
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
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January 30, 2026

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 25-0114 – Zoning – Uses – Smoke Shop

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 25-0114 for form and legal sufficiency. The bill would create a new definition in the Zoning Code for “smoke shop”; would create distance restrictions for smoke shops from one another and from schools, recreation centers, and parks; would establish a calculation for measuring distance between properties; and would allow smoke shops in the commercial districts as a conditional use with BMZA approval.

In promoting the health, safety, and general welfare of the community, the City may, in pertinent part, regulate “the location and use of buildings, signs, structures, and land.” Md. Code, Land Use (“LU”) § 10-202. This includes controlling the location of commercial establishments by concentration and/or dispersal regulations to ameliorate legitimate land use impacts posed by those establishments. *See, e.g., Davenport v. City of Alexandria, Va.*, 683 F.2d 853, 856 (4th Cir. 1982), *on reh’g*, 710 F.2d 148 (4th Cir. 1983) (*citing Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 62 (1975)) (“We have no doubt that the municipality may control the location of theatres as well as the location of other commercial establishments, either by confining them to certain specified commercial zones or by requiring that they be dispersed throughout the city.”).

Although the State has an extensive licensing scheme governing the tobacco-related retailers covered by the bill, it does not establish distance requirements for such retailers. *See* Md. Code, State Business Regulation, §§ 16.5-201 (licenses for other tobacco products retailers); 16.7-201 (licenses for electronic smoking devices retailers); 16.7-201 (licenses for vape shop vendors); Title 16, Subtitle 2 (licenses for cigarette businesses). The distance requirements in the bill, thus, are likely not preempted by State law.

Moreover, so long as the City has a rational basis for the bill’s dispersal requirements—and that the requirements are related to the City’s legitimate interests in controlling the land use impacts posed by smoke shops—the bill passes constitutional muster. *See, e.g., Pack Shack, Inc. v. Howard Cnty.*, 377 Md. 55, 92 (2003) (explaining that a locality must have some justification for the size of the exclusionary zone created).

However, a number of minor amendments are recommended for clarity and accuracy, as follows:

1. On page 2, in line 17, delete the words “including cannabis”.
 - *Reason: State law regulates cannabis retailers separately from the tobacco-related retailers covered by the bill’s definition of “smoke shop”. The state regulations include a distance requirement for cannabis dispensaries. See Md. Code, Alcoholic Beverages and Cannabis, Section 36-410(b). Accordingly, the bill’s attempt to include cannabis retailers is both internally inconsistent and preempted by State law.*
2. On page 2, in line 21, delete the letter “s” from the word “retailers”; and on that same page, in line 27, delete “business license” and replace it with “retailer”; and on that same page, in line 27, between the words “by” and “Title” insert “Subtitle 2 of”; and on that same page, in line 28, delete “Cigarettes” and replace it with “Cigarette Business Licenses”; and on that same page, in line 31, delete “16.7-101(c)” and replace it with “16.5-101(j)”; and on page 3, in line 1, delete “16.7-201 {“License Required”}” and replace it with “16.7-101(c)”.
 - *Reason: These changes better align the subsection with the State laws it references.*
3. On page 3, in line 7, delete “and” and replace it with “or”.
 - *Reason: This change is clearer grammatically in the context of the list.*

Procedural Requirements

The City Council must consider the following when evaluating changes to the text of the City’s Zoning Code:

- (1) the amendment’s consistency with the City’s Comprehensive Master Plan;
- (2) whether the amendment would promote the public health, safety, and welfare;
- (3) the amendment’s consistency with the intent and general regulations of this Code;
- (4) whether the amendment would correct an error or omission, clarify existing requirements, or effect a change in policy; and
- (5) the extent to which the amendment would create nonconformities.

City Code, Art. 32, § 5-508(c).

Any bill that authorizes a change in the text of the Zoning Code is a “legislative authorization,” which requires that certain procedures be followed in the bill’s passage, including a public hearing. City Code, Art. 32, §§ 5-501; 5-507; 5-601(a). Certain notice requirements apply to the bill. Baltimore City Code, Art. 32, §§ 5-601(b)(1), (c), (e). The bill must be referred to certain City agencies, which are obligated to review the bill in a specified manner. City Code, Art. 32, §§ 5-504, 5-506. Finally, certain limitations on the City Council’s ability to amend the bill apply. City Code, Art. 32, § 5-507(c).

Assuming all procedural requirements are followed, and amendments are adopted consistent with those suggested above, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey Hochstetler', with a long horizontal flourish extending to the right.

Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, City Solicitor
Nina Themlis, Mayor's Office of Government Relations
Ty'lor Schnella, Mayor's Office of Government Relations
Hilary Ruley, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Michelle Toth, Assistant Solicitor
Desireé Luckey, Assistant Solicitor