

**DARBY BOROUGH
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 813

AN ORDINANCE OF DARBY BOROUGH, DELAWARE COUNTY, PENNSYLVANIA, AMENDING THE DARBY BOROUGH ZONING CODE TO AMEND CHAPTER 153 TITLED “ZONING,” AMENDING ARTICLE XVII, TITLED SMOKE SHOP “SMOKE SHOPS AND TOBACCO STORES;” REPEALING PRIOR INCONSISTENT ORDINANCES, RESOLUTIONS AND PARTS THEREOF; AND PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.

WHEREAS, the Borough Code and the Pennsylvania Municipalities Planning Code authorizes the Borough Council of Darby (“Borough Council”) to make, amend, and adopt ordinances that are consistent with the constitution and laws of the Commonwealth when necessary for the proper management, care and control of the Borough and the maintenance of peace, good government, health and welfare of Darby Borough (“Borough”) and its citizens;

WHEREAS, Borough Council intends to preserve, maintain, and enhance the community existing within the Borough while providing reasonable standards for smoke shops and tobacco stores within the Borough;

WHEREAS, the regulation of smoke shops and tobacco stores is necessary and in the interests of the public health, safety and general welfare because there is substantial likelihood of the continued establishment and operation of smoke shops and tobacco stores in the Borough;

WHEREAS, the expansion of smoke shops and tobacco stores in the Borough would result in undesirable impacts in the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and

heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses

WHEREAS, the Borough council approved a comprehensive zoning ordinance on October 20, 2010; and

WHEREAS, Borough Council desires to make certain changes to the Zoning Code, as set forth below;

WHEREAS, Borough Council has met the procedural requirements of 53 P.S. § 10101, *et seq.*, of the Pennsylvania Municipalities Planning Code for the adoption of the proposed ordinance, including advertising and holding a public hearing; and,

WHEREAS, Borough Council, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of Darby Borough will be served by this amendment of the Darby Borough Zoning Code.

NOW THEREFORE, THE FOLLOWING IS HEREBY ORDAINED AND ENACTED by the Darby Borough Council:

I. § 153-146 (C) Smoke Shops and Tobacco Stores

1) The regulation of smoke shops and tobacco stores is necessary and in the interests of the public health, safety and general welfare because there is substantial likelihood of the continued establishment and operation of smoke shops and tobacco stores in Darby Borough (“Borough”).

2) The expansion of smoke shops and tobacco stores in the Borough would result in undesirable impacts in the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and

heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses.

3) This section contains amendments consistent with good zoning and planning practices to address negative impacts of smoke shops and tobacco stores while providing a reasonable number of locations and zones for such shops/ stores to locate within the Borough.

1. Definitions.

As used in this section, the following terms shall have the meanings indicated:

DRUG PARAPHERNALIA STORES

Any retail store selling paraphernalia commonly related to the use of any drug or narcotic of which the sale, use or possession of its subject to the provisions of "The Controlled Substance, Drug, Device and Cosmetic Act," 1972, April 12, P. L. 233. No. 64, § 780-101 et seq., "roach" clips, "coke" spoons, "bongs," and cigarette rolling paper, except that this shall not be deemed to include the sale of cigarette rolling paper by a store that also sells loose tobacco or the sale by prescription of implements needed for the use of prescribed drugs or narcotics.

E-CIGARETTE

Any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution, popularly referred to as "juice," and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason, e-cigarettes and their juice can be classified as both tobacco products and drug paraphernalia.

MIXED-USE ESTABLISHMENTS

Where a grocery store, supermarket, convenience store or similar market combines an area greater than 75 square feet or 2% of its retail space, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes or tobacco with the sale of other retail products. For the purpose of this section, these mixed-use establishments shall be subject to the restrictions of this section. The display, sale, distribution, delivery, offering, furnishing, or marketing of e-cigarettes or any other tobacco products or tobacco paraphernalia, regardless of square footage used, is subject to the restrictions of this section.

SMOKE SHOPS AND TOBACCO STORES

Any premises having more than 100 square feet dedicated to marketing and storage of tobacco, tobacco products, or tobacco paraphernalia.

TOBACCO

Any preparation of the nicotine -rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.

TOBACCO PARAPHERNALIA

Any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P. S. § 780- 113 (a) (33).

TOBACCO PRODUCTS

Any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any means. For the purposes of this section, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/ smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such and approved purpose.

A. Zoning and Use Standards.

1) Notwithstanding any other provision of this title to the contrary, smoke shops, tobacco stores and mixed- use establishments shall be a conditional use in the CBD Central Business District, HC-Highway Commercial District; or the BI-Business Industrial District

2) All smoke shops, tobacco stores and mixed- use establishments proposing to operate within the CBD, HC, and BI Districts after the effective date of this section must obtain a conditional use approval. Standard conditions of approval, at a minimum, shall include the following:

- a) No smoking shall be permitted on the premises at any time.
- b) No sales may be solicited or conducted on the premises by minors.
- c) No self-service tobacco, tobacco product, or tobacco paraphernalia displays shall be permitted.
- d) No distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as coupons for said items, shall be permitted.

3) Additional Zoning and Land Use Standards for smoke shops, tobacco stores and mixed- use establishments shall be as follows:

a) Smoke shops, tobacco stores and mixed- use establishments shall not be located within 1000 feet, measured property line to property line, from a school (private or public), family day-care home, child-care facility, youth center, community center, recreational facility, park, church or religious institution, hospital, or other similar uses where children regularly gather.

b) Smoke shops, tobacco stores and mixed- use establishments shall not be located within 1000 feet, measured from property line to property line, from another smoke shop and/ or tobacco store and/ or mixed-use establishment.

c) It is unlawful for a smoke shop and/ or tobacco store to knowingly allow or permit a minor not accompanied by his or her parent or legal guardian to enter or remain within any smoke shop or tobacco store.

d) Smoke shops and tobacco stores shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one such sign shall be placed in a conspicuous location near each public entrance to all such store. It shall be unlawful for the above-listed stores to fail to display and maintain, or fail to cause to be displayed or maintained, such signage and is subject to violations and penalties as listed in

B. Pre-existing Nonconforming Smoke Shops and Tobacco Stores.

Smoke shops and tobacco stores that are legally existing on the effective date of this section may continue to operate as legal nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or

expansion of the legal nonconforming use shall require compliance with this chapter and a conditional use permit.

C. Prevention and Removal of Refuse.

1) All smoke shops and tobacco stores shall provide and maintain a minimum of 1 garbage can per entryway, locations as approved by the Zoning Officer.

2) Owners shall be responsible for removal of all trash, litter, garbage, etc., as a result of the purchase or use of tobacco related products, from their property and the adjacent right -of ways within the Borough.

II. REPEALER

Any and all terms, conditions and provisions of any Ordinance or Resolution of Darby Borough in conflict with the terms, conditions and provisions of this Ordinance, are hereby repealed to the extent of such conflict.

III. SEVERABILITY

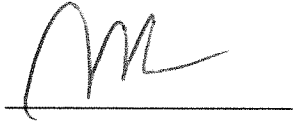
It is hereby declared to be the legislative intent, that if a court of competent jurisdiction declares any provision of this Ordinance to be invalid or ineffective in whole or part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all such other provisions of this Ordinance shall continue to be separately and fully effective.

IV. EFFECTIVE DATE

This Ordinance shall be effective immediately upon adoption of the Darby Borough Council.

ORDAINED AND ENACTED by the Darby Borough Council on this 26th day of June, 2024.

ATTEST:



Secretary

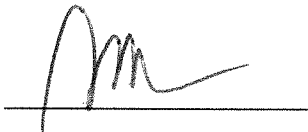
COUNCIL OF THE BOROUGH OF DARBY



By: Lucille Pratt, President of Borough Council

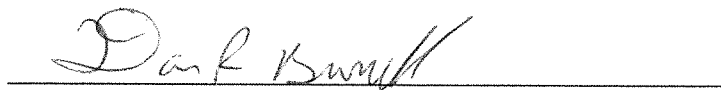
APPROVED, this 26th day of June, 2024, by the Mayor of the Borough of Darby.

ATTEST:



Secretary

MAYOR OF THE BOROUGH OF DARBY



By: Darren Burrell, Mayor