

**LEGISTAR #37398 - Body**

DRAFTER'S ANALYSIS: The City's zoning code currently permits tobacco shops in the NMX, TSS, MXC, CC-T, and CC districts. However, the code does not specifically define tobacco shops and does not provide specific regulations for them. Nor does the code specifically address e-cigarettes, which the Common Council recently added to the City's ban on indoor smoking.

This amendment will amend the zoning code to create new definitions for Tobacco Retailer, Tobacco Paraphernalia, and Tobacco Products, which will include and incorporate e-cigarette products. Tobacco retailers (currently referred to as tobacco shops) will continue as permitted uses in the NMX, TSS, MXC, CC-T, and CC districts, and tobacco retailers established after the effective date of this ordinance will be subject to supplemental regulations pertaining to locating and operating such establishments.

Key supplemental regulations under this ordinance include that no tobacco retailer shall be located within one-thousand (1,000) feet of the boundary of any residential zone or parcel occupied by certain other uses, such as schools, day cares, playgrounds, youth centers, parks, libraries, and health care facilities. Furthermore, this ordinance contains a dispersion requirement, which prohibits a tobacco retailer to locate within five hundred (500) feet of a site occupied by another tobacco retailer. Finally, the ordinance contains supplemental regulations regarding the display and sale of tobacco products and paraphernalia.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 28.211 entitled "Definitions" of the Madison General Ordinances is amended by creating therein the following:

Tobacco Paraphernalia. Tobacco paraphernalia means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products. Tobacco paraphernalia includes electronic cigarettes, personal vaporizers, electronic nicotine delivery systems, or any item designed to atomize liquid solutions that simulate smoking.

Tobacco Retailer. A tobacco retailer is any establishment that either devotes twenty percent (20%) or more of floor area or display area to the sale or exchange of tobacco products or tobacco paraphernalia.

Tobacco Products. Tobacco products means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, bidis, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco. Tobacco products includes e-liquids such as propylene glycol, glycerin, nicotine, flavorings, or other products for use in electronic cigarettes, personal vaporizers, or electronic nicotine delivery systems."

2. Section 28.151 entitled "Applicability" of the Madison General Ordinances is amended by creating therein the following:

Tobacco Retailer.

- (a) No tobacco retailer shall be located within one thousand (1,000) feet of the boundary of any residential zone or parcel occupied by:
  - 1. A public or private kindergarten, elementary, middle, junior high or high school;
  - 2. A licensed child-care facility or preschool other than a family day care facility;
  - 3. Playground;
  - 4. Youth center;
  - 5. Park;
  - 6. Library; or
  - 7. Health care facility.
- (b) No tobacco retailer shall be located on a site which is within five hundred (500) feet of a site occupied by another tobacco retailer or any establishment selling tobacco products or tobacco paraphernalia, as measured in a straight line from the two properties nearest parcel boundaries.
- (c) Tobacco products or tobacco paraphernalia shall be secured so that only store employees have immediate access to the tobacco products or tobacco paraphernalia. Self-service displays are prohibited.

- (d) The tobacco retailer shall comply with local, state, and federal laws regarding sales, advertising or display of tobacco products and tobacco paraphernalia including posting prominently near the cash register or other point of sale the legal age to buy tobacco products and tobacco paraphernalia, and checking the identification of all purchasers to ensure they are of legal age.
- (e) No person under eighteen (18) years of age may sell or exchange tobacco products or tobacco paraphernalia.
- (f) Sampling of tobacco products by individuals under eighteen (18) years of age shall not be permitted. Therefore, tobacco products shall not be given or sold to individuals under eighteen (18) years of age.”

3. Table 28D-2 of Section 28.061 entitled “Mixed-Use and Commercial Districts Uses” of the Madison General Ordinances is amended by amending and creating therein the following:

<b>“Mixed-Use and Commercial Districts</b>							
	<b>LMX</b>	<b>NMX</b>	<b>TSS</b>	<b>MXC</b>	<b>CC-T</b>	<b>CC</b>	<b>Supplemental Regulations</b>
<b>Retail Sales and Service</b>							
<u>Tobacco retailer.</u>		P	P	P	P	P	Y
<u>Tobacco shop.</u>		P	P	P	P	P”	