of a smoke shop and vaping products and accessories
- Alcohol Prohibition
- Defined Hours of Operation

Smoke shop/smoking parlor. A retail sales or wholesale establishment primarily engaged or marketed as selling tobacco, tobacco products/accessories, and/or vaping products and accessories. A retail sales or wholesale establishment which maintains 20% or more of its total merchandise as tobacco, tobacco products/accessories, and/or vaping products or accessories shall be considered a tobacco store/smoke shop for the purposes of this Chapter. For the purposes of this Chapter, a retail or wholesale establishment which holds itself out as, or otherwise promotes or markets itself as, a “tobacco store”, a “smoke shop”, a “vape shop”, a “cigar shop” or a similar establishment, shall also be considered a tobacco store/smoke shop for the purposes of this Chapter. Examples of vaping products and accessories referred to in this Chapter include, without limitation, e-cigarette or vape cartridges or refills, vaporizers, vape pens, vapor products, hookah pens, electronic cigarettes, e-cigarettes, e-cigs, e-pipes, and any other electronic nicotine delivery system (“ENDS”). ENDS shall be deemed noncombustible tobacco products. Tobacco products and accessories as referred to in this Chapter shall include, without limitation, any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, matches, lighters, grinders, hookahs, pipes, chewing tobacco, cigarette rolling machines or papers, ashtrays, pipe tools, pipe supplies and pipe accessories. For the purposes of this Chapter, cannabidiol (CBD) products, without the inclusion of tobacco within such product, shall be excluded when counting the total merchandise of such a retail sales or wholesale establishment.

Purpose of Amending Ordinance No. 3106

Lack of clarity between what is a convenience/retail store
and what is a smoke shop

Smoke shops and smoking parlors are lumped together
under the same definition

Current measurement standard (“20% or more of its total merchandise”)
is time consuming for Code Enforcement to calculate and easy to evade

Purpose of Amending Ordinance No. 3106

Upper Darby Police Department reports trend of robberies, assaults, and illegal sales to minors concentrated in this retail category

Community complaints are frequent and come in a variety of ways – at Zoning Hearing Board Meetings, via Council members, and directly received by Township staff

Revisit intention of not allowing barber shops, beauty shops and nail salons to be within 300 feet of each other

Purpose of Amending Ordinance No. 3106

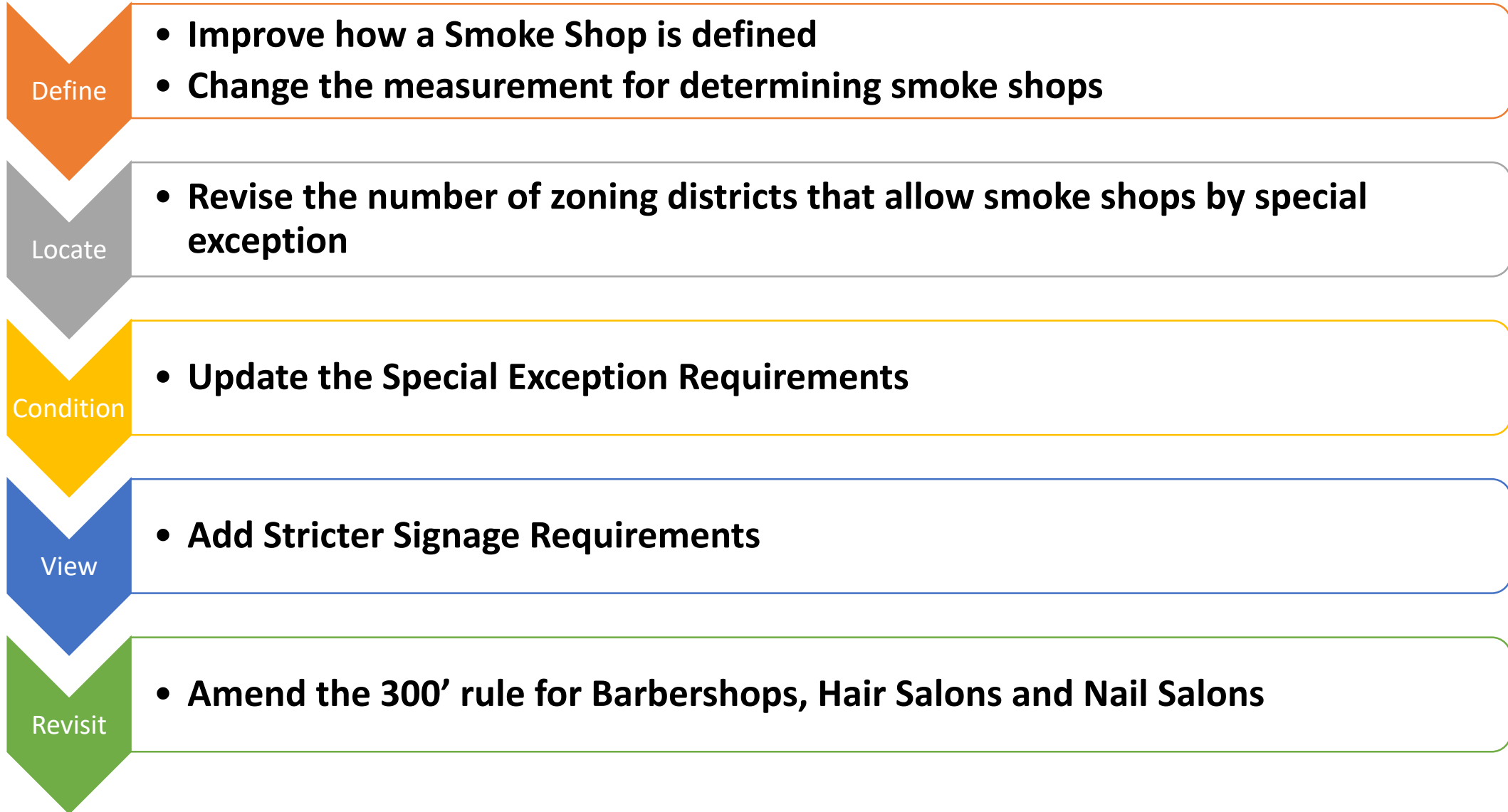
Business receives approval as a convenience/retail store

**Only an estimated 22 actual smoke shops are approved by special exception or as a existing non-conformity (existed prior to the enactment of Ord. No. 3106)*

Over time stores effectively operates as a smoke shop

**Estimated that 40-70 convenient stores operate as smoke shops*

Proposed Changes to Ordinance No. 3106



Improve how a Smoke Shop is defined

Move away from percentage of merchandise and establish a percentage of measurable retail square footage:

“A retail sales or wholesale establishment which maintains 15% of its retail floor space, of tobacco products/accessories, and/or vaping products or accessories shall be considered a tobacco store/smoke shop for the purposes of this chapter...”

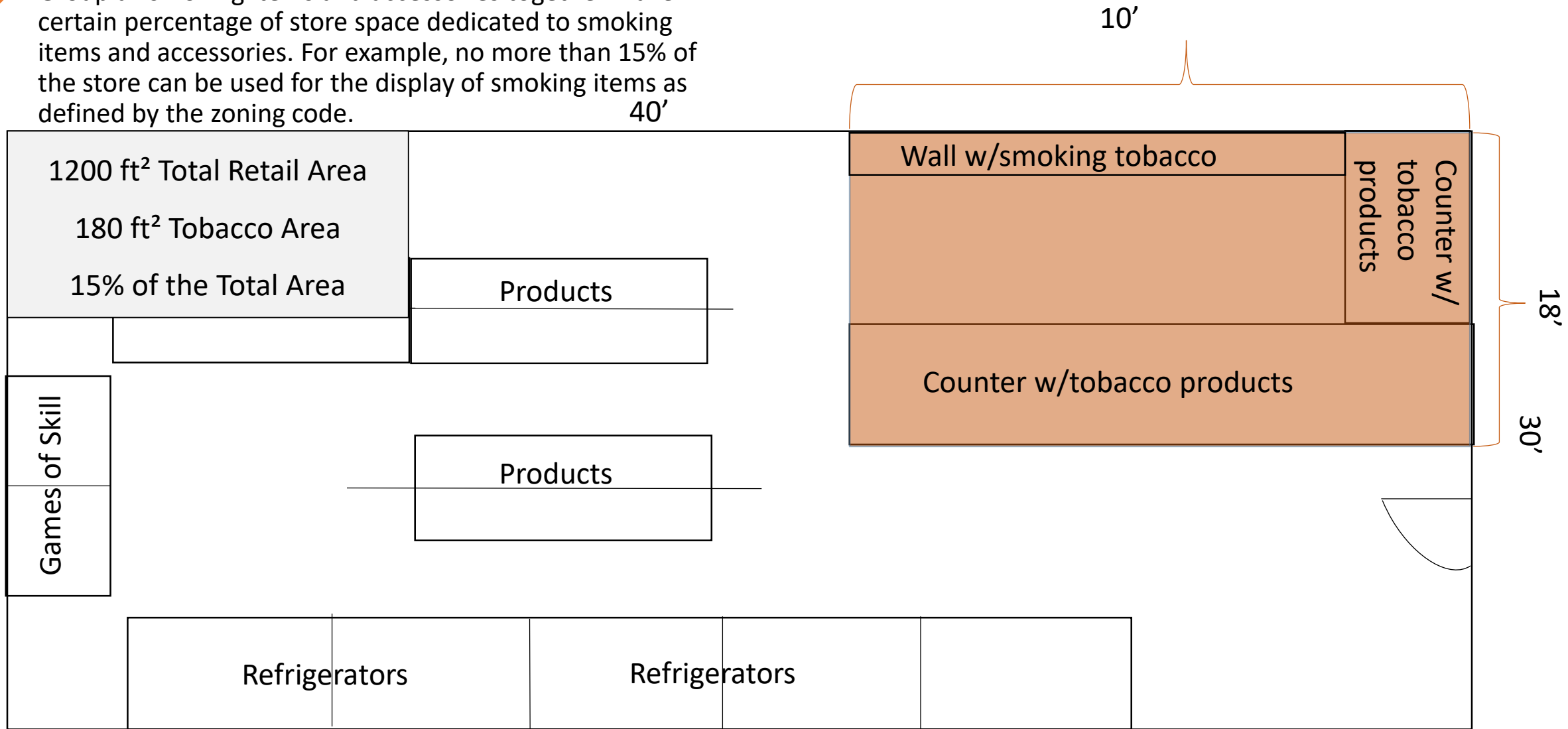
“All tobacco merchandise, vapes and vaping accessories as described under the definition must be displayed together and not interspersed with other retail goods.”

“Add definition of Tobacco Products”

“Change Smoking Parlor to Cigar Lounge”

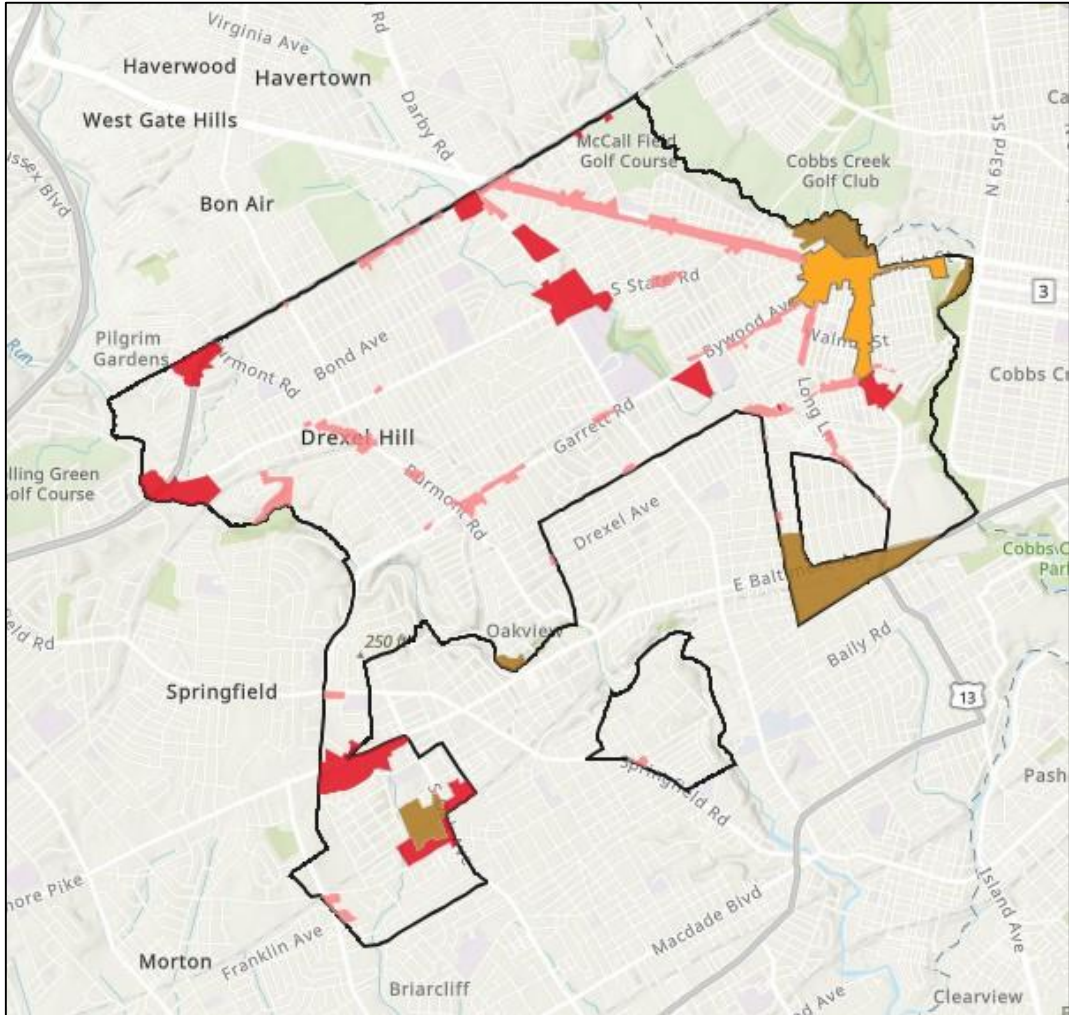
Sample Application Site Plan

Group all smoking items and accessories together. Have certain percentage of store space dedicated to smoking items and accessories. For example, no more than 15% of the store can be used for the display of smoking items as defined by the zoning code.

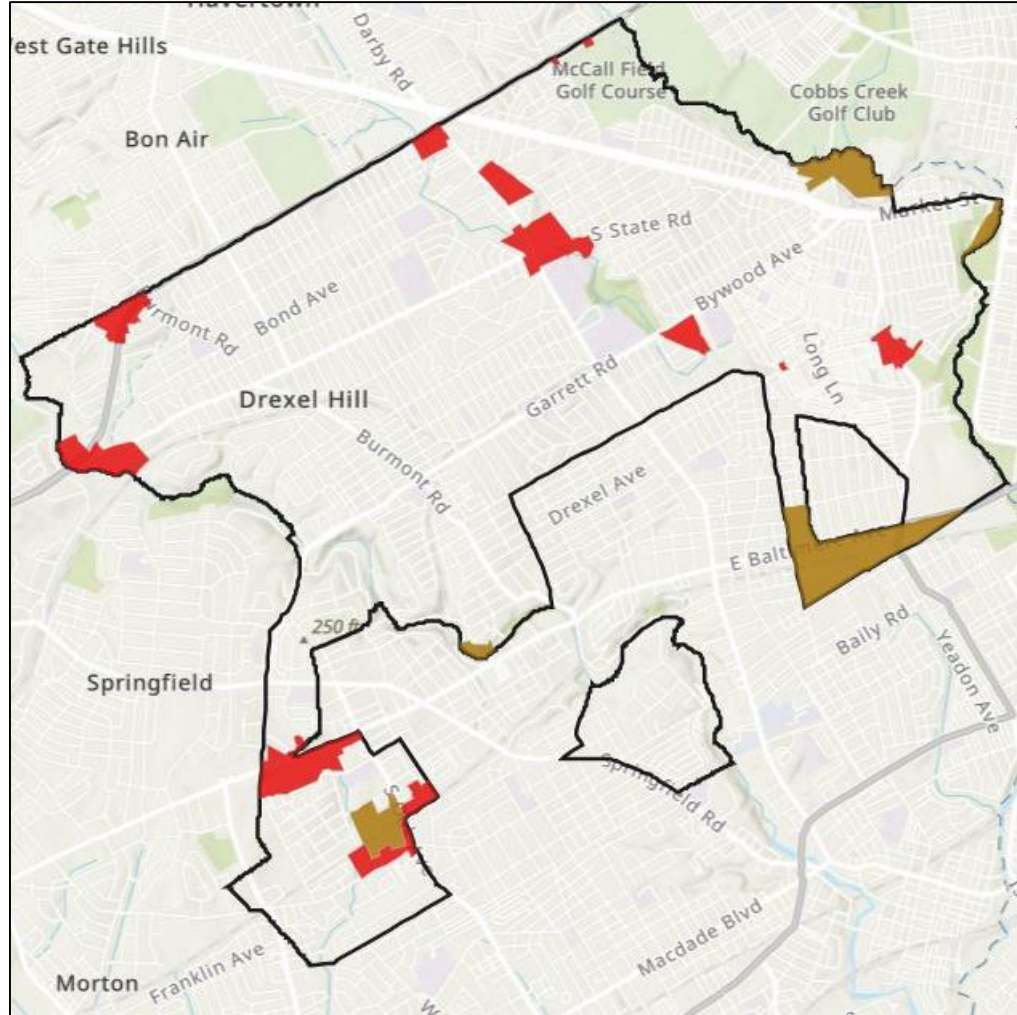


Revise the number of zoning districts that allow smoke shops by Special Exception

Locate

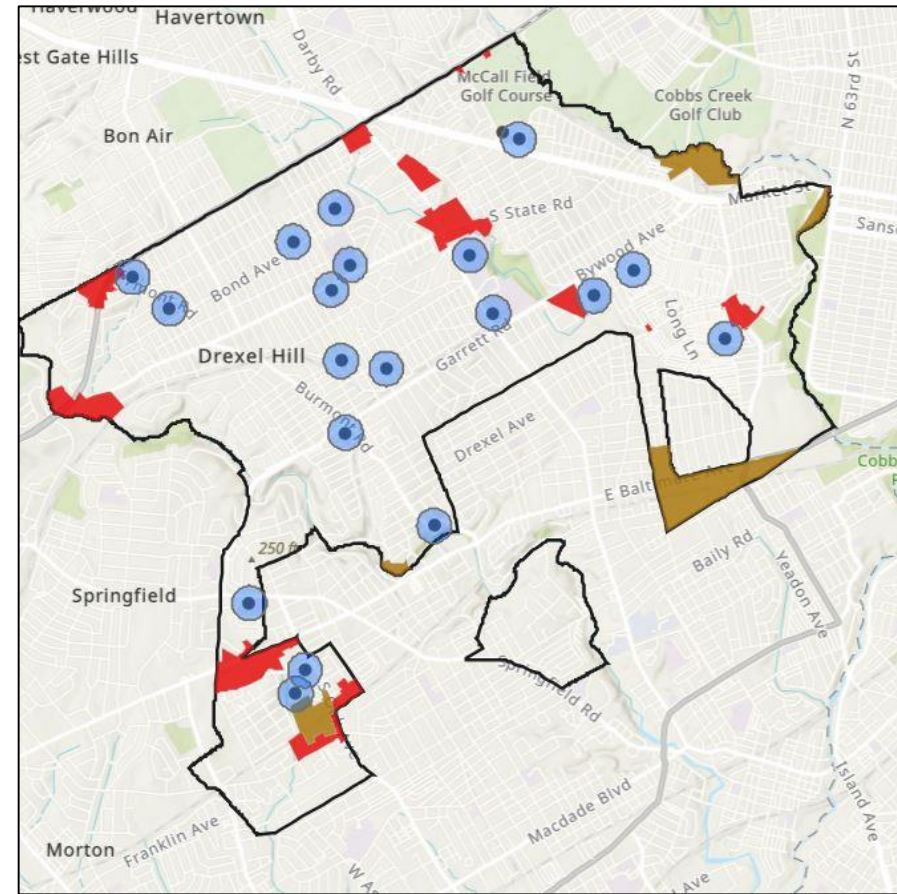
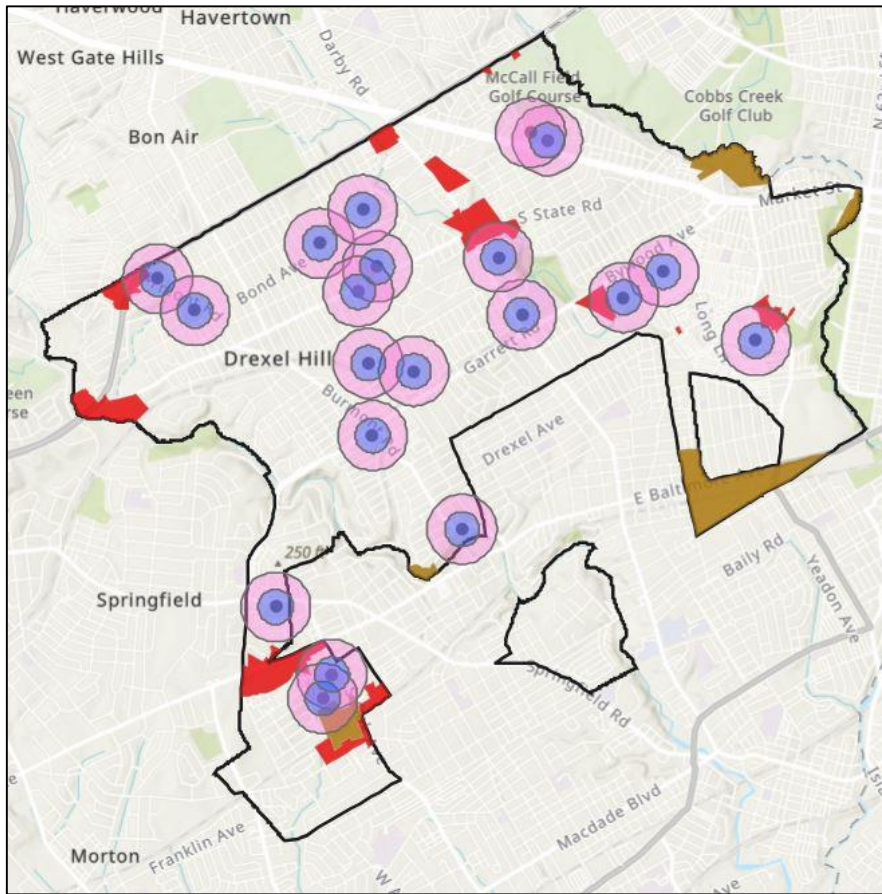


Existing: C-1, C-2, C-3 & C-4



Proposed: C-2 & C-4

Update the Special Exception Requirements



Blue Dot-School, Blue Circle-500' radius, Pink Circle 1000' radius

- Each tobacco store/smoke shop shall be located no closer than 500-1,000 feet from any public, private or charter school.

Update the Special Exception Requirements

- Applicant must submit professional elevations and floor plans during submission of the business permit
- Applicant must comply with spot checks by Township staff
- Selling prohibited items to minors will result in loss of Special Exception status and/or Certificate of Occupancy
- Escalating violations of Special Exception requirements may result in loss and/or suspension of Use & Occupancy and/or Special Exception

Add Strict Signage Requirements

- Add the following under prohibited signs:
 - “Signs advertising smoking products and accessories in a retail store that has not met the smoke shop special exception requirements of Section 550-23.C(3) & 550-24.C(3). This does not include signs under Section 550-37.H.”
- Window signs count as signs on the building and towards the allowable square footage
- No moving Electronic Signage
- Signage limited to less than 25% of the window or 75% of the window space must remain open
- Temporary signage must be removed after 30 days

Additional Recommendation

- Amend Section One of Ord. 3106
 - Currently any Nail Salon, Barbershop or Beauty Salon cannot be within 300' from each other.
- Issues:
 - Increases soft costs for opening a new business
 - Increases costs and time of the Zoning Hearing Board
- Recommendation:
 - Removal
 - ~~This use is only permitted if no barber shop, beauty salon, or nail salon is located within a 300-foot distance from such use.~~