

INTRODUCED BY:

Frank A. Mullens, Jr., Mayor

ORDINANCE NO:

2352

REFERRED TO:

APPROVED ON:

3/21/24

AN ORDINANCE TO ENACT ARTICLE 1355 OF PART 13, CHAPTER FIVE. ENTITLED SUPPLEMENTAL ZONING REQUIREMENTS OF THE MUNICIPAL CODE OF THE CITY OF SOUTH CHARLESTON CONCERNING VAPE SHOPS.

WHEREAS, Part 13 of the Municipal Code of the City of South Charleston establishes comprehensive zoning regulations for the City and provides for the administration, enforcement, and amendment thereof, in accordance with West Virginia Code § 8A-2-1, *et seq.*; and

WHEREAS, e-cigarettes have risen in prominence among smokers and non-smokers since their introduction to the United States, as a way to inhale nicotine; and

WHEREAS, e-cigarettes, often sold in a variety of flavors, are extremely enticing to both adolescents and adults, and are marketed as a safer alternative to traditional cigarettes; and

WHEREAS, e-cigarettes have created a growing public health epidemic of nicotine addiction among adolescents, particularly those of middle and high school age, as well as adults; and

WHEREAS, tobacco products also have been proven to be addictive and harmful to users and to non-users through secondhand smoke; and

WHEREAS, a significant number of vape shops already exist within the City; and

WHEREAS, the City now believes that regulation of such vape shops serves the common good and public health of the City, its residents and its visits; and

WHEREAS, the City Council now desires to enact Municipal Code Article 1355 to regulate and permit such shops, beginning on July 1, 2024; and to amend Article 1307.01 and 1329.01 to reflect the need for a shop proprietor to obtain a special permit before opening or relocating a vape shop or converting an existing shop into a vape shop.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SOUTH CHARLESTON, WEST VIRGINIA, AS FOLLOWS:

A. THAT ARTICLE 1355 BE ENACTED TO READ AS FOLLOWS:

1355.01 Definitions

(a) "Community location" means:

(1) a public or private kindergarten, elementary, middle, junior high or high school;

- (2) a licensed child-care facility or preschool;
- (3) a trade or technical school;
- (4) a church;
- (5) a public library;
- (6) a public playground; or
- (7) a public recreational facility.

(b) "E-cigarette" means 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 and battery circuit, which work 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 similar 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.

(c) "E-cigarette liquid" means 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 or nicotine from any source or flavorings.

(d) "Tobacco paraphernalia" means 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 e-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.

(e) "Tobacco product" means 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 article, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for an approved purpose.

(f) "Vape shop" means any business that sells at retail tobacco, tobacco products, vape products, e-cigarette devices, vape juice, e-cigarettes, e-cigarette liquid 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 gross retail sales shall not be defined as a "vape shop."

1355.02 Zoning District and Development Standards

(a) No person, firm, corporation or association shall cause or permit the establishment of any vape shop within any zoning district other than C-6, C-8 or C-10, and then only after receiving a special permit in accordance with Section 1311.02.

(b) In addition to the development standards prescribed for the districts heretofore noted, no person, firm, corporation or association shall cause or permit the establishment of a vape shop within 2,000 feet of another such business or within 1,500 feet of any community location. For the purpose of this regulation, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the parcel of real estate upon which a vape shop is located to the nearest property line of the premises of a community location, or to the nearest boundary line of a district restricted to residential use by these Codified Ordinances.

(c) The establishment of a vape shop shall include: the opening of such business as a new business, the relocation of such business, or the conversion of an existing business location to any of the uses defined to constitute a vape shop.

B. THAT ARTICLE 1307.01 (155) BE AMENDED TO READ AS FOLLOWS:

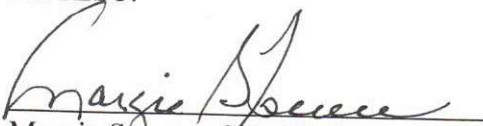
(155) "Vape shop" means any business that sells at retail tobacco, tobacco products, vape products, e-cigarette devices, vape juice, e-cigarettes, e-cigarette liquid or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes, vape products, e-cigarettes or tobacco as less than 25% of gross retail sales shall not be defined as a "vape shop."


C. THAT SUBSECTIONS 1307.01 (155) through (165) be renumbered to 1307.01 (156) through 1307.01 (166); and

D. THAT ARTICLE 1329.01 BE AMENDED to list Vape Shops before Variety Stores as a special permitted-only ("S") use in Zoning Districts C-6, C-8 and C-10.

This ordinance shall take effect immediately upon passage.

ATTEST:


Margie Spence, City Clerk


Frank A. Mullens, Jr., Mayor

This ordinance was prepared by Moore & Biser PLLC, City Attorney.