

**AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING PART THIRTEEN, ARTICLE 1315, 1320, AND 1341 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON, AS REVISED, CONCERNING PLANNING AND ZONING CODE.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that Part Thirteen, Article 1315, 1320, and 1341 of the Codified Ordinances of the City of Huntington, as revised, is hereby AMENDED, MODIFIED AND RE-ENACTED to read as follows:**

**PART THIRTEEN  
PLANNING AND ZONING CODE**

**ARTICLE 1315 DEFINITIONS AND MEASUREMENTS**

1315.02 - MEANING OF WORDS.

Unless otherwise stated, the following words shall, for the purpose of this Ordinance have the following meanings:

\* \* \*

**E-CIGARETTE** – an electrical or electronic device that provides a smoke, vapor, fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled, simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that is composed of a heating element, battery or electrical or electronic circuit, or a combination of heating element, battery and electrical or electronic circuit, which works in combination with e-cigarette liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so designed, or similarly designed, product that is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity of smoking”, in the context of this definition, means replicating, mimicking or reproducing an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other product or material that can be used in a similar fashion.

**E-CIGARETTE LIQUID** – any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid, vape juice, or e-liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin, nicotine from any source or flavorings.

\* \* \*

**SMOKE SHOP/TOBACCO STORE** – any business that sells at retail tobacco, tobacco products, vape products, e-cigarette devices, vape juice, e-cigarettes, e-cigarette liquids or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes, vape products, e-cigarettes or tobacco as less than 25% of retail sales shall not be defined as a "smoke shop and tobacco store".

\* \* \*

**TOBACCO PARAPHERNALIA** – any equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bongs, water bongs, e-cigarettes, electronic cigars, electronic hookahs, electronic bongs and electronic pipes, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar or electronic pipe, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia. This definition shall not apply to medical treatments prescribed or administered by medical professionals

**TOBACCO PRODUCT** – any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. For the purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

**ARTICLE 1320  
PERMITTED USES**

**Section 1320.04 Permitted Uses**

The chart in this section lists all permitted uses, conditional uses, and use-specific standards.

<b>Legend</b>	
Permitted Use	●
Conditionally Permitted Use	○
Prohibited Use	

**Table 1320.A: Permitted Uses**

Use Type	Districts									
	R-1 & R-2	R-4	R-5	C-1	C-2	C-3	I-1	I-2	(Reserved)	Use-Specific Standards
<b>Commercial</b>			***							
<b>Smoke Shop/Tobacco Store</b>			***	○	●	○	○	●		1341.55

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ARTICLE 1341  
GENERAL REGULATIONS

**1341.55 Smoke Shop/Tobacco Store**

- A. It shall be unlawful to operate a smoke shop/tobacco store within 1500 feet of an existing smoke shop/tobacco store, day care center, or school.
- B. Measurement Distance. Distance shall be measured in a straight line, without regard to intervening structures, from the closest property line of the smoke shop/tobacco store to the closest property line of the other smoke shop/tobacco store, day care center, or school.
- C. Nonconforming and Conditional Use Status; Time Limitation:
  - 1. Upon the adoption of this ordinance, any smoke shop/tobacco store, as defined in section 1315.02 of the city ordinances, that is within 1500 feet of an existing smoke shop/tobacco store, day care center, or school shall become a lawful nonconforming use and be subject to all nonconforming use restrictions, except that, if any nonconforming smoke shop/tobacco store ceases operation for a period of 180 days or more regardless of any intent to resume operation, it may not recommence operation in that location.
  - 2. A lawfully operating smoke shop/tobacco store shall not be rendered a nonconforming use by the subsequent location of another smoke shop, day care center, or school with 1500 feet; however, if the smoke shop/tobacco store ceases operation for a period of 180 days or more regardless of any intent to resume operation, it may not recommence operation in that location.
  - 3. Upon the adoption of this ordinance, any smoke shop/tobacco store, as defined in section 1315.02 of the city ordinances, that is located within a C-1 Neighborhood Commercial, C-3 Downtown Commercial, or I-1 Light Industrial zoning district shall become a lawful conditional use and subject to all conditional use restrictions, whether general or for the district
  - 4. Any smoke shop/tobacco store that is a conditional use, regardless of whether the conditional use was obtained by public hearing or operation of law, that ceases operation for a period of 180 days or more regardless of any intent to resume operation, may not recommence operation in that location.
- D. Shall conform with all Federal, State, and Local laws related to the sale of electronic cigarettes, tobacco products, and other vape products.

**BE IT FURTHER ORDAINED** that all other articles, sections and subsections of Section Thirteen of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

**BE IT FURTHER ORDAINED** that these amendments to the Codified Ordinances of the City of Huntington, as revised, shall become effective upon its adoption by Council and approval by the Mayor.

SPONSORED BY COUNCILWOMAN ALLY LAYMAN

APPROVED AS TO FORM BY EBH

FIRST READING 5/22/2023 - ORDERED ADVERTISED

SECOND READING 6/12/2023 - ADOPTED (8 yeas, 0 nay and 3 absent - Bowen, Rumbaugh and Sweeney)

DATE 6/12/2023

*Luia Adkins, Assl. City Clerk*  
BARBARA MILLER, CITY CLERK

DATE 6/13/2023

*Steve Williams*  
STEVE WILLIAMS, MAYOR

*✓*  
APPROVE

DATE 6/13/2023

\_\_\_\_\_  
VETO

**Staff Report:** A petition to amend Article 1315, 1320, and 1341 of the Zoning Ordinance.

**PC 23-TA-06**

*Issue:* A petition to make the following changes to the City of Huntington Zoning Ordinance:

1. Amend Article 1315 Definitions and Measurements to define E-Cigarette, E-Cigarette Liquid, Smoke Shop/Tobacco Store, Tobacco Paraphernalia, and Tobacco Product.
2. Add Article 1341.55 Smoke Shop/Tobacco Store Standards.
3. Amend Article 1320 Permitted Uses to add Smoke Shop/Tobacco Store to the Permitted Uses Chart.

*Petitioner:* City of Huntington, 800 5<sup>th</sup> Avenue, Huntington, WV 25701

**Introduction**

This is a petition to update the City of Huntington’s zoning ordinance to create regulations specific to businesses that primarily sell tobacco and vape products.

**Existing Code**

Under the existing code, stores that primarily sell tobacco or vape products are classified under a general “Retail Sales and Services” use. Retail Sales and Services businesses under 6,000 square feet are permitted in all commercial and industrial zoning districts.

**Proposed Code Changes**

**Article 1315 – Definitions and Measurements**

Definitions for the following items added to the code:

- *E-Cigarette,*
- *E-Cigarette Liquid*
- *Smoke Shop/Tobacco Store*
- *Tobacco Paraphernalia*
- *Tobacco Product*

**Article 1320 – Permitted Uses**

*Smoke Shop/Tobacco Store* would be added to the permitted uses chart. If the location met distance requirements outlined in additional standards for this use, this use would be permitted by-right (without a public hearing) in the C-2 Highway Commercial and the I-2 Industrial Districts, and conditionally (requires a public hearing of the Board of Zoning Appeals) in the C-1 Neighborhood Commercial, C-3 Central Business, and I-1 Light Industrial Districts.

**Addition of Article 1341.55 Smoke Shop/Tobacco Store**

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This would add additional regulation to the location of Smoke Shop/Tobacco Stores. These businesses would not be permitted to open within 1,500 feet of an existing smoke shop/tobacco store, a day care center, or a school. This article explains how this distance would be measured, from closest property line to property line.

This article also outlines how this ordinance would impact existing lawfully operating Smoke Shops/Tobacco Stores. Under these updates, any existing Smoke Shops/Tobacco stores within 1500 feet of an existing smoke shop, day care center or school becomes lawfully nonconforming. If the smoke shop/tobacco store ceases operation for a period of 180 days or more, regardless of any intent to resume operation, it may not recommence in that location.

Any existing smoke shop in a C-1, C-3, or & I-1 district becomes a conditional use, which would need to seek permission through a public hearing of the Board of Zoning Appeals in order to expand. If the smoke shop/tobacco store ceases operation for a period of 180 days or more, regardless of any intent to resume operation, it must petition the Board of Zoning Appeals in order to re-open.

The chart below outlines the scenarios where a new smoke shop/tobacco store could be located.

<b>Zoning Decision Chart A</b>		
	<b>Is business within 1,500' of school/daycare/another smoke shop?</b>	
<b>Zone</b>	<b>Yes</b>	<b>No</b>
C-1	Not permitted	Conditionally permitted
C-2	Not permitted	Permitted
C-3	Not permitted	Conditionally permitted
I-1	Not permitted	Conditionally permitted
I-2	Not permitted	Permitted

**Staff Comments**

In order to be classified as a Smoke Shop/Tobacco Store, 75% of that business's retail sales must be from products related to tobacco and/or vaping. Based on the new definitions, there are 13 existing businesses that we were able to identify in Huntington city limits that are currently classified as "Retail Sales and Services" that would be classified as "Smoke Shop/Tobacco Store" if these changes are approved. If these ordinance changes are approved, of these existing businesses, only two (2) would be permitted by right. Ten (10) would be would be legally non-conforming based on proximity to existing smoke shops/tobacco stores, schools, or day cares,

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and one would be conforming, but a conditional use. One would be conditionally permitted, and two (2) would be permitted by-right in their current locations.

All of the existing smoke shop/tobacco stores could continue to operate in the same manner they are currently, however, any expansions of those that are non-conforming or conditionally permitted would need to be approved by the Board of Zoning Appeals.

<b>Zoning Decision Chart B :</b>			
If business closes for 180< days			
	Can continue operating	Cannot continue operating in same location	Must obtain conditional use permit to resume operation
Permitted & Conforming to Distance Requirements	X		
Conditionally Permitted & Conforming to Distance Requirements			X
Permitted but not conforming to distance requirements		X	
Conditionally permitted but not conforming to distance requirements		X	

**Attachments**

- Proposed amendments; light gray are additions and dark gray strikethrough are omissions.
- Article 1355 – Nonconforming Use Specifications

