

**AN ORDINANCE AMENDING THE ZONING CODE  
TO ESTABLISH A USE CLASSIFICATION FOR SMOKE SHOP OR TOBACCO  
STORE, ESTABLISH DEFINITIONS RELATED TO THE USE, AND PROVIDE FOR  
PERMITTED USES AND SUPPLEMENTAL CONDITIONS  
RELATED TO THE USE AND RELATED DEFINED TERMS**

WHEREAS, The City of Morgantown has enacted a zoning ordinance in accordance with the authority provided by West Virginia Code Chapter 8A; and

WHEREAS, the zoning ordinance is designed to promote the general public welfare, health, safety, comfort and morals as prescribed by W. Va. Code section 8A-7-1(a)(1); and

WHEREAS, the zoning ordinance designates and permits, or prohibits, specific land uses in conjunction with dividing the land of the City into different zone classifications regulating the use of land within those districts, all as permitted by W. Va. Code section 8A-7-1(b); and

WHEREAS, the defined use classifications within the zoning ordinance do not presently include a definition for a specific type of retail establishment focused on sales of electronic smoking devices, electronic smoking liquids or substances, and/or tobacco products; and

WHEREAS, other West Virginia communities including Charleston, Huntington, and Fayette County have adopted use classifications for smoke shop or tobacco store uses as part of their zoning ordinances; and

WHEREAS, the City Council finds and concludes that defining this use of property and establishing districts where the use is permitted and where it is prohibited, along with establishing certain supplementary conditions regulating the use classification, will promote the general health, safety, and welfare by promoting the orderly development of land, contributing to a diverse array of business uses within commercial districts within the city, and ensuring that the smoke shop/tobacco store use is operated in a manner compatible with the continuation and development of other permitted land use districts where the use is permitted;

NOW, THEREFORE, The City of Morgantown hereby ordains that the Zoning Code is amended as follows (new matter underlined; deleted matter ~~stricken~~):

**Sec. 1329.02. - Definition of terms.**

*Drug store* means an establishment engaged in the retail sale of prescription drugs and patient medicines and which may carry a number of related product lines, such as cosmetics, toiletries, tobacco and novelty merchandise, and which may also operate a soda fountain or lunch counter. "Drug store" shall not include or be construed to be a medical cannabis dispensary.

*Electronic Smoking Device* means any electronic product that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, electronic

cigarettes (e-cigarettes), electronic cigars, (e-cigars), electronic pipes (e-pipes), vape pens, or electronic hookahs (e-hookahs), whether by smoke, vapor, fog, mist, gas, or aerosol suspension of nicotine or another substance. "Electronic Nicotine Delivery System" shall include any component or accessory of such a device, whether sold separately or not, including any filters and/or liquids used in such devices.

Electronic Smoking Liquid means any of the liquids or liquid mixtures used in any Electronic Smoking Device such as, but not limited to, propylene glycol, vegetable glycerin, flavorings, or other liquids converted to aerosol, and including, but not limited to any electronic smoking device mixing kits and/or components thereof.

Smoke Shop/Tobacco Store means any premises that engages in the display, sale, distribution, delivery, offering, furnishing, or marketing of electronic smoking devices, electronic smoking liquid, tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store, drug store, or similar retail use that only sells conventional cigars, cigarettes, or tobacco as an ancillary sale shall not be defined as a smoke shop/tobacco store.

Tobacco Paraphernalia means any paraphernalia, equipment, device, or instrument other than a lighter or matches 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 as defined herein. Tobacco Paraphernalia shall include but is not limited to pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, electronic smoking devices, vaporizers, and hookahs.

Tobacco Product means any product containing, made of, or derived from tobacco or nicotine, that is intended for human consumption by inhalation, absorption, chewing, dissolving, snorting, sniffing, or any other ingestion. The term "tobacco product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration as a tobacco/smoking cessation product or for other medical purposes, as those terms are defined in the Federal Food, Drug and Cosmetic Act and/or implementing regulations authorized thereunder, and where such product is marketed and sold solely for such approved purpose.

**Table 1331.05.01: Permitted Land Uses**

Uses	R-1	R-1A	R-2	R-3	PRO	B-1	B-2	B-4	OI	B-5	I-1	Supplemental Regulations
<u>Smoke Shop/Tobacco Store</u>							<u>C</u>			<u>P</u>		<u>36</u>

**Sec. 1331.06. - Supplemental regulations pertaining to permitted land uses table.**

(36) No smoke shop/tobacco store may be operated within 1500 feet of another smoke shop/tobacco store, day care center, or school. For purposes of this limitation, distance shall be measured in a straight line without regard to intervening structures, from the closest point of one use to the closest point of another. A lawfully operating smoke shop/tobacco store that is located within the B-2 District shall become a lawful conditional use and shall be subject to all conditional use restrictions, whether general or for the district. Every smoke shop/tobacco store shall conform with all federal, state, and local laws and regulations related to the sale of electronic smoking devices, electronic nicotine delivery systems, tobacco products, and similar products.

This ordinance shall become effective upon adoption.

FIRST READING: June 4, 2024

SECOND READING: July 16, 2024

ADOPTED: July 16, 2024

FILED: July 17, 2024



Mayor



City Clerk

