BALTIMORE CITY COUNCIL
LAND USE & TRANSPORTATION COMMITTEE

Mission Statement

On behalf of the Citizens of Baltimore City, the Land Use & Transportation Committee is committed to shaping a reliable, equitable, and sustainable future for Baltimore's land use and transportation systems. Through operational oversight and legislative action, the committee aims to develop and support lasting solutions grounded in principles of good governance.

The Honorable Ryan Dorsey

CHAIR

PUBLIC HEARING

10/16/2025

10:00 AM
CLARENCE "DU" BURNS COUNCIL CHAMBERS

Bill: 25-0040

Title: Zoning – Uses – Retail: Small Box Establishment

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100 N. HOLIDAY STREET
BALTIMORE MD, 21202

Meeting: Bill Hearing

Committee: Land Use & Transportation

Bill # 25-0040

Title: Zoning – Uses – Retail: Small Box Establishment

Purpose: FOR the purpose of making small box discount retail stores a conditional use by approval of the Board of Municipal Zoning Appeals in all commercial zoning districts; setting use standards for new small box discount retail stores; and defining certain terms.

REPORTING AGENCIES

Agency	Report
Law Department	Approved with Amendments
Department of Housing & Economic Development (DHDC)	Favorable
Planning Commission	Approved with Amendments
Department of Finance	Does not Oppose
Baltimore Development Corporation (BDC)	Favorable with Amendments

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BACKGROUND

Bill Summary

This bill, if enacted, would:

1. Define a small box retail store
2. Make a small box retail store a conditional use under the zoning code allowed by approval of the BMZA (Board of Municipal & Zoning Appeals)
3. Create a minimum distance that such facilities must be from each other.
4. Create a 30-day discontinuance of use standard for such facilities, which would constitute an abandonment of the use.

Definition

25-0040 would define a small box retail store as:

- Part of a chain with 10 or more locations in the city doing business under the same name (regardless of ownership – thus a franchise which may be owned by an individual but operates under a chain name would qualify)

- Has a floor space between 5,000 – 12,000 sq ft.
- Offers inexpensive general goods for sale in small units

This definition would exclude:

- Grocery stores.
- Stores with a pharmacy.
- A fuel station.
- A store where the majority of the products are personal hygiene or cosmetic products.
- A store that primarily deals in the resale of used consumer goods.

In their analysis, the Law Department noted that state law (Md. Code, Land Use §10-306) did allow for local municipalities to create small box discount stores as a conditional use and to regulate the distance between them. The Law Department does note a concern with the State's uniformity statute. The concern is that some of the excluded uses (such as a grocery store) are not rationally different from a small box retail store, and the exclusion of these stores with the regulation of small box retail would constitute a violation of equal protection from arbitrary zoning restrictions. The Law department believes that this would mean that the law would fail under a rational basis test that a court would likely review the law under.

Part of the concern is that the law differentiates between chain stores and all other stores. So, if two stores were the same in every other way, one would be permitted and one would not on the basis of the chain of the store. Similar concerns around equal protection exist because the bill differentiates between stores that are otherwise the same, but one has a pharmacy or a fuel station, and the other does not.

The Law department also noted that there was a concern with the vagueness of the definition, particularly with subjectivity around terms like "inexpensive" or "small units".

<u>Conditional Use</u>

25-0040 would include an amendment to Table 10-301 in the zoning code, making Retail: Small Box Establishment a use conditional by BMZA approval in the zoning code (Article 32 of the City Code)

<u>Minimum Distance</u>

Bill 25-0040 would also limit the density of these stores in the City by limiting them to being within 2,640 feet of each other. This is approximately ½ mile in distance, and would mean that if enacted, each established use of a small box retail store would create a ½ mile radius around itself where no other small box retail store could exist.

The Law Department noted that they have concerns about whether this mandated distance would meet a rational test if the law were challenged in court. There was also a concern that such a large dispersal area would constitute an effective ban and would meet a constitutional challenge based on interference with interstate commerce. The Planning department in their report estimated that approximately 52% of the commercially zoned land in the City would not be eligible for the Small Box Retail use if the bill was enacted. BDC, in their report, noted that over 50 of these stores, most national chains, exist in the City currently.

Discontinuance/Abandonment Standard

Those locations that do currently exist would be in a state of non-conformity and, according to 25-0040, would be in a state of abandonment if the store ceased operations for a period of longer than 30 days for any reason. Thus, after 30 days of being closed, if the store had not reopened, it would not be permitted to reopen, and the space (presuming it was within a ½ mile from another store would not be permitted to reopen as a small box retail store.

The Law Department noted that they have additional concerns regarding the equal protection standard with this bill because it changes the abandonment standard specifically and only for the small box retail store use.

Amendments

The Law Department is proposing several amendments:

1. On page 2, delete lines 9 through 11 in their entirety. And on that same page, in line 14, delete “inexpensive” through “units” and insert “convenience and consumer shopping goods, the majority of which do not exceed $5 per item or its equivalent adjusted for inflation.”.
    a. This would be to address some of the concerns that the Law Department has around vagueness in the bill.
2. On page 2, in 17, after “store”, delete the semi-colon and insert “whose primary business is selling food at retail to the general public for off-premises consumption, at least 20% of the gross receipts of which are derived from the retail sale of fresh produce, meats, and dairy products;”. And on that same page, in line 20, after “station”, delete the semi-colon and insert “as otherwise permitted under this Article;”.
    a. This would go to the rational basis for regulating small box retail stores vs other stores, such as a grocery store
3. On page 3, delete lines 7 through 30 in their entirety from the bill, and continuing on page 4, delete lines 1 through 18 in their entirety from the bill.
    a. This would remove the different abandonment standard for small box retail stores – presumably these stores would be subject to the same standard for abandonment as other conditional uses.

The BDC in its report noted that it would support the bill if there was an amendment easing the abandonment standard from the proposed 30-day time period, which they described as an unfair burden to the store operators and an unrealistic timeline.

ADDITIONAL INFORMATION

Fiscal Note:
The Department of Finance, in its report, notes that they do not believe that this bill would have a significant impact on revenues if enacted.
Information Source(s):

Analysis by: Tony Leva
Analysis Date:9/16/2025

Direct Inquiries to: 410-396-1091

CITY OF BALTIMORE
COUNCIL BILL 25-0040
(First Reader)

Introduced by: Councilmembers Middleton and Ramos
Cosponsored by: Councilmembers Parker, Conway, Torrence, Gray, Bullock, Porter, Glover, and Blanchard
Introduced and read first time: March 24, 2025
Assigned to: Land Use and Transportation Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Planning Commission, Department of Finance, Department of Housing and Community Development

A BILL ENTITLED

AN ORDINANCE concerning

Zoning – Uses – Retail: Small Box Establishment

FOR the purpose of making small box discount retail stores a conditional use by approval of the Board of Municipal and Zoning Appeals in all commercial zoning districts; setting use standards for new small box discount retail stores; and defining certain terms.

BY renumbering
Article 32 - Zoning
Sections 1-312(v) and 1-312(w)
to be
New Sections 1-312(w) and 1-312(x)
Baltimore City Code
(Edition 2000)

BY adding
Article 32 - Zoning
New Sections 1-312(v) and 14-335.2
Baltimore City Code
(Edition 2000)

BY repealing and re-ordaining, with amendments,
Article 32 - Zoning
Section 18-307 and Table 10-301
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That Sections 1-312(v) and 1-312(w) of Article 32 - Zoning of the Baltimore City Code be renumbered to be Sections 1-312(w) and 1-312(x), respectively.

SECTION 2. AND BE IT FURTHER ORDAINED, That the Laws of Baltimore City read as follows:

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

Baltimore City Code

Article 32. Zoning

Title 1. General Provisions

Subtitle 3. Definitions

§ 1-312. "Property line" to "Roof deck".

(V) *RETAIL: SMALL BOX ESTABLISHMENT*.

(1) *IN GENERAL*.

"RETAIL: SMALL BOX ESTABLISHMENT" MEANS A RETAIL STORE THAT:

(I) IS PART OF A CHAIN WITH 10 OR MORE LOCATIONS IN BALTIMORE CITY DOING BUSINESS UNDER THE SAME NAME, REGARDLESS OF THE TYPE OF OWNERSHIP OF THE LOCATION;

(II) HAS A FLOOR AREA OF MORE THAN 5,000 SQUARE FEET AND LESS THAN 12,000 SQUARE FEET; AND

(III) OFFERS FOR SALE ASSORTED INEXPENSIVE GENERAL GOODS IN SMALL UNITS.

(2) *EXCLUSIONS*.

"RETAIL: SMALL BOX ESTABLISHMENT" DOES NOT INCLUDE:

(I) A GROCERY STORE;

(II) A STORE THAT CONTAINS A PHARMACY WHERE PRESCRIPTION DRUGS ARE COMPOUNDED, DISPENSED, OR DISTRIBUTED;

(III) A FUEL STATION;

(IV) A RETAIL STORE WHERE THE MAJORITY OF THE PRODUCTS SOLD ARE PERSONAL HYGIENE PRODUCTS OR COSMETICS;

(V) A STORE THAT PRIMARILY ENGAGES IN THE RESALE OF USED CONSUMER GOODS.

(W) [(v)] *Right-of-way*.

(1) *In general*.

"Right-of-way" means land dedicated for use as a public way.

(2) *Inclusions*.

"Right-of-way" includes the roadway and, generally, the curbs, parkways, sidewalks, lighting facilities, and drainage facilities.

(X) [(w)] *Roof deck*.

"Roof deck" means a roofless outdoor platform that is constructed on the roof of a structure and connected to the roof by structural supports.

Title 14. Commercial Districts

Subtitle 3. Use Standards

§ 14-335.2. RETAIL: SMALL BOX ESTABLISHMENT.

ANY NEW RETAIL: SMALL BOX ESTABLISHMENT SHALL BE AT LEAST 2,640 FEET FROM ANY EXISTING RETAIL: SMALL BOX ESTABLISHMENT.

Title 18. Nonconformities

Subtitle 3. Nonconforming Uses

§ 18-307. Discontinuance or abandonment.

(a) *Discontinuance of use*.

Whenever the active and continuous operation of any nonconforming use EXCEPT FOR A RETAIL: SMALL BOX ESTABLISHMENT, or any part of that use, has been discontinued for 12 consecutive months:

(1) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use; and

(2) the discontinued nonconforming use, or discontinued part of that use:

(i) may not be reestablished; and

(ii) any subsequent use of any part of the land or structure previously used for the discontinued use, or discontinued part of that use, must conform to the regulations of the district in which the land or structure is located.

(B) *RETAIL: SMALL BOX ESTABLISHMENT DISCONTINUANCE OF USE*.

WHENEVER THE ACTIVE AND CONTINUOUS OPERATION OF ANY NONCONFORMING RETAIL: SMALL BOX ESTABLISHMENT USE, OR ANY PART OF THAT USE, HAS BEEN DISCONTINUED FOR 30 CONSECUTIVE DAYS:

(1) THE DISCONTINUANCE CONSTITUTES AN ABANDONMENT OF THE DISCONTINUED NONCONFORMING USE, OR DISCONTINUED PART OF THAT USE, REGARDLESS OF ANY RESERVATION OF AN INTENT TO RESUME ACTIVE OPERATIONS OR OTHERWISE NOT ABANDON THE USE; AND

(2) THE DISCONTINUED NONCONFORMING USE, OR DISCONTINUED PART OF THAT USE:

(I) MAY NOT BE REESTABLISHED; AND

(II) ANY SUBSEQUENT USE OF ANY PART OF THE LAND OR STRUCTURE PREVIOUSLY USED FOR THE DISCONTINUED USE, OR DISCONTINUED PART OF THAT USE, SHALL CONFORM TO THE REGULATIONS OF THE ZONING DISTRICT IN WHICH THE LAND OR STRUCTURE IS LOCATED.

(C) [(b)] *Abandonment of use.*

If, at any time, actual abandonment in fact is evidenced by removal of structures, machinery, or equipment, or by alterations that indicate a change in the use of any part of the land or structure:

(1) that action constitutes an abandonment of the nonconforming use, or affected part of that use; and

(2) all rights to continue or reestablish the nonconforming use, or part of that use, immediately terminate.

Zoning Tables

Table 10-301: Commercial Districts - Permitted and Conditional Uses

Uses	***Districts***							***Use Standards***
	C-1	**C-1-VC**	**C-1-E**	**C-2**	**C-3**	**C-4**	**C-5**	
Commercial								
RETAIL: SMALL BOX ESTABLISHMENT	CB	CB	CB	CB	CB	CB	CB	PER § 14-335.2

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

 MIDDLETON/RAMOS IV 18SEPT25

AMENDMENTS TO COUNCIL BILL 25-0040
(1st Reader Copy)

By: Councilmembers Middleton and Ramos
{To be offered to the Land Use and Transportation Committee}

Amendment No. 1

On page 1, in line 5, after "stores;" insert "requiring a permit issued by the Building Official upon transfer of ownership or operation of a small box discount retail store;"; and, on that same page, after line 5, insert:

"BY repealing and re-ordaining, with amendments,
Article – Building, Fire, and Related Codes
Section 2-103 (BC § 105.1.7)
Baltimore City Revised Code
(2024 Edition)";

and, on that same page, after line 27, insert:

Baltimore City Revised Code

Article – Building, Fire, and Related Codes

Part II. International Building Code

§ 2-103. City Modifications.

The additions, deletions, amendments, and other modifications adopted by the City are as follows:

Chapter 1. Scope and Administration

Section 105. Permits

105.1 Required.

A permit issued by the Building Official is required before any person may do any of the following work:

7. on transfer of ownership or operation of property, continue any of the following uses:

a. banquet hall (as defined in Baltimore City Zoning Code § 1-303(c) {"Banquet hall."}),

b. body art establishment (as defined in Baltimore City Zoning Code § 1-303(j) {"Body art establishment."}),

c. carry-out food shop (as defined in Baltimore City Zoning Code § 1-303(t) {"Carry-out food shop."}),

d. congregate living facilities (as defined in § 202.1 of the Baltimore City Building Code),

e. day-care center: adult or child (as defined in Baltimore City Zoning Code §§ 1-304(y) and (z) {"Day-care center: Adult"} and {"Day-care center: Child"}, respectively),

f. drive-through facility (as defined in Baltimore City Zoning Code § 1-305(h) {"Drive-through facility."}),

g. entertainment: indoor or live (as defined in Baltimore City Zoning Code §§ 1-306(b) and 1-306(c) {"Entertainment: Indoor"} and {"Entertainment: Live"}, respectively),

h. fuel station (as defined in Baltimore City Zoning Code § 1-306(t) {"Fuel station."}),

i. health-care clinic (as defined in Baltimore City Zoning Code § 1-307(f) {"Health-care clinic."}),

j. lodge or social club (as defined in Baltimore City Zoning Code § 1-308(q) {"Lodge or social club."}),

k. lounge (as defined in Baltimore City Zoning Code § 1-309(h-1) {"Lounge."}),

l. pawn shop (as defined in Baltimore City Zoning Code § 1-311(l) {"Pawn shop."}),

m. personal services establishment (as defined in Baltimore City Zoning Code § 1-311(o) {"Personal services establishment."}),

n. residential care facility (as defined in Baltimore City Zoning Code § 1-312(p) {"Residential care facility"}),

o. restaurant (as defined in Baltimore City Zoning Code § 1-312(s) {"Restaurant."}),

p. retail: big box establishment (as defined in Baltimore City Zoning Code § 1-312(t) {"Retail: Big box Establishment"}),

Q. RETAIL: SMALL BOX ESTABLISHMENT (AS DEFINED IN BALTIMORE CITY ZONING CODE § 1-312(V) {"RETAIL: SMALL BOX ESTABLISHMENT."},

R. [q.] retail goods establishment – with or without alcoholic beverage sales (as defined in Baltimore City Zoning Code § 1-312(u) {"Retail goods establishment."}),

S. [r.] rooming house (as defined in Baltimore City Zoning Code § 1-313(b) {"Rooming house."}),

T. [s.] supportive housing facility (as defined in § 202.2.56 of this Code), or

U. [t.] tavern (as defined in Baltimore City Zoning Code § 1-314(a) {"Tavern."}).".

Amendment No. 2

On page 2, strike in their entireties lines 9 through 11; and, on that same page, in line 12, strike "(II)" and substitute "(I)"; and, on that same page, in line 14, strike "(III)" and substitute "(II)"; and, on that same page, in that same line, strike "INEXPENSIVE GENERAL GOODS IN SMALL UNITS." and substitute "CONVENIENCE AND CONSUMER SHOPPING GOODS, THE MAJORITY OF WHICH DO NOT EXCEED $5.00 PER ITEM OR ITS EQUIVALENT, AS ADJUSTED FOR INFLATION SINCE THE YEAR 2025.".

Amendment No. 3

On page 2, in line 17, strike "STORE;" and substitute "STORE, WHOSE PRIMARY BUSINESS IS SELLING FOOD AT RETAIL TO THE GENERAL PUBLIC FOR OFF-PREMISES CONSUMPTION, OF WHICH AT LEAST 20% OF THE GROSS RECEIPTS MUST BE DERIVED FROM THE RETAIL SALE OF FRESH PRODUCE, MEATS, AND DAIRY PRODUCTS;"; and, on that same page, in line 20, strike "STATION;" and substitute "STATION, AS OTHERWISE PERMITTED IN THIS CODE;".

Amendment No. 4

On page 1, in line 20, strike “Section 18-307 and”; and, on pages 3 through 4, strike in their entirety the lines beginning with line 12 on page 3 through line 18 on page 4, inclusive.

Baltimore City Council

Land Use & Transportation Committee

Bill: 25-0040

Title: Zoning – Uses – Retail: Small Box Establishment

Agency Reports

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor

DEPARTMENT OF LAW
EBONY THOMPSON
CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

May 29, 2025

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 25-0040 – Zoning – Uses – Retail: Small Box Establishment

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 25-0040 for form and legal sufficiency. The bill defines "Retail: Small Box Establishment" as a new zoning term, prohibits such establishments from being located within 2,640 feet—or half a mile—of one another, requires conditional use approval for such establishments by the Board of Municipal and Zoning Appeals in the C-1 through C-5 districts, and creates a lower threshold for discontinuance/abandonment of such establishments as nonconforming uses.

As explained below, several amendments are required to address the clearest legal problems with the bill. Although the Law Department can approve the bill for form and legal sufficiency with these amendments, there remain other vulnerabilities that should be considered in determining whether zoning regulations are the appropriate method to address the perceived harms posed by small box retail establishments.

<u>The City's Zoning Authority</u>

Under State law, the City, in promoting the health, safety, and general welfare of the community, may regulate: "(1) the height, number of stories, and size of buildings and other structures; (2) the percentage of a lot that may be occupied; (3) off-street parking; (4) the size of yards, courts, and other open spaces; (5) population density; and (6) the location and use of buildings, signs, structures, and land." Md. Code, Land Use ("LU") § 10-202.

In 2022, the General Assembly added Section 10-306 to the Land Use Article, which permits the City to "enact planning and zoning controls that: (1) establish a dispersal regulation that provides for a minimum distance between small box discount stores" and "(2) establish the development of a small box discount store as a conditional use," among other related provisions. LU § 10-306. Because the City's zoning authority already permits it to regulate the location and use of buildings, it is doubtful that Section 10-306 enlarges or otherwise impacts the City's zoning authority. As such, Section 10-306 is not an "enabling" statute in the normal sense, *i.e.*, it does not give the City powers it did not previously have and therefore does not set forth the only permissible parameters within which the City may legislate on this topic. In other words, the City bill can—and does—differ from Section 10-306, so long as it complies with all other legal standards surrounding the City's zoning authority. However, as explained below, it is with regard to these other legal standards that aspects of Bill 25-0040 are problematic. Moreover, to the extent the state law itself contains some of these same problems, it does not otherwise provide a haven for the problematic aspects of the City's bill.

Ensuring Uniformity and Equal Protection in Zoning Classifications

The bill defines "Retail: Small Box Establishment" as a retail store that "is part of a chain with 10 or more locations in Baltimore City doing business under the same name, regardless of the type of ownership of the location; has a floor area of more than 5,000 square feet and less than 12,000 square feet; and offers for sale assorted inexpensive general goods in small units." The definition also contains several exclusions. It excludes: grocery stores; stores that contain pharmacies; fuel stations; stores where the majority of items sold are personal hygiene products or cosmetics; and stores that are primarily engaged in resale of used consumer goods.

The effect of this definition—and its exclusions—is to establish several distinctions between the retail stores the bill regulates and those that fall outside of its regulation. As explained below, this is problematic to the extent there is no rational basis for the disparate treatment of retail stores that are otherwise similarly situated.

The Mayor and City Council are required to adopt uniform zoning regulations for each class or kind of development throughout each district or zone. LU § 10-301. This requirement is closely related to constitutional guarantees of equal protection before the law. As Maryland's Supreme Court has recently explained:

> Maryland's uniformity statutes, the likes of which nearly all other states have adopted, reassure property owners that they will not be subject to arbitrary or invidious discrimination or government favoritism or coercion. Modern courts, including this one, understand uniformity as a state law counterpart to the constitutional equal protection prohibition against purely arbitrary zoning classifications and restrictions, and generally apply similar principles of review.

Prince George's Cnty. Council v. Concerned Citizens of Prince George's Cnty., 485 Md. 150, 179-81 (2023) (internal citations and quotation marks omitted).

A court would review the bill's distinctions between the stores it intends to regulate and those it does not under the so-called rational basis test. *See Sec. Mgmt. Corp. v. Baltimore Cnty.*, 104 Md. App. 234, 243 (1995) (where there is no "infringement of a fundamental right or discrimination against a suspect class, we review the Council's actions under the rational basis test"). Under the rational basis test, a law's disparate treatment of similarly situated parties may pass constitutional muster if that disparate treatment bears a rational relationship to legitimate government interests. *Id.* at 244.

Here, the bill's definition of "Retail: Small Box Establishment" discriminates between retail stores solely on the basis of whether the store is part of a chain with ten or more locations. In other words, if there are two identical stores but one is part of a chain and the other is not, only the former would be regulated under the law. But whatever land use-related harms are allegedly caused by small box retail stores, the harm would be the same regardless whether the store is part of a chain. It is thus unlikely a court would view this distinction as bearing a rational basis to the City's legitimate zoning interests. *See Prince George's Cnty. Council*, 485 Md. at 181 ("Regulations that draw classifications between properties within a zone are, as a general matter, permissible" if they are "reasonable and based upon the public policy to be served").

This problem highlights the difficulty in using the City's zoning authority to address perceived public welfare concerns with a store's business model. "It is settled law in this State that the zoning ordinance is concerned with the *use* of property and not with *ownership thereof nor with the purposes of the owners or occupants*. . . . As a general matter, the prevention of competition is not a proper element of zoning." *Kreatchman v. Ramsburg*, 224 Md. 209, 220 (1961) (internal citations omitted) (emphasis added). By drawing the seemingly arbitrary distinction between similarly situated commercial properties (*i.e.*, chain versus non-chain), the bill appears to be aimed at regulating competition and favoring local businesses over national chain businesses within the same district, which the City may not do through its zoning powers. An amendment deleting the distinction based on chain status is attached.

It is worth pointing out that similar equal protection concerns could be raised by the bill's exclusions, too. For example, two retail stores may have the same physical footprint in a community and otherwise be similarly situated, but under the bill, one would be excluded based solely on the type of goods it primarily sells, be it used consumer goods or cosmetics. Or to take another example, two stores may otherwise meet the bill's definition of small box retail establishment based on business model and footprint, but one would be excluded from the bill's regulations simply because it adds a pharmacy or fuel pumps. A court may be hard pressed in any of these situations to discern a reasonable relationship between the City's legitimate zoning concerns and the arguably arbitrary classifications created by the bill's exclusions. Nonetheless, the exclusions do not raise the same level of concern as the distinction between chain and non-chain, so Law is not recommending deleting the exceptions.

In sum, if there are unique land-use related concerns posed by small box retail stores, then the City may use its zoning authority to ameliorate those concerns, but the authority must be applied equally to all similarly situated establishments unless there is a rational basis for disparate treatment.

<u>Void for Vagueness Concerns</u>

In addition to the problems with the definition of small box retail establishments raised above, the definition is also problematically vague. As a general matter, a statute must be sufficiently explicit both to inform those subject to it what conduct on their part will render them liable to its regulations, and to allow government officials to apply those regulations in a consistent manner. *See, e.g., Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 360 (2020).

Here, a small box retail establishment is defined, in part, as a retail store that "offers for sale assorted inexpensive general goods in small units." There is no further definition or guidance as to what is considered "inexpensive" or what the threshold is for "small units." To avoid the potential impermissible vagueness of these terms, an amendment is attached that borrows from the state's definition of small box retail establishment in LU Section 10-306. Amendments are also attached to make the exclusions more precise; these amendments also borrow, as appropriate, from LU Section 10-306.

Disparate Standards for Abandonment

The same uniformity and equal protection requirements discussed above also prohibit the bill's attempt to create a lower abandonment threshold for small box retail establishments than other commercial establishments. In other words, a court would likely find no rational basis to apply different criteria to small box retail establishments than other commercial establishments for purposes of determining when a nonconforming use has been abandoned. An amendment deleting this provision is attached.

Dispersal Zoning

As a general matter, the City may use its zoning authority to control 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.").

However, the City must have a rational basis for the bill's half-mile dispersal requirement and how that dispersal zone is related to the City's legitimate interests in controlling the land use impacts posed by small box retail establishments. *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). Unlike many dispersal zoning cases—which review a locality's dispersal zoning requirements applied to adult theaters—regulating small box establishments does not implicate a fundamental right, *e.g*., it does not implicate Second Amendment guarantees. Thus, although the City's chosen dispersal zone need not be specially tailored to achieve its objective, it still must be rationally related to that objective and cannot be arbitrarily or capriciously burdensome.

Additionally, to the extent such a large dispersal zone would, as applied, effectively ban national small box retail chains from operating in the City, the bill might be susceptible to a constitutional challenge on the grounds that it impermissibly burdens interstate commerce. *See, e.g., Island Silver and Spice, Inc. v. Islamorada*, 542 F.3d 844 (11th Cir. 2008) (finding that a locality's zoning limits on national formula chain big box retail stores had the practical effect of precluding them from locating in the area and therefore burdened interstate commerce). Even though a statute might, on its face, allow targeted businesses to operate, it might become problematic as applied if it in fact precludes those businesses from operating. *See id.*

To determine whether such a regulation violates the Commerce Clause, courts apply one of two levels of analysis. First, if a regulation directly regulates or discriminates against interstate commerce, or has the effect of favoring local economic interests, the regulation must be shown to advance a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. *Id.* (*citing Brown–Forman Distillers Corp. v. N.Y. State Liquor Auth*., 476 U.S. 573, 578–79 (1986) and *Bainbridge v. Turner*, 311 F.3d 1104, 1109 (11th Cir. 2002)). The recommended amendment to delete the distinction between chain and non-chain small box stores helps the bill avoid this level of concern under the Commerce Clause.

Second, if a regulation has only indirect effects on interstate commerce, courts examine whether the government's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. *Id.* (*citing Brown–Forman*, 476 U.S. at 579) (additional citations omitted). *See also, e.g., Wal-Mart Stores, Inc. v. City of Turlock,* 483 F. Supp. 2d 987, 1017 (E.D. Cal. 2006) (finding the putative benefits of a local ordinance banning certain "discount superstores"—*e.g.,* avoidance of traffic congestion, prevention of urban blight, minimization of air pollution, and preservation of land-use objectives as to location and character of economic zones within locality—were "not so outweighed by any burden on interstate commerce as to render the Ordinance unreasonable or irrational").

These possible vulnerabilities do not render the bill illegal on its face, but might be raised depending on the effects of the bill's application. In other words, whatever the harms posed by small box retail stores the City wishes to ameliorate, doing so through location limits may lead to a challenge that these limits burden commerce more than they provide any local benefit.

Additional Considerations

Although not required for legal sufficiency, consideration should be given to whether "Retail: Small Box Establishment" should be added to the list of uses that require a building permit for continuation upon transfer of ownership or operation in Section 105.1, Part II of the Building Code. Similar consideration should be given to whether the new category should be added to Table 16-406 (off-street parking requirements).

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.

Baltimore City Code, Art. 32, § 5-508(c). If the Planning Commission Report does not evaluate these factors, the City Council must take care to evaluate them.

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. Baltimore 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. Baltimore City Code, Art. 32, §§ 5-504, 5-506. Finally, certain limitations on the City Council's ability to amend the bill apply. Baltimore City Code, Art. 32, § 5-507(c).

Assuming all procedural requirements are followed and with the attached amendments, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,

Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
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

Law Amendments

Amendment 1

On page 2, delete lines 9 through 11 in their entirety. And on that same page, in line 14, delete "inexpensive" through "units" and insert "convenience and consumer shopping goods, the majority of which do not exceed $5 per item or its equivalent adjusted for inflation.".

Amendment 2

On page 2, in 17, after "store", delete the semi-colon and insert "whose primary business is selling food at retail to the general public for off-premises consumption, at least 20% of the gross receipts of which are derived from the retail sale of fresh produce, meats, and dairy products;". And on that same page, in line 20, after "station", delete the semi-colon and insert "as otherwise permitted under this Article;".

Amendment 3

On page 3, delete lines 7 through 30 in their entirety from the bill, and continuing on page 4, delete lines 1 through 18 in their entirety from the bill.

FROM

NAME & TITLE: CHRIS RYER, DIRECTOR

AGENCY NAME & ADDRESS: DEPARTMENT OF PLANNING
8TH FLOOR, 417 EAST FAYETTE STREET

SUBJECT: CITY COUNCIL BILL #25-0040 / ZONING – USES – RETAIL: SMALL BOX ESTABLISHMENT

CITY of BALTIMORE

MEMO

CITY OF BALTIMORE 1797

TO

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

DATE: September 2, 2025

This memo will correct our prior memo of August 20, 2025.

At its regular meeting of June 5, 2025, the Planning Commission considered City Council Bill #25-0040, for the purpose of permitting, Zoning – Uses – Retail: Small Box Establishment.

Due to the complexity of this item, the Planning Commission voted in three parts. In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended approval of City Council Bill #25-0040 and the three amendments recommended by the Law Department, and adopted the following resolution, with eight members being present (eight in favor):

> RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings and equity analysis outlined in the staff report, with consideration for testimony and facts presented in the meeting, and recommends that City Council Bill #25-0040 be **amended and approved** by the City Council with the amendments #1 and #2 provided by the Law Department in their report.
>
> RESOLVED, That the Planning Commission does not concur with amendment #3 provided by the Law Department in their report, and voted to recommend retaining the distance standard language and the nonconforming use discontinuance and abandonment language in the bill.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

cc: Ms. Nina Themelis, Mayor's Office
The Honorable John Bullock, Council Rep. to Planning Commission
Ms. Rebecca Witt, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Stephanie Murdock, DHCD
Ms. Hilary Ruley, Law Dept.
Mr. Francis Burnszynski, PABC
Mr. Luciano Diaz, DOT
Ms. Nancy Mead, Council Services

Brandon M. Scott
Mayor

PLANNING COMMISSION

Jon Laria, Chair; Eric Stephenson, Vice Chair

STAFF REPORT

Chris Ryer
Director

May 15, 2025

REQUEST: City Council Bill #25-0040/ Zoning – Uses – Retail: Small Box Establishment: For the purpose of making small box discount retail stores a conditional use by approval of the Board of Municipal Zoning Appeals in all commercial zoning districts; setting use standards for new small box discount retail stores; and defining certain terms.

RECOMMENDATION: Approval

STAFF: Eric Tiso

INTRODUCED BY: Council Vice President Green Middleton, and Councilmembers Ramos, Parker, Dorsey, Conway, Torrence, Gray, Bullock, Porter, and Glover.

OWNER: Multiple – potentially all owners of retail establishment structures containing more than 5,000 square feet and less than 12,000 square feet of floor area available for use as a *Retail: Small Box Discount Establishment*.

GENERAL AREA: This bill would apply to all parts of the City of Baltimore within C-1 through C-5 commercial zoning districts and subdistricts.

HISTORY

- CCB #23-0431 was reviewed by the Planning Commission on January 25, 2024, and recommended disapproval of this bill. The bill died at the end of the last Council session.

CONFORMITY TO PLANS

The 2024 Comprehensive Master Plan for the City of Baltimore was enacted by Ordinance #24-426, dated December 2, 2024. There are no specific

ANALYSIS

Background: Staff understands that this bill is a follow-on action from amendments to Md. Code, Land Use §10-306, made in 2022, that was intended to help address concerns with dollar stores. Staff notes that the changes to the Maryland Land Use Code further empowered the City to amend its own zoning code for that purpose, but did not make any changes directly. This bill will create a new land use category, *Retail: Small Box Discount Establishment*, by establishing a new use definition for that use. That new use would be permitted as a conditional use in all Commercial Zoning Districts in Baltimore.

This bill will create a new use definition for *Retail: Small Box Establishment* (as a new §1.312.(v), and renumbering subsequent definitions). The use will include retail stores with a floor area between 5,000 and 12,000 square feet, that are part of a chain of stores with ten or more locations, that offer assorted inexpensive general goods for sale in small units. This new definition is intended to capture what are commonly known as "dollar stores."

> **§ 1-312. "Property line" to "Roof deck".**
> …
> (V) *RETAIL: SMALL BOX ESTABLISHMENT*.
> (1) *IN GENERAL*.
> "RETAIL: SMALL BOX ESTABLISHMENT" MEANS A RETAIL STORE THAT:
> (I) IS PART OF A CHAIN WITH 10 OR MORE LOCATIONS IN BALTIMORE CITY DOING BUSINESS UNDER THE SAME NAME, REGARDLESS OF THE TYPE OF OWNERSHIP OF THE LOCATION;
> (II) HAS A FLOOR AREA OF MORE THAN 5,000 SQUARE FEET AND LESS THAN 12,000 SQUARE FEET; AND
> (III) OFFERS FOR SALE ASSORTED INEXPENSIVE GENERAL GOODS IN SMALL UNITS.
> (2) *EXCLUSIONS*.
> "RETAIL: SMALL BOX ESTABLISHMENT" DOES NOT INCLUDE:
> (I) A GROCERY STORE;
> (II) A STORE THAT CONTAINS A PHARMACY WHERE PRESCRIPTION DRUGS ARE COMPOUNDED, DISPENSED, OR DISTRIBUTED;
> (III) A FUEL STATION;
> (IV) A RETAIL STORE WHERE THE MAJORITY OF THE PRODUCTS SOLD ARE PERSONAL HYGIENE PRODUCTS OR COSMETICS;
> (V) A STORE THAT PRIMARILY ENGAGES IN THE RESALE OF USED CONSUMER GOODS.

Use Exclusions: The bill includes some exclusions in the new definition, which are intended to make the new definition apply to dollar stores, but not to other forms of business such as grocery stores, fuel stations, pharmacies, and second-hand stores. Staff understands the intent of the bill, and applauds the effort to closely tailor this new use definition, but there may be a simple loop-hole. Staff wants to highlight that if a proposed dollar store offered some number of electric vehicle charging stations, thereby becoming a fueling station, it might escape this definition entirely. By including *Fuel Station* to the exclusions, the typical convenience store that is a fuel station with a convenience store that would fall in this bill's target square footage range is excluded by design. The key interpretation may be whether the *Fuel Station* portion of the use is a co-primary use or if it is accessory in nature.

Use Standard: A new use standard is proposed to be added in Article 32, Title 14 that would prohibit a new *Retail: Small Box Establishment* from locating within a half-mile of another existing *Retail: Small Box Establishment*. The intent of this use standard is to limit the overall number of these businesses within the City. The new use standard is in the bill as follows:

> **§ 14-335.2. RETAIL: SMALL BOX ESTABLISHMENT.**
> ANY NEW RETAIL: SMALL BOX ESTABLISHMENT SHALL BE AT LEAST 2,640 FEET FROM ANY EXISTING RETAIL: SMALL BOX ESTABLISHMENT.

Minimum Separation Distance: This bill would prohibit a new *Retail: Small Box Discount Establishment* from locating within a half-mile of another such establishment (expressed as 2,640 feet above). For existing *Retail: Small Box Discount Establishments* already located within a half-mile of one another, this would make both such *Retail: Small Box Discount*

Establishments nonconforming uses. However, the categorization as a nonconforming use would only last as long as both such retail stores continued to operate in their existing locations – once one or the other closed, the surviving business would no longer be nonconforming due to proximity to another of its kind of land use. But, should another retailer wish to re-use the space vacated by a closed *Retail: Small Box Discount Establishment* by a different *Retail: Small Box Discount Establishment*, its application would be denied. Staff notes that there is about 6,829 acres of commercially-zoned land in the City, and about 52% of that area would not be eligible for a new *Retail: Small Box Discount Establishment* because of proximity to existing businesses.

Discontinuance: The bill provides for a significantly shorter period of time required to determine when a *Retail: Small Box Establishment* has been discontinued. In Title 18, § 18-307 (a) is amended to except this specific use from the general requirements, creates a new § 18-307 (b), and renumbers subsequent sections:

> (B) *RETAIL: SMALL BOX ESTABLISHMENT DISCONTINUANCE OF USE*.
> WHENEVER THE ACTIVE AND CONTINUOUS OPERATION OF ANY NONCONFORMING RETAIL: SMALL BOX ESTABLISHMENT USE, OR ANY PART OF THAT USE, HAS BEEN DISCONTINUED FOR 30 CONSECUTIVE DAYS:
> (1) THE DISCONTINUANCE CONSTITUTES AN ABANDONMENT OF THE DISCONTINUED NONCONFORMING USE, OR DISCONTINUED PART OF THAT USE, REGARDLESS OF ANY RESERVATION OF AN INTENT TO RESUME ACTIVE OPERATIONS OR OTHERWISE NOT ABANDON THE USE; AND
> (2) THE DISCONTINUED NONCONFORMING USE, OR DISCONTINUED PART OF THAT USE:
> (I) MAY NOT BE REESTABLISHED; AND
> (II) ANY SUBSEQUENT USE OF ANY PART OF THE LAND OR STRUCTURE PREVIOUSLY USED FOR THE DISCONTINUED USE, OR DISCONTINUED PART OF THAT USE, SHALL CONFORM TO THE REGULATIONS OF THE ZONING DISTRICT IN WHICH THE LAND OR STRUCTURE IS LOCATED.

Land Use Table: Since a new land use is defined, it must also be added to the appropriate use table so that the use is available in certain zones. In this case, Table 10-301 allows this new use as a conditional use requiring approval by the Board of Municipal and Zoning Appeals (BMZA) in each Commercial zone C-1 through C-5. The table also refers the reader to the use standards created in § 14-335.2.

Equity:

- Impact:
  - It is unclear what effect this proposed Zoning Code amendment would have on residential communities near to Commercial Districts, or upon other business communities nearest the sites that are or could be locations for *Retail: Small Box Discount Establishments*. Staff understands that the driving concern for this bill involves how a typical chain dollar store operates their business, but there is no direct tie between good operations and zoning classifications. While it is certainly possible that a bad operator may choose to close, and that location won't be reoccupied by another such business, there is also the chance that a well-operated business that might be a community asset would be prevented from locating in an area. There are too many variables to draw certain conclusions.
  - In the short term, this bill will have little effect due to the existing presence of the retailers to be regulated by it. However, as normal commercial turn-over occurs, it will

BALTIMORE CITY BOARD OF MUNICIPAL AND ZONING APPEALS

Brandon M. Scott
Mayor

Justin A. Williams
Interim Executive Director

Members
Leland Shelton
Chair

Victor Clark
Liz Cornish
David Marcozzi

417 E. Fayette St., Ste. 922
Baltimore, MD 21202
(410) 396-4301
zoning.baltimorecity.gov

MEMORANDUM

To: The Honorable Members of the Land Use and Transportation Committee
From: Justin A. Williams, Interim Executive Director
CC: Geoffrey Veale, Zoning Administrator
Date: October 14, 2025
Re: Council Bill No. 25-0040 – Zoning – Uses – Retail: Small Box Establishments
Position: **No Objection**

NOTE: This report has been prepared by the staff of the Board of Municipal and Zoning Appeals and has not been presented to or approved by the Board members. The comments and concerns expressed herein represent staff observations regarding implementation and administration of the proposed legislation.

OVERVIEW

City Council Bill 25-0040 proposes to regulate small box discount retail stores by defining them as a new use category, making them a conditional use requiring BMZA approval in all commercial zoning districts (C-1 through C-5), and establishing use standards including minimum separation distances between such establishments.

BMZA STAFF COMMENTS AND CONCERNS

1. Clarification Needed on Distance Measurement (§ 14-335.2)

The proposed § 14-335.2 establishes that "any new Retail: Small Box Establishment shall be at least 2,640 feet from any existing Retail: Small Box Establishment." However, the bill does not specify the method of measurement for determining compliance with this separation requirement.

BMZA Staff requests clarification on whether the 2,640-foot distance should be measured:

- Door-to-door between establishments?
- Property line to property line?
- From the center point of each property?
- By some other method? This clarification is essential for consistent application and enforcement of the standard, and to provide clear guidance to applicants and the Board when reviewing conditional use applications.

2. Responsibility for Compliance Verification

The bill does not clearly designate which City agency or department is responsible for:

- Initially verifying compliance with the 2,640-foot separation requirement
- Maintaining an ongoing inventory of Small Box Retail Establishments citywide
- Monitoring continued compliance with use standards

BMZA Staff notes that if the intent is for BMZA staff to verify compliance with the distance requirement, the BMZA currently lacks:

- **The technological tools** to efficiently map and calculate distances between existing and proposed establishments across all commercial districts citywide
- **The staff resources** to compile, maintain, and update a comprehensive database of Small Box Retail Establishments
- **The enforcement authority** to monitor ongoing compliance after conditional use approval

If the BMZA is expected to determine compliance as part of conditional use review, additional resources and technological infrastructure would be necessary.

3. Concerns Regarding Shortened Discontinuance Timeline

BMZA Staff shares the concerns raised by the Baltimore Development Corporation regarding the originally proposed § 18-307(b), which would have created a significantly shortened discontinuance period (30 consecutive days) specifically for Small Box Retail Establishments, compared to the standard 12-month period for other nonconforming uses.

While we understand that Amendment No. 4 proposes to remove this provision entirely, BMZA Staff wishes to note for the record that such disparate treatment of nonconforming uses:

- May create enforcement challenges and confusion
- Could result in legal challenges based on lack of rational basis for the distinction, and
- Would place additional administrative burdens on City enforcement staff

4. Ongoing Compliance with Grocery Store Exclusion

One of the proposed exclusions from the definition of "Retail: Small Box Establishment" is a grocery store. According to Amendment No. 3, a grocery store is defined as a "store, whose primary business is selling food at retail to the general public for off-premises consumption, of which at least 20% of the gross receipts must be derived from the retail sale of fresh produce, meats, and dairy products."

BMZA Staff is concerned about ongoing compliance verification:

While an applicant may initially represent that 20% or more of gross receipts derive from fresh produce, meats, and dairy products (thereby claiming exclusion from the Small Box Retail Establishment category), there is no clear mechanism for:

- Verifying the initial representation
- Monitoring ongoing compliance with the 20% threshold, or
- Enforcing the requirement if a store subsequently changes its product mix

The BMZA does not have:

- Access to retailers' sales records or gross receipts data
- Staff resources to audit financial records
- Authority to compel production of sales documentation
- Capacity for ongoing monitoring of product mix and sales percentages

If the intent is to ensure ongoing compliance with this threshold, a different enforcement mechanism would be necessary, potentially involving the Department of Finance or another agency with appropriate audit authority.

5. Licensing as Alternative Regulatory Approach

BMZA Staff acknowledges the City Council's intent to address community concerns regarding small box discount retail establishments and their impacts on neighborhoods. However, we respectfully note and support the position previously raised by the Planning Department that a licensing mechanism may be the more appropriate regulatory tool to address the specific concerns about these establishments.

Advantages of a licensing approach:

- Would allow for direct regulation of business operations and practices
- Could establish ongoing compliance requirements and monitoring
- Would provide clear enforcement mechanisms for problematic operators
- Could target specific operational issues (product quality, maintenance, community impact) rather than use category
- Would allow the City to address "bad actors" without restricting all establishments in this category
- Could include renewal requirements that ensure continued compliance

Zoning regulations, by contrast, are designed to address land use compatibility issues based on the physical characteristics and impacts of different use types, rather than the quality of individual business operations.

CONCLUSION

BMZA Staff respectfully submits these comments for City Council's consideration. While we recognize the policy objectives underlying this legislation, we believe the practical implementation and enforcement challenges identified above warrant careful consideration.

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**.

strongly influence whether new or replacement small box discount retail establishments would locate in certain portions of Baltimore (see discussion of separation requirements above).

- Engagement:
  - Some communities have been discussing their perceived need for this legislation for several years, as they have viewed the presence of small box discount retailers as an indicator of lack of commercial value of their area and as indicative of some retailers' decisions not to invest in those communities in more than a shallow way. These perceptions are viewed as in turn discouraging other types of commercial activity that communities prefer or are actively seeking.

- Internal Operations:
  - The proposed legislation would not directly affect the Department of Planning activities or operations. However, some aspects of the bill if enacted could create a large demand for staff in Zoning Administration and Zoning Enforcement. Likewise, as a new conditional use, there will be some increase in potential case load for the BMZA. Planning staff defers to the BMZA and the Zoning Administrator for additional comment.

Notification: Notification of this action was sent to over 17,300 recipients via GovDelivery.

Chris Ryer
Director

CITY OF BALTIMORE
MAYOR BRANDON M. SCOTT

TO	The Honorable President and Members of the Baltimore City Council
FROM	Veronica P. McBeth, Director, Department of Transportation (BCDOT)
CC	Mayor's Office of Government Relations
DATE	September 30, 2025
SUBJECT	25-0040 • Zoning – Uses – Retail: Small Box Establishment

Position: Favorable

BILL SYNOPSIS

Council Bill 25-0040 limits the creation of new small box discount stores in all commercial districts by requiring conditional use approval through the Board of Municipal Zoning Appeals (BMZA). Discount stores are defined as chain stores with ten or more locations in the City which sell discounted goods and operate in properties with between five and twelve thousand square feet of floor space. In the long term, the Bill would limit the concentration of discount stores by requiring that new establishments are no less than half a mile apart.

Under current law, discount retailers are not regulated. As a result, these retailers operate numerous locations in the city, many of them densely clustered in low-income communities. Discount stores may act as a valuable source of food and household goods in areas underserved by more conventional grocery stores. However, these stores tend to have an overall negative impact on the neighborhoods they serve. Local businesses and larger stores with higher-quality offerings may struggle to compete with these extremely low-cost retailers, limiting the choices available to residents in the long term.

From a transportation perspective, the proliferation of small box stores offers a more accessible alternative to residents who lack access to automobiles and live far from a grocery store. However, these stores tend to carry low-quality goods and rarely offer perishable items like fresh produce. The City's efforts to expand access to grocery stores in underserved neighborhoods are generally hampered by discount stores. Finally, discount stores, despite their general proximity to transit and residential neighborhoods, are rarely conductive to the pedestrian-focused, transit-oriented development the City has worked to prioritize in recent years.

SUMMARY OF POSITION

BCDOT has reviewed the proposed legislation and does not anticipate any immediate fiscal or operational impact resulting from the changes. Furthermore, the legislation should not immediately impact existing discount stores; any land use changes resulting from the legislation would manifest over the long term. Therefore, BCDOT respectfully requests a favorable report on Council Bill 25-0040.

Baltimore Development Corporation

MEMORANDUM

DATE: April 16, 2025
TO: Land Use & Transportation Committee
FROM: Colin Tarbert, President and CEO
POSITION: Favorable with amendment
SUBJECT: Council Bill 25-0040 – Zoning – Uses – Retail: Small Box Establishments

INTRODUCTION

The Baltimore Development Corporation (BDC) is reporting on City Council Bill 25-0040 introduced by Councilmembers Middleton & Ramos.

PURPOSE

The purpose of this bill is to require a conditional use variance be granted when establishing a Small Box Discount Retail Establishment, or dollar store, in any commercially zoned area within Baltimore City. The bill stipulates that new stores cannot be constructed within 0.5 miles of existing establishments. The bill also sets guidelines for discontinuance or abandonment of a non-conforming use.

BRIEF HISTORY

This bill represents a new attempt to regulate the proliferation of Small Box Retail Establishments within Baltimore City. This effort corresponds with a broader trend nationwide with cities such as Cleveland, New Orleans, Chicago, Kansas City, Atlanta, and many more have passed legislation aimed at controlling the spread of Small Box Retail Establishments.

BDC has identified more than 50 Small Box Retail Establishments currently located in the city, the overwhelming majority of which represent major national chains (Dollar Tree, Family Dollar, Dollar General), many of which are within 0.5 miles of one another. After identifying these locations, we cross-referenced them with available code violation data which did reveal several instances of excess trash and dumping, but very little in the way of more serious violations.

BDC supports the proposal to require a conditional use variance for Small Box Retail Establishments. Baltimore City's zoning code already restricts certain land uses to conditional use only, and also restricts the density of certain operations such as liquor stores, convenience stores, and big-box retail. Therefore, those strategies outlined in this bill would not be inconsistent with existing policy. Requiring a conditional use variance would also trigger the introduction of a City Council Bill, which would allow for public engagement, community input, and consideration of economic impact.

The section of this bill pertaining to the discontinuance of use for a non-conforming Small Box Retail Establishment stipulates that once a non-conforming use has been discontinued for a period of 30 days, the use may not be reestablished. BDC believes this represents an unfair burden to operators. This provision could potentially result in scenarios where Small Box Retail Establishments which have closed for renovations, disaster recovery, or other scenarios which require discontinuance of use could be subject to forfeiture of that use with no legal pathway to reopening the establishment. Typically, such forfeiture requires a use be discontinued or abandoned for a period of 12 months. BDC feels that 30 days represents an unrealistic timeline. We support the adoption of this bill provided that this section is amended to reflect a timeline for forfeiture of use that is more closely in line with existing practices.

FISCAL IMPACT [to BDC]

None.

AGENCY POSITION

The Baltimore Development Corporation respectfully submits a **favorable report with amendment** on City Council Bill 25-0040. If you have any questions, please contact Kim Clark at 410-837-9305 or KClark@baltimoredevelopment.com.

cc: Nina Themelis, Mayor's Office of Government Relations
Ty'lor Schnella, Mayor's Office of Government Relations

[TW]

CITY OF BALTIMORE
MAYOR BRANDON M. SCOTT

TO	The Honorable President and Members of the Baltimore City Council
FROM	Alice Kennedy, Commissioner, Housing and Community Development
CC	Mayor's Office of Government Relations
DATE	September 12, 2025
SUBJECT	25-0040 Zoning – Uses – Retail Small Box Establishment

Position: Favorable

BILL SYNOPSIS

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 25-0040 Zoning – Uses – Retail: Small Box Establishment for the purpose of making small box discount retail stores a conditional use by approval of the Board of Municipal Zoning Appeals in all commercial zoning districts; setting use standards for new small box discount retail stores; and defining certain terms.

If enacted, Council Bill 25-0040 would create the new use definition of Retail: Small Box Establishment and make them conditional use by board in all commercial districts while establishing standards around minimum separation distance and discontinuance. If approved, this Bill will take effect on the 30th day after its enactment.

SUMMARY OF POSITION

This Bill will create a new use known as Retail: Small Box Establishment, broadly defined as retail stores with a floor area between 5,000 and 12,000 square feet, part of a chain with ten or more locations, and with "assorted inexpensive general goods for sale in small units." Several exemptions to the new use definition are also provided to better hone its application. This Bill would render all Small Box Establishments within a half mile of each other to both non-conforming uses. While this would not have any initial effect on said Small Box Establishments, as they naturally close, they would not be able to be re-opened as such. Finally, this Bill greatly reduces the required timeframe to establish their discontinuance of use.

At its regular meeting of August 28, 2025, the Planning Commission concurred with its departmental staff and recommended that City Council Bill 25-0040 be approved by the City Council. DHCD also supports the approval of this legislation.

FISCAL IMPACT

As drafted, this Bill would have minimal fiscal or administrative impact on DHCD.

AMENDMENTS

DHCD does not seek any amendments to this Bill at this time.

CITY OF BALTIMORE
MAYOR BRANDON M. SCOTT

TO	The Honorable President and Members of the Baltimore City Council
FROM	Laura Larsen, Budget Director
DATE	June 25th, 2025
SUBJECT	25-0040 Zoning – Uses – Retail Small Box Establishment

The Honorable President and
Members of the City Council
City Hall, Room 400

Position: Does Not Oppose
The Department of Finance is herein reporting on City Council Bill 25-0040 Zoning – Uses – Retail Small Box Establishment, the purpose of which is the purpose of making small box discount retail stores a conditional use by approval of the Board of Municipal and Zoning Appeals in all commercial zoning districts; setting use standards for new small box discount retail stores; and defining certain terms.

Background
This legislation seeks to regulate the future placement of "Small Box Establishments" by making their opening conditional upon approval from the Board of Municipal Zoning Appeals. The legislation also prevents the opening of a new establishment within 2,640 feet (half a mile) of an already operating establishment. A "Small Box Establishment" refers to a retail store that meets the following criteria:

- It is part of a chain with 10 or more locations in Baltimore City, operating under the same name, regardless of the ownership structure of each location.
- The store has a floor area of more than 5,000 square feet but less than 12,000 square feet.
- It sells a variety of inexpensive general goods in smaller quantities.

However, certain establishments are excluded from this classification. A "Retail: Small Box Establishment" does not include:

- Grocery stores,
- Stores with a pharmacy where prescription drugs are compounded, dispensed, or distributed,
- Fuel stations,
- Retail stores where the majority of products sold are personal hygiene products or cosmetics,
- Stores that primarily engage in the resale of used consumer goods.

This distinction helps define specific retail operations within Baltimore City, setting parameters for regulatory purposes. The companies that best fit the criteria are Dollar Tree/Family Dollar (same company operating under different names) and Dollar General.

While these companies appear to offer benefits like jobs and discounted items, communities in Baltimore have reported struggles with lax security and thin staffing, leading to increased trash and safety concerns. These stores also a provide poor value to customer, despite perceptions of low prices, dollar stores may offer limited product quality and selection, affecting overall customer value.

Fiscal Impact
This legislation is not expected to meaningfully impact revenues or expenses.

Conclusion
City Council Bill 25-0040 seeks to define and regulate future locations of Small Box Establishments such as Dollar Tree/Family Dollar and Dollar General. Communities across the City have reported experiencing more trash as well as other negative effects once the stores begin operations. By regulating these establishments, the City can ensure a balance between providing affordable retail options and maintaining community safety, cleanliness, and overall quality of life. The legislation aims to address these concerns, fostering a retail environment that better serves both businesses and the people of Baltimore.

For the reasons stated above, the Department of Finance does not oppose City Council Bill 25-0040.

cc: Michael Mocksten
Nina Themelis

Baltimore City Council

Land Use & Transportation Committee

Bill:25-0040

Title: Zoning – Uses – Retail: Small Box Establishment

Additional Materials

Odette Ramos

Baltimore City Councilwoman

District 14

(410) 396 - 4814

odette.ramos@baltimorecity.gov

100 N. Holliday Street, Room 553

Baltimore MD 21202

September 18, 2025

Testimony
25-0040 – Zoning – Uses – Small Box Establishment
SUPPORT with Amendments

Dear Chair Dorsey and Members of the Land Use and Transportation Committee:

I am writing to ask for your support for City Council Bill 25-0040 – Zoning – Uses – Small Box Establishment. I am grateful for the leadership of Vice President Middleton on this bill and the opportunity to work with her on it.

This bill creates a new class of uses in all C zone categories called Small Box Establishment. This is in the same spirit as any other use listed in the zoning code. Our bill then requires that Small Box Establishment uses are a conditional use by board in the zoning code, and requires ½ mile distance between any other property with the same use. Last, this bill requires that if the use is abandoned at any time, that the use then is removed from the property in 30 days and not 2 years after the use is abandoned.

Our communities, particularly Black communities, are inundated with these kinds of stores, and in fact in Council Vice President Middleton's district, there are some right next to each other. These are discount stores that sell very discounted items that are owned by large chains. Our experience is that they are badly managed, and not good community partners. Moreover, they can be predatory claiming that they sell things at discount, but they are smaller amounts for a similar price as Grocery stores. The idea here is to make sure that there is a conversation with the community and the store, which is the point making sure this kind of use goes through the conditional use by board hearing process.

The General Assembly passed legislation to provide a study regarding the impact of those stores. The study was completed by Johns Hopkins University and team and is provided as an attachment to this testimony. In it, you will find that the impact of these stores is negative in the community.

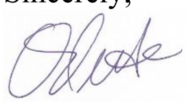
We have been working with the Law Department on their suggested amendments and have taken some of them, not all of them. Below is a summary of the attached amendments:

- Amendment 1 suggested by Law places small box stores in the building code as needing a Use permit.
- Amendment 2 also suggested by Law changes the original definition of small box stores so that we are working with all discount stores and not just the large chains as originally drafted.
- Amendment 3 suggested by Law clarifies the definition of "grocery store" as one of the exceptions.

- Amendment 4 removes the language about ending the conditional use right away. As much as we would like to do that, the Law Department will not approve for form and legal sufficiency. Law does not want us to treat small box stores differently in the conditional use discontinuance section than any other use.

Thank you for your consideration. I can be reached on 410-396-4814 or via email at odette.ramos@baltimorecity.gov should you have any further questions.

Sincerely,



Odette Ramos
Baltimore City Councilwoman, District 14

Maryland The Daily Record
200 St. Paul Place
Baltimore, MD, 21202
Phone: 4435248100

MARYLAND
THE DAILY RECORD

Affidavit of Publication

To: Office of Council Services - Nancy Mead
100 Holliday St
Baltimore, MD, 21202

Re: Legal Notice 4086769,

PUBLIC HEARING ON BILL NO. 25-0040

We hereby certify that the annexed advertisement was published in Maryland The Daily Record, a Daily newspaper published
in the State of Maryland 1 time(s) on the following date(s):
09/03/2025

By

Joy Hough
Authorized Designee of the Publisher

Baltimore City

BALTIMORE CITY COUNCIL
PUBLIC HEARING ON BILL NO. 25-0040

The Committee on Land Use & Transportation of the Baltimore City Council will conduct a public hearing on City Council Bill No. 25-0040 on Thursday, September 18, 2025, at 10:00 AM in the Clarence 'Du' Burns Chamber, City Hall, 100 N. Holliday Street, 4th Floor, Baltimore, MD 21202. Information on how the public can participate in the hearing virtually, via Webex, will be available at https://baltimore.legistar.com/Calendar.aspx.

Zoning - Uses - Retail; Small Box Establishment

FOR the purpose of making small box discount retail stores a conditional use by approval of the Board of Municipal Zoning Appeals in all commercial zoning districts; setting use standards for new small box discount retail stores; and defining certain terms.

Applicant: Sharon Middleton - City Council Vice President

For more information, contact committee staff at (410) 396-1091.

NOTE: This bill is subject to amendment by the Baltimore City Council.

RYAN DORSEY
Chair

s3 4086769

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Affidavit Reference: PUBLIC HEARING ON BILL NO. 25-0040

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Baltimore City Council

Land Use & Transportation Committee

Bill: 25-0040

Title: Zoning – Uses – Retail: Small Box Establishment

PUBLIC TESTIMONY

Leva, Anthony F (City Council)

From: Middleton, Sharon (City Council)
Sent: Thursday, October 9, 2025 7:51 AM
To: Cole, Brittany (City Council); Carla Wilson; Parker, Mark (City Council); Conway, Mark (City Council); Gray, Paris (City Council); Porter, Phylicia R.L. (City Council); Blanchard, Zachary (City Council); Ramos, Odette (City Council); rdorsey; Torrence, James (City Council); Bullock, John (City Council); antonio.glover@baltimorecity.go
Cc: Miller, Tywanda (City Council); Barnes, Jasmine (City Council); Ham, Sheena (City Council); District 7 Staff; Leva, Anthony F (City Council)
Subject: Re: FPNA's Support of CCB 25-0040

Good morning Toni:

Please add this testimony to the bill file.

Sincerely,
Sharon Middleton

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android]

From: Cole, Brittany (City Council) <brittany.cole@baltimorecity.gov>
Sent: Wednesday, October 8, 2025 12:30:34 PM
To: Carla Wilson <legiscoordforestpkassn@gmail.com>; Middleton, Sharon (City Council) <Sharon.Middleton@baltimorecity.gov>; Parker, Mark (City Council) <mark.parker@baltimorecity.gov>; Conway, Mark (City Council) <Mark.Conway@baltimorecity.gov>; Gray, Paris (City Council) <Paris.Gray@baltimorecity.gov>; Porter, Phylicia R.L. (City Council) <Phylicia.Porter@baltimorecity.gov>; Blanchard, Zachary (City Council) <zachary.blanchard@baltimorecity.gov>; Ramos, Odette (City Council) <Odette.Ramos@baltimorecity.gov>; rdorsey <Ryan.Dorsey@baltimorecity.gov>; Torrence, James (City Council) <James.Torrence@baltimorecity.gov>; Bullock, John (City Council) <John.Bullock@baltimorecity.gov>; antonio.glover@baltimorecity.go <antonio.glover@baltimorecity.go>
Cc: Miller, Tywanda (City Council) <Tywanda.Miller@BaltimoreCity.gov>; Barnes, Jasmine (City Council) <Jasmine.Barnes@baltimorecity.gov>; Ham, Sheena (City Council) <Sheena.Ham@baltimorecity.gov>; District 7 Staff <District7Staff@baltimorecity.gov>
Subject: Re: FPNA's Support of CCB 25-0040

Good afternoon, Ms. Wilson,

I hope all is well. Confirming receipt of your correspondence on behalf of the district 7. Thank you for providing your position on CCB 25-0040. Wishing you all a great rest of the day!

In Service,
Brittany Cole

From: Carla Wilson <legiscoordforestpkassn@gmail.com>
Sent: Tuesday, October 7, 2025 12:10 PM
To: Middleton, Sharon (City Council) <Sharon.Middleton@baltimorecity.gov>; Parker, Mark (City Council) <mark.parker@baltimorecity.gov>; Conway, Mark (City Council) <Mark.Conway@baltimorecity.gov>; Gray,

Paris (City Council) <Paris.Gray@baltimorecity.gov>; Porter, Phylicia R.L. (City Council) <Phylicia.Porter@baltimorecity.gov>; Blanchard, Zachary (City Council) <zachary.blanchard@baltimorecity.gov>; Ramos, Odette (City Council) <Odette.Ramos@baltimorecity.gov>; rdorsey <Ryan.Dorsey@baltimorecity.gov>; Torrence, James (City Council) <James.Torrence@baltimorecity.gov>; Bullock, John (City Council) <John.Bullock@baltimorecity.gov>; antonio.glover@baltimorecity.go <antonio.glover@baltimorecity.go>
Cc: Miller, Tywanda (City Council) <Tywanda.Miller@BaltimoreCity.gov>; Barnes, Jasmine (City Council) <Jasmine.Barnes@baltimorecity.gov>; Ham, Sheena (City Council) <Sheena.Ham@baltimorecity.gov>; District 7 Staff <District7Staff@baltimorecity.gov>
Subject: FPNA's Support of CCB 25-0040

Hello,

Please review Forest Park Neighborhood Association's letter in support of City Council Bill 25-0040. Thank you.

--
Carla Wilson
Legislative Chair
Forest Park Neighborhood Association
Email: legiscoordforestpkassn@gmail.com
Cell: 410-499-4753

Leva, Anthony F (City Council)

From: Chris Plano <chris.e.plano@gmail.com>
Sent: Monday, September 15, 2025 5:19 PM
To: Testimony
Subject: 25-0040 Zoning - Uses - Retail: Small Box Establishment

I fully support this bill. It will promote local businesses over poorly managed chains that detract from our communities.

Thank you,
Chris Plano
4202 Elsrode Avenue
Baltimore, MD 21214

Testimony to the Baltimore City Council Land Use and Transportation Committee
from Christine M. Layton
in support of Dollar Store Bill 25-0040
Public hearing date September 18, 2025

Good morning, Chairman Dorsey and members of Baltimore City Council's Land Use and Transportation Committee. I am Christine Layton, a Baltimore City Resident homeowner who has lived in the Oakenshaw neighborhood since 1994 during which time I raised two children, and served on the Board of our neighborhood association, the Oakenshaw Improvement Association.

I am here today to tell you all why I think the Dollar Store Bill 25-0040 would be beneficial for Baltimore and it's neighborhoods like Oakenshaw.

One of the appealing features of Oakenshaw is its convenient proximity to institutions like Johns Hopkins University and Union Memorial Hospital, services like the Waverly Branch of the Enoch Pratt Free Library and Saturday Farmer's Market, and businesses like the Waverly Ace Hardware Store and Red Emma's.

Oakenshawe shares a boarder with Greenmount Ave. It takes me less than 10 minutes to walk from my home to where a Dollar Store on Greenmount Ave. is out of business. I was concerned when a Dollar Store took the place of a long-standing chain pharmacy at the corner of Greenmount and 32nd St. I worried that the appeal of low-price every-day items would be outweighed by its adverse impact on other businesses, and increases in trash, and sales of low-quality, highly processed foods. I did not anticipate -- and was horrified -- when the Dollar Store became the site of multiple violent crimes, most recently a shooting this past July.

Bill 25-0040 would require an explicit definition of "Small Box Stores", like Dollar Store, and make such stores establishment conditional use. By requiring Zone C applicants to consult with local community members to identify and establish means to mitigate concerns like crime/violence, trash, etc., this legislation would help assure retailers are serving the communities where they do business.

As Baltimore continues its efforts to thrive and prosper, we need to assure we have structures in place to prevent businesses from taking advantage of our struggles. I think Bill 25-0040 would be helpful in these efforts.

Thank you for your time and attention to this issue.