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MEMORANDUM

To: The Honorable Members of the Land Use & Transportation Committee
From: Justin A. Williams, Interim Executive Director
CC: Geoffrey Veale, Zoning Administrator
Date: January 8, 2026
Re: Council Bill No. 25-0114 – Zoning – Uses – Smoke Shop
Position: Favorable with Amendments

This testimony reflects staff analysis and does not constitute a formal Board-approved position.

The Board of Municipal and Zoning Appeals (BMZA) staff supports the intent of City Council Bill #25-0114 to regulate the proliferation of smoke shops and protect the health and character of Baltimore's neighborhoods. However, based on an analysis of best practices from other jurisdictions and the operational realities of zoning enforcement, BMZA staff strongly recommends specific technical amendments to ensure this legislation is enforceable, equitable, and legally defensible.

I. THE PREFERRED MECHANISM: LICENSING DENSITY CAPS

While CCB #25-0114 proposes to use zoning to regulate smoke shop locations, BMZA staff notes that *the most effective tool for controlling the density of tobacco retailers is business licensing*. We point the Committee to the model utilized by Philadelphia, Pennsylvania.

Philadelphia Code § 9-631 created a comprehensive 'Tobacco Retailer Permit' system that imposes a strict cap of one permit per 1,000 residents in each planning district.¹ This 'cap and winnow' approach provides three critical advantages over zoning-based regulation:

- (1) **Dynamic adjustment:** The City can naturally reduce density over time as existing permits lapse, without triggering the complex property-specific litigation often associated with zoning non-conformities;
- (2) **Administrative efficiency:** License caps are easier to track and enforce than property line-to-property line distance measurements; and
- (3) **Targeted equity:** Density caps can be calibrated by neighborhood planning district, allowing the city to address over-concentration in historically underinvested communities while preserving legitimate businesses in appropriately zoned commercial corridors.

BMZA staff recognizes that the City is currently constrained by the Maryland Supreme Court's decision in *Altadis U.S.A., Inc. v. Prince George's County*, which held that State law impliedly preempts local jurisdictions from enacting certain regulations regarding the sale of tobacco.² However, given the demonstrated public health

crisis and the proven effectiveness of density caps in peer jurisdictions, BMZA staff recommends the City Council consider a Resolution urging the Maryland General Assembly to enact enabling legislation that would grant Baltimore City the specific authority to cap tobacco retailer licenses locally, mirroring the Philadelphia model. Such enabling legislation would provide Baltimore with the most effective regulatory tool while avoiding the enforcement challenges inherent in zoning-based approaches.

II. ZONING AMENDMENTS REQUIRED FOR ENFORCEABILITY

If the City Council proceeds with regulating smoke shops through the Zoning Code, BMZA shares the concerns raised by the Planning Commission regarding the definition and administration of the use. Specifically, the Planning Commission has asked: (1) how the definition will impact properties with multiple approved land uses (e.g., grocery stores); (2) how these provisions will be enforced; and (3) how the floor area measurement methodology will function in practice. To address these operational concerns, we recommend the following amendments:

A. Replace “Floor Area” with “Display Area” (The “Tape Measure” Rule)

Section 1-313(m)(3) of the First Reader defines a smoke shop as an establishment that devotes ‘10% or more of its gross retail floor area’ to tobacco products. This threshold creates three significant administrative problems:

First, the City does not currently collect/require floor plans for Use & Occupancy (U&O) permits. So will be difficult to discern at the permit level whether a proposed use that self-identifies as a retail goods establishment should actually be identified as a smoke shop.

Second, at the time of review by a building inspector at the time of issuance of the U&O Permit, or subsequently after complaint, an inspector cannot easily calculate square footage percentages in the field without specialized tools, structural drawings, and multiple site visits. This will significantly delay enforcement actions and increase litigation risk.

Third, retailers can manipulate floor area calculations by reconfiguring interior spaces or redefining what constitutes ‘gross retail floor area’ versus back-of-house space.

Recommendation: Adopt the objective, field-verifiable metrics used by cities like San Francisco and Modesto, California. These jurisdictions define smoke shops based on *linear feet of display area*; a measurement that any inspector can verify with a tape measure during a routine site visit.

- San Francisco Health Code Article 19H defines a ‘Tobacco Paraphernalia Establishment’ as any retail use with more than 10 linear feet of display area devoted to tobacco products or paraphernalia.³
- Modesto Municipal Code § 4-24.102 defines a ‘Smoke Shop’ as having more than 15 linear feet of display area.⁴

Proposed Amendment to Baltimore City Code Art. 32, § 1-313(m)(3):

(3) DEVOTES MORE THAN 20 LINEAR FEET OF DISPLAY AREA (MEASURED BY SHELF SPACE, COUNTER SPACE, OR WALL-MOUNTED DISPLAYS, WHETHER VERTICAL OR HORIZONTAL) OR 10% OF TOTAL RETAIL DISPLAY VOLUME TO THE SALE OF TOBACCO PRODUCTS OR RELATED PARAPHERNALIA.

This amendment provides enforcement/inspectors with a clear, objective standard. A retail establishment exceeding 20 linear feet of tobacco/vape product display is clearly operating as a specialty smoke shop rather than a general retailer with ancillary tobacco sales.

B. The Safe Harbor: Explicit Exemption for Grocery Stores and Essential Retailers

If the Council declines to adopt the ‘Display Area’ metric and retains the ‘Floor Area’ definition, BMZA Staff recommend adding a safe harbor provision to prevent the accidental classification of grocery stores and smaller food retailers as “smoke shops.” Without this protection, one could foresee a small corner store (like a ‘bodega’) or even a small grocery store inadvertently meeting the 10% floor area threshold if tobacco products occupy even a modest endcap display or checkout counter rack, subjecting essential food access points to the 1,500-foot distancing requirement and conditional use process.

Inadvertently subjecting these establishments to smoke shop regulations could trigger closure or relocation, further reducing food access in already underserved communities.

Recommendation: Adopt an ‘Ancillary Tobacco Retailer’ definition similar to Covina, California.⁵ This creates a rebuttable presumption that full-service grocery stores and convenience stores are *not* smoke shops where tobacco sales are incidental to their primary food retail function.

Proposed Amendment: Add Baltimore City Code Art. 32, § 1-313(m)(4):

(4) SAFE HARBOR FOR ANCILLARY SALES. THE TERM ‘SMOKE SHOP’ SHALL NOT INCLUDE A RETAIL GOODS ESTABLISHMENT, GROCERY STORE, CONVENIENCE STORE, OR SUPERMARKET WHERE: (I) THE SALE OF TOBACCO PRODUCTS IS ANCILLARY TO THE ESTABLISHMENT’S PRIMARY RETAIL FUNCTION; (II) SUCH PRODUCTS OCCUPY LESS THAN 20 LINEAR FEET OF DISPLAY AREA; AND (III) THE ESTABLISHMENT DERIVES LESS

THAN 10% OF ITS GROSS REVENUE FROM TOBACCO PRODUCTS. SUCH ESTABLISHMENTS SHALL REMAIN CATEGORIZED AS DETERMINED BY THE ZONING ADMINISTRATOR AND SHALL NOT BE SUBJECT TO THE SPACING REQUIREMENTS OF § 14-337.

C. Establishing the Baseline: Mandatory Registration

The Bill prohibits new smoke shops within 1,500 feet of an existing smoke shop. However, the City does not currently have a comprehensive map or database distinguishing ‘smoke shops’ from general retailers. While the Department of Planning maintains GIS layers for schools, parks, and recreation centers (necessary for enforcing the 500-foot buffer), no comparable dataset exists for smoke shop locations.

This creates an immediate enforcement problem: without a baseline inventory, Zoning Administration and BMZA staff cannot determine whether a new conditional use application complies with § 14-337(2)’s 1,500-foot spacing requirement. Additionally, existing operators have a strategic incentive to delay registration, creating uncertainty about which establishments are ‘grandfathered’ legal non-conforming uses.

Recommendation: Adopt a mandatory registration affidavit process similar to San Antonio, Texas.⁶ Upon passage of the Bill, existing operators should be given some period of time (e.g., 180 days) to register their status as a ‘Legal Non-Conforming Smoke Shop’ via affidavit submitted to the Department of Planning or other agency. The affidavit should require:

- (1) Business name, address/block & lot;
- (2) Current State tobacco license number(s) (e.g., Vape Shop Vendor, ESD Retailer, or Cigarette Business License);
- (3) Affirmation under penalty of perjury that the establishment meets the definition of ‘Smoke Shop’ under § 1-313(m); and
- (4) Documentation demonstrating continuous operation at the location prior to [*effective date of ordinance*].

Failure to register within [180] days would result in the presumption that the use is a general retail goods establishment subject to the ancillary use limits proposed above. This approach balances the need for a clear enforcement baseline with protection for legitimate existing businesses.

III. “BAD ACTOR” ENFORCEMENT: ZONING IS NOT THE APPROPRIATE TOOL

Regarding concerns about illegal sales (e.g., unlicensed cannabis products or Delta-9 THC variants), **BMZA staff advises that zoning is not the appropriate tool for penalizing criminal behavior.** Zoning regulations ‘run with the land’ and thus attach to the property itself, not to individual operators. Revoking zoning approval is an inherently slow, quasi-judicial process requiring notice, hearing, findings of fact, and

appellate review. This procedural framework is not designed to address immediate public safety threats posed by illegal drug sales.

Instead, we highlight two more appropriate enforcement mechanisms:

First, the Maryland Alcohol, Tobacco, and Cannabis Commission (ATCC) now has expanded enforcement powers. Following the lifting of the injunction in *Governor Wes Moore v. Maryland Hemp Coalition*,⁷ the ATCC has the authority to seize illegal THC products, conduct compliance inspections, and *revoke State tobacco licenses* for violations. This administrative action is immediate and does not require protracted zoning hearings.

Second, the Baltimore Police Commissioner retains the authority to close premises under the City's 'Padlock Law' (Baltimore City Code Article 19, Subtitle 43) for repeated drug violations. This statute allows for emergency closure orders and is specifically designed for immediate public safety response.¹⁰

Recommendation: Establish a protocol where revocation of a State Tobacco License by the ATCC automatically triggers the revocation of the U&O Permit, as the business would no longer meet the statutory definition of a smoke shop under § 1-313(m)(2). This creates a direct enforcement pipeline that leverages State regulatory authority while avoiding the procedural limitations of zoning enforcement.

IV. RESOURCE REQUIREMENTS: THE COST OF COMPREHENSIVE ENFORCEMENT

BMZA notes that the enforcement of this Bill, along with recent zoning legislation regulating small box discount stores ("Dollar Stores" per Ord. 25-065), sustainability requirements (e.g., Landscape Manual compliance, Forest Conservation), and other additional zoning provisions, places a significant and cumulative new burden on City staff.

Specifically, enforcing Bill #25-0114 will require:

- (1) Field inspections to verify 'linear feet of display area' in existing and prospective smoke shops;
- (2) Ongoing GIS mapping and spatial analysis to enforce the complex spacing buffers (500 feet from schools/parks/recreation centers and 1,500 feet from other smoke shops);
- (3) Processing and verification of mandatory registration affidavits for existing smoke shops (if the above-proposed amendments are adopted);
- (4) Coordination with the Maryland ATCC to track State tobacco license revocations and trigger corresponding U&O permit revocations (if the above proposed protocols are adopted); and

- (5) Responding to appeals and providing expert testimony in BMZA hearings for conditional use applications and enforcement actions.

So additional staffing would appear to be necessary.

Revenue Mechanisms to Offset Enforcement Costs: To partially defray the costs associated with enhanced enforcement staffing, the Council should consider establishing dedicated fees for smoke shop regulation. This has not been analyzed thoroughly, but as an example, BMZA staff recommends:

- (1) **A one-time registration fee** of \$500–\$750 for existing smoke shops to register as legal non-conforming uses during the [180]-day registration window. This fee would cover the administrative costs of processing registration affidavits, conducting initial compliance inspections, and updating GIS mapping systems;
- (2) **An enhanced conditional use application fee** for new smoke shop applications, set at \$600. This reflects the additional staff time required for display area verification, complex buffer analysis involving multiple sensitive uses, and coordination with State licensing authorities and would be comparable to the fee charged by the Liquor Board; and
- (3) An annual **compliance monitoring fee** of \$2000 for all permitted smoke shops to fund periodic inspections verifying continued compliance with display area limits, State licensing requirements, and conditional use approval conditions. This would also be comparable to the annual fee assessed to Class A (BWL) Liquor License holders.

While fees typically are collected into the City’s General Fund, it would help defray the costs of additional staff. Based on current estimates of approximately 150–200 existing smoke shops citywide and an anticipated 10–15 new conditional use applications annually, these fees could generate \$350,000–\$560,000 in the first year and \$300,000–\$400,000 annually thereafter: offsetting the cost of the additional positions to help with enforcement and regulation of this and other provisions within the Department of Planning’s portfolio. This approach ensures that the regulated industry bears a fair share of enforcement costs while maintaining affordability for legitimate small business operators.

Recommendation: BMZA staff recommends the Council provide for additional to allow for creation of additional full-time positions within the Department of Planning. These positions are essential to perform the field inspections required to verify display area measurements, conduct spatial buffer analysis, and enforce the new smoke shop regulations. Without adequate staffing, these regulations will exist on paper but not in practice, thus undermining the Council’s public health objectives and creating a false sense of regulatory protection.

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BMZA staff appreciates the Council’s commitment to addressing the proliferation of smoke shops in Baltimore’s neighborhoods. The amendments recommended in this testimony are designed to ensure that CCB #25-0114 is enforceable in practice, not just aspirational in principle.

For any questions regarding this report or to discuss these concerns further, please contact **Justin Williams** at justin.williams@baltimorecity.gov or **(410) 396-4301**.

ENDNOTES

¹ Phila., Pa., Code § 9-631(2) (2016).

² *Altadis U.S.A., Inc. v. Prince George’s County*, 431 Md. 307, 65 A.3d 118 (2013).

³ S.F., Cal., Health Code art. 19H (2014).

⁴ Modesto, Cal., Mun. Code § 4-24.102 (2025).

⁵ See Covina, Cal., Mun. Code § 17.61.020 (2023) (exempting stores where tobacco sales represent less than 2% of floor area and 2% of gross revenue).

⁶ See generally *San Antonio, Tex.*, Unified Dev. Code § 35-398 (2019) (establishing registration requirements for existing vape shops and smoke shops prior to implementing spacing buffers).

⁷ *Governor Wes Moore, et. al. v. Maryland Hemp Coalition et. al.*, No. 1590, September Term, 2023, 2025 WL 2602274 (Md. App. Ct. Sept. 9, 2025).