

ORDINANCE NO. 3155

**AN ORDINANCE OF THE TOWNSHIP OF UPPER DARBY, COUNTY OF DELAWARE,
COMMONWEALTH OF PENNSYLVANIA, AMENDING CHAPTER 550. ZONING,
PERTAINING TO SMOKE SHOPS WITHIN THE TOWNSHIP; REPEALING ALL
INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A
SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, pursuant to Section C-701 of the Home Rule Charter of the Township of Upper Darby, the Township Council ("Council") is authorized to establish, alter, or amend any zoning ordinance;

WHEREAS, Council intends to preserve, maintain, and enhance the community existing within the Township while providing reasonable standards for smoke shops and tobacco stores within the Township;

WHEREAS, the regulation of smoke shops and tobacco stores is necessary and in the interests of the public health, safety and general welfare because there is substantial likelihood of the continued establishment and operation of smoke shops and tobacco stores in the Township;

WHEREAS, the expansion of smoke shops and tobacco stores in the Township would result in undesirable impacts in the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for 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;

WHEREAS, on May 19, 2010, pursuant to Ordinance No. 2984, Council enacted the current Zoning Code;

WHEREAS, on December 1, 2021, pursuant to Ordinance No. 3106, Council amended the Table of Permitted Uses for the current Zoning Code;

WHEREAS, Council desires to make certain changes to the Zoning Code, as set forth below;

WHEREAS, Council has met the procedural requirements of 53 P.S. § 10101, *et seq.*, of the Pennsylvania Municipalities Planning Code for the adoption of the proposed ordinance, including advertising and holding a public hearing; and,

WHEREAS, Council, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of Upper Darby Township will be served by this amendment of the Upper Darby Township Zoning Code.

NOW, THEREFORE BE IT ORDAINED, Ordinance No. 2984 and Ordinance No. 3106 shall be amended as follows (text to be deleted shown as ~~[strikethrough]~~, text to be added shown as underline):

Section 1.

§ 550-21 C-1 Traditional Neighborhood Commercial District

C. Special Exception Uses.

~~(5) Smoke shops/smoking parlors. Smoke shops/smoking parlors are permitted by special exception subject to the following requirements:~~

~~(a) Smoke shops/smoking parlors shall cease operations between the hours of 9:00 p.m. and 10:00 a.m.;~~

~~(b) No alcoholic beverages shall be served or consumed on the premises; and~~

~~(c) Where located on a parcel within 300 feet of a residentially zoned property or institutional use, the smoke shop/smoking parlor must include a planted buffer, privacy fence, and/or other sound or visual barrier adequate to screen adjacent residential properties from any activities on the premises to the satisfaction of the Zoning Hearing Board.~~

§ 550-22 C-2 Traditional General Commercial District.

C. Special Exception Uses.

(3) Smoke Shops/~~smoking parlors~~. Smoke Shops/~~smoking parlors~~ are permitted by special exception subject to the following requirements:

(a) Smoke Shops/~~smoking parlors~~ shall cease operations between the hours of 9:00 p.m. and 10:00 a.m.;

(b) No alcoholic beverages shall be served or consumed on the premises; ~~and~~

(c) Where located on a parcel within 300 feet of a residentially zoned property or institutional use, smoke shop/~~smoking parlor~~ must include a planted buffer, privacy fence, and/or other sound or visual barrier adequate to screen adjacent residential properties from any activities on the premises to the satisfaction of the Zoning Hearing Board;

(d) Tobacco Products are prohibited from being sold to individuals under 21 years of age;

(e) Individuals under 21 years of age are prohibited from being present in the Smoke Shop;

(f) Applicant must submit professional elevations and floor plans during submission of the business permit;

(g) Applicant must comply with spot checks from Township staff; and,

(h) Violations of these special exception requirements, or any other federal or state law, statute, or regulation will result in loss of a Smoke Shop's use and occupancy permit, and suspension of their special exception status. A suspended special exception status may only be reinstated by the Zoning Hearing Board upon petition.

§ 550-23 C-3 Traditional Downtown Business District.

C. Special Exception Uses.

(4) Subject to the general standards set forth in § 550-54J of this chapter and the specific standards set forth below, the following uses shall be permitted as special exceptions in the C-3 Zoning District when authorized by the Upper Darby Zoning Hearing Board:

~~(b) A smoke shop/smoking parlor. A smoke shop/smoking parlor shall be permitted as a special exception in the C-3 Traditional Downtown Business District. A smoke shop/smoking parlor shall meet the following specific criteria and requirements to receive approval as a special exception from the Zoning Hearing Board:~~

~~[1] Smoke shops/smoking parlors shall cease operations between the hours of 11:00 p.m. and 10:00 a.m.; provided, however, that operations of any smoke shops/smoking parlors located within 300 feet of a residential zoned property must cease operations between 9:00 p.m. and 10:00 a.m.; and~~

~~[2] No alcoholic beverages shall be served or consumed on the premises; and~~

~~[3] Where located on a parcel within 300 feet of a residentially zoned property or institutional use, the smoke shop/smoking parlor must include a planted buffer, privacy fence, and/or other sound or visual barrier adequate to screen adjacent residential properties from any activities on the premises to the satisfaction of the Zoning Hearing Board.~~

(b) Cigar Lounge. A Cigar Lounge shall be permitted as a special exception in the C-3 Traditional Downtown Business District. A Cigar Lounge shall meet the following specific criteria and requirements to receive approval as a special exception from the Zoning Hearing Board:

[1] Cigar Lounges shall cease operations between the hours of 2:00 a.m. and 10:00 a.m.; provided, however, any cigar lounge located within 300 feet of a residential zoned property must cease operations between 11:00 p.m. and 10:00 a.m.;

[2] Where located on a parcel within 300 feet of a residentially zoned property or institutional use, the cigar lounge must include a planted buffer, privacy fence, and/or other sound or visual barrier adequate to screen adjacent residential properties from any activities on the premises to the satisfaction of the Zoning Hearing Board.

[3] There shall be adequate ventilation for occupied spaces.

[4] Cigar lounges must be located at least 500' from any other Cigar Lounge.

[5] No alcoholic beverages shall be sold, served or consumed on the premises of a Cigar Lounge.

[6] The consumption of cannabis or cannabis derived substances is prohibited within the premises of a Cigar Lounge.

[7] Tobacco Products are prohibited from being sold to individuals under 21 years of age.

[8] Individuals under 21 years of age are prohibited from being present in a Cigar Lounge.

[9] Violations of these special exception requirements, or any other federal or state law, statute, or regulation will result in loss of a Cigar Lounge's use and occupancy permit, and suspension of the special exception status. A suspended special exception status may only be reinstated by the Zoning Hearing Board upon petition.

(C)

[3] There shall be adequate ventilation for occupied spaces.

[4] Hookah Bars must be located at least 500' from any other Hookah Bar.

[5] No alcoholic beverages shall be sold, served or consumed on the premises of a Hookah Bar

[6] The consumption of cannabis or cannabis derived substances is prohibited within the premises of a Hookah Bar.

[7] Tobacco Products are prohibited from being sold to individuals under 21 years of age.

[8] Individuals under 21 years of age are prohibited from being present in a Hookah Bar.

[9] Violations of these special exception requirements, or any other federal or state law, statute, or regulation will result in loss of a Hookah Bar's use and occupancy permit, and suspension of the special exception status. A suspended special exception status may only be reinstated by the Zoning Hearing Board upon petition.

§ 550-24 C-4 Commercial-Industrial District.

C. Special Exception Uses.

(3) Subject to the general standards set forth in § 550-54J of this chapter and the specific standards set forth below, the following uses shall be permitted as special exceptions in the C-4 Commercial-Industrial District when authorized by the Upper Darby Zoning Hearing Board:

(a) Smoke Shops/~~smoking parlors~~. Smoke Shops/~~smoking parlors~~ shall be permitted as a special exception in the C-4 Zoning District. A smoke shop/~~smoking parlor~~ shall meet the following specific criteria and requirements to receive special exception approval:

[1] Smoke shops/~~smoking parlors~~ shall cease operations between the hours of 9:00 p.m. and 10:00 a.m.; ~~provided, however, that operations of any smoke shops/smoking parlors located within 300 feet of a residential-zoned property must cease operations between 11:00 p.m. and 10:00 a.m.;~~

[2] No alcoholic beverages shall be served or consumed on the premises; ~~and~~

[3] Where located on a parcel within 300 feet of a residentially zoned property or institutional use, smoke shop/~~smoking parlor~~ must include a planted buffer, privacy fence, and/or other sound or visual barrier adequate to screen adjacent residential properties from any activities on the premises to the satisfaction of the Zoning Hearing Board.;

[4] Tobacco Products are prohibited from being sold to individuals under 21 years of age;

[5] Individuals under 21 years of age are prohibited from being present in the Smoke Shop;

[6] Applicant must submit professional elevations and floor plans during submission of the business permit;

[7] Applicant must comply with spot checks from Township staff; and,

[8] Violations of these special exception requirements, or any other federal or state law, statute, or regulation will result in loss of a Smoke Shop's use and occupancy permit, and suspension of the special exception status. A suspended special exception status may only be reinstated by the Zoning Hearing Board upon petition.

(b)

[3] There shall be adequate ventilation for occupied spaces.

[4] Hookah Bars must be located at least 500' from any other Hookah Bar.

[5] No alcoholic beverages shall be sold, served or consumed on the premises of a Hookah Bar.

[6] The consumption of cannabis or cannabis derived substances is prohibited within the premises of a Hookah Bar.

[7] Tobacco Products are prohibited from being sold to individuals under 21 years of age.

[8] Individuals under 21 years of age are prohibited from being present in a Hookah Bar.

[9] Violations of these special exception requirements, or any other federal or state law, statute, or regulation will result in loss of a Hookah Bar's use and occupancy permit, and suspension of the special exception status. A suspended special exception status may only be reinstated by the Zoning Hearing Board upon petition.

(c) Cigar Lounge. A Cigar Lounge shall be permitted as a special exception in the C-4 Commercial-Industrial District. A Cigar Lounge shall meet the following specific criteria and requirements to receive approval as a special exception from the Zoning Hearing Board:

[1] Cigar Lounges shall cease operations between the hours of 2:00 a.m. and 10:00 a.m.; provided, however, any cigar lounge located within 300 feet of a residential zoned property must cease operations between 11:00 p.m. and 10:00 a.m.;

[2] Where located on a parcel within 300 feet of a residentially zoned property or institutional use, the cigar lounge must include a planted buffer, privacy fence, and/or other sound or visual barrier adequate to screen adjacent residential properties from any activities on the premises to the satisfaction of the Zoning Hearing Board.

[3] There shall be adequate ventilation for occupied spaces.

[4] Cigar lounges must be located at least 500' from any other Cigar Lounge.

[5] No alcoholic beverages shall be sold, served or consumed on the premises of a Cigar Lounge.

[6] The consumption of cannabis or cannabis derived substances is prohibited within the premises of a Cigar Lounge.

[7] Tobacco Products are prohibited from being sold to individuals under 21 years of age.

[8] Individuals under 21 years of age are prohibited from being present in a Cigar Lounge.

[9] Violations of these special exception requirements, or any other federal or state law, statute, or regulation will result in loss of a Cigar Lounge's use and occupancy permit, and suspension of the special exception status. A suspended special exception status may only be reinstated by the Zoning Hearing Board upon petition.

§ 550-36 Definitions.

Smoke Shop, Cigar Lounge or Hookah Bar Sign-Any sign that advertises Tobacco Products as defined by section 550-56.

§ 550-37 Sign Regulations.

B. Prohibited Signs. It is unlawful to erect or maintain the following signs:

(10) Smoke Shop, Cigar Lounge, or Hookah Bar Signs in a retail store that has not met the Special Exception Requirements for a Smoke Shop contained within § 550-22.C(3), § 550-24.C(3)(a), Cigar Lounge contained within § 550-23.C(4)(b), §550-24.C(3)(c), or Hookah Bar contained within § 550-23.C(4)(c), § 550-24.C(3)(b), and has not been granted a special exception, pursuant to the applicable section.

(a) There shall be no moving and/or electronic signage or lighting permitted for the advertisement of Tobacco Products, except for signs that have met the special exception requirements for a Smoke Shop, Cigar Lounge or Hookah Bar.

G. Signs for which a permit is required. The following signs, as described under each zoning district or group of districts, are allowed, provided they comply with the standards and conditions set out in § 550-37E and, in the case of a billboard, § 550-37H, and a sign permit has been obtained:

(3) Signs in Commercial Districts. The following requirements apply to all signs advertising a commercial use in the C-1, C-2, C-3 and C-4 Districts.

(b) A maximum of three attached signs are permitted for each establishment. The total area of the signs cannot exceed two times the minimum width of the building and must be attached to the establishment being advertised. Window signs, including, but not limited to, cling film window signage, regardless of opacity, will count as attached signs on the building and towards the total allowable square footage. Individual establishments may also have one freestanding or ground sign for each street frontage. The maximum size of such signs cannot exceed 1/2 square foot of sign area for each linear foot of lot frontage.

(f) Signage must be limited to less than 25% of the window or 75% of the window space must remain clear and or unobstructed.

(g) For purposes of this section windows shall include all windows of the commercial portion of a property and shall constitute commercial frontage and/or display windows. Windows of a residential and/ or industrial portion of the a property shall not constitute commercial frontage and/or display windows.

§ 550-56 Definition of Terms.

Cigar Lounge

Any establishment that is devoted to, marketed as, or designed for, whether as its primary use or as an ancillary use, the on-premises use of cigars or tobacco products not including Hookah. This includes, but is not limited to, establishments variously known as cigar lounges, cigar clubs, cigar bars or smoking parlors. Sales of Cigars or Cigar accessories are permitted as an ancillary use as long as they remain secondary in nature.

A. Escalating violations of special exception requirements may result in loss and/or suspension of Use and Occupancy Permit. A revocation or suspension of an Use and Occupancy Permit may be reinstated by the Director of L&I and or the BCO upon

petition and the presentation of substantial evidence that the offending Cigar Lounge has remediated the violations resulting in the revocation or suspension.

Hookah Bar

Any establishment that is devoted to, marketed as, or designed for, whether as its primary use or as an ancillary use, the on-premises use of smoking through a water pipe with a smoke chamber, a bowl, a pipe and a hose, commonly referred to as a "hookah," and also known as narghile, argileh, shisha, hubble-bubble and goza, or any similar device used for on-premises smoking. The term "hookah bar" includes, but is not limited to, establishments variously known as hookah parlors, hookah cafes, and hookah lounges.

- A. Escalating violations of special exception requirements may result in loss and/or suspension of Use and Occupancy Permit. A revocation or suspension of an Use and Occupancy Permit may be reinstated by the Director of L&I and or the BCO upon petition and the presentation of substantial evidence that the offending Hookah Bar has remediated the violations resulting in the revocation or suspension.**

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~~ 15% or greater of its retail floor space as calculated per subsection A of this section below, as tobacco, tobacco products and or 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.~~

~~A. Each tobacco store/smoke shop shall be located no closer than 500 feet from any other tobacco store/smoke shop.~~

~~B. There shall be one off-street parking space required for each 200 feet of gross floor area or fraction thereof.~~

~~C. There shall be adequate ventilation for occupied spaces~~

A. The Smoke Shop display area is calculated as follows:

1. Measure the total display area of tobacco products.

(a) Measure area by multiplying length of tobacco products by width of tobacco products. The area shall be measured by the largest geometric rectangle formed by the extreme outside edge of the furthest item/accessory as described in the definition of tobacco products.

2. This number will then be divided by the store's retail floor area and multiplied by 100.

(a) The floor area will be calculated by measuring the area of usable retail space. This space includes but is not limited to, shelf space, floor displays, wall displays, customer seating, refrigeration units, freezers, lottery machines, ATMs, games of skill and counter space. This area will not include storage areas, hallways, restrooms, offices, kitchens and areas not accessible to the public.

B. Each smoke shop shall be located no closer than 1000 feet from any other tobacco store/smoke shop.

C. Each smoke shop shall be located no closer than 1000 feet from any public, private or charter school.

D. There shall be one off-street parking space required for each 200 feet of gross floor area or fraction thereof.

E. There shall be adequate ventilation for occupied spaces.

F. All retail stores must group tobacco products together with the exception of permitted smoke shops, which nevertheless, must comply with all state and federal laws, statutes, and regulations for the storage, safekeeping, handling, and display of Tobacco Products.

G. Escalating violations of special exception requirements may result in loss and/or suspension of Use and Occupancy Permit. A revocation or suspension of an Use and Occupancy Permit may be reinstated by the Director of L&I and or the BCO upon petition and the presentation of substantial evidence that the offending Hookah Bar has remediated the violations resulting in the revocation or suspension.

Tobacco Products

Tobacco Products shall include, without limitation, any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, chewing tobacco, and related accessories, including, but not limited to, matches, lighters, grinders, hookahs, pipes, cigarette rolling machines or papers, ashtrays, pipe tools, pipe supplies and pipe accessories, and vaping products and accessories. Vaping Products and accessories 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.

Table 3-1 Table of Permitted Uses

NOTES:

~~2 This use is only permitted if no barber shop, beauty salon, or nail salon is located within a 300-foot distance from such use.~~

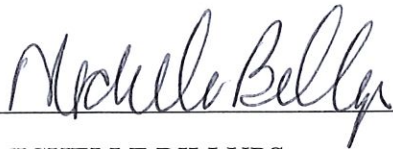
Section 2. If any section, sentence, clause, or word of this Ordinance shall be declared illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such declaration shall

not prevent, preclude or otherwise foreclose the validity of the remaining portions of this Ordinance.

Section 3. All ordinances or resolutions or parts thereof inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specially repealed.

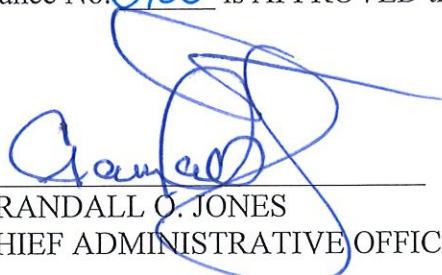
Section 4. This Ordinance shall be effective immediately.

ENACTED and **ORDAINED** this 10th day of July, 2024.

ATTEST: 
MICHELLE BILLUPS
SECRETARY OF COUNCIL

BY: 
HAFIZ TUNIS, JR.
PRESIDENT OF COUNCIL

Ordinance No. 3155 is APPROVED this 10th day of July, 2024.

ATTEST: 
CRANDALL O. JONES
CHIEF ADMINISTRATIVE OFFICER

BY: 
EDWARD BROWN
MAYOR