

**ORDINANCE 2025-05
BOROUGH OF DOWNINGTOWN
CHESTER COUNTY, PENNSYLVANIA**

AN ORDINANCE AMENDING CHAPTER 287 ENTITLED “ZONING” TO ADD THE DEFINITION OF CONVENIENCE STORE, TO DEFINE E-LIQUIDS, ELECTRONIC CIGARETTES, ELECTRONIC NICOTINE DELIVERY SYSTEMS, HOOKAH BARS, SIGNIFICANT TOBACCO RETAILERS AND SMOKE SHOPS; TO PLACE SEPARATION REQUIREMENTS AND ESTABLISHING ADDITIONAL RESTRICTIONS ON SIGNIFICANT TOBACCO RETAILER USES IN THE C-1 AND C-3 COMMERCIAL AND INDUSTRIAL DISTRICTS, AND TO ADD A NEW SECTION 287-87.3 ESTABLISHING ADDITIONAL CRITERIA FOR THE APPROVAL OF A SIGNIFICANT TOBACCO RETAILERS USE.

WHEREAS, the Borough of Downingtown has the authority to make and adopt ordinances consistent with the Constitution and laws of this Commonwealth and with the Charter;

WHEREAS, the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, et. seq., provides that municipalities are permitted to address the intensity of uses within a zoning district and provide for the promotion, protection and facilitation of public health, safety, morals, and the general welfare, and coordinate practical community development; and

WHEREAS, the Borough Council desires to promote a complementary mix of uses that will generate pedestrian foot-traffic, disperse the intensity of uses throughout the Borough, and promote the economic health of the Borough; and

WHEREAS, the Borough Council desires to prevent the over-concentration of certain uses within the Borough; and

WHEREAS, tobacco use is still the leading cause of preventable death in the United States; and

WHEREAS, tobacco use places a huge financial cost on the nation's healthcare system and constraints on productivity imposed on the nation's economic system; and

WHEREAS, since 2014 electronic cigarettes have been the most commonly used tobacco

products among the youth of the United States; and

WHEREAS, the Borough Council desires to clarify the definition of Convenience Store, to define E-Liquids, Electronic Cigarettes, Electronic Nicotine Delivery Systems, Hookah Bars, Significant Tobacco Retailers and Smoke Shops; to regulate Significant Tobacco Retailers in the C-1 and C-3 Commercial District; and to establish the criteria for the approval of a Significant Tobacco Retailers use.

WHEREAS, the Borough Council has met the procedural requirements of the Pennsylvania Municipalities Planning Code for the adoption of the proposed ordinance, including advertising and holding a public hearing;

WHEREAS, the 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 Downingtown Borough will be served by this amendment of the Borough's Code.

NOW, THEREFORE, the Borough Council of Downingtown Borough hereby ordains and enacts as follows:

AND NOW, this 6th day of August 2025, it is hereby enacted and ordained by the Borough Council of Downingtown, Chester County, Pennsylvania, that:

SECTION 1. Chapter 287 of the Borough Code, "ZONING", Article II, Definition and Word Usage is hereby amended by adding definitions to read as follows:

CONVENIENCE STORE

A mini food market designed to attract and serve stop-and-go traffic, specializing in fast sales of bread, dairy, luncheon meats, as well as both made-to-order and ready-to-consume sandwiches, meals and beverages intended for consumption off the premises, and providing a limited supply of grocery store stock as a convenience to its patrons, with less than 10% of its retail floor area or display area dedicated to, or which maintains 20% or less of its

total merchandise, whether on display or in stock, for products containing tobacco, tobacco paraphernalia, Delta-8 THC (or Delta-8-tetrahydrocannabinol) products, kratom, ingestible CBD/cannabidiol products, and/or Electronic Nicotine Delivery Systems (ENDS), ENDS-related products and/or any materials that can be used in Electronic Nicotine Delivery Systems. A store exceeding this 10% requirement shall be considered a Significant Tobacco Retailer.

E-LIQUID

Any liquid that contains vegetable glycerin, propylene glycol, nicotine, water, and/or possibly flavoring that can be used in Electronic Nicotine Delivery Systems (ENDS) devices. E-liquids can also be referred to as "vape" or "vape juice."

ELECTRONIC CIGARETTE

- (1) An electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substance and the use or inhalation of which simulates smoking.
- (2) The term includes any ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS) device, notwithstanding whether the device is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar and e-pipe or under any other product, name or description.

ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS)

Any device designed or used to transform an e-liquid (that may contain nicotine) into an aerosol that the user inhales. ENDS can also be referred to as "vapes," "vaporizers," "vape pens," "hookah pens," "electronic cigarettes," "e-cigarettes," "e-cigs," and "e-pipes."

HOOKAH BAR

Any establishment that is devoted to, marketed as, or designed for, whether as its primary use or as an accessory use, the on-premises use of smoking through a water pipe with a smoke chamber, a bowl, a pipe and a hose, commonly referred to as a "hookah," and also

known as narghile, argileh, shisha, hubble-bubble and/or goza, or any similar device used for on-premises smoking. The term "hookah bar" includes, but is not limited to, establishments variously known as hookah parlors, hookah cafes, and hookah lounges. A Hookah Bar shall be considered a Significant Tobacco Retailer.

SIGNIFICANT TOBACCO RETAILER

Any of the following establishments:

- (1) Any retailer or wholesale establishment that devotes 10% or more of retail floor area devoted to the use or display area to, or maintains 20% or more of its total merchandise, whether on display or in stock, for Tobacco Products, Vape Products, Delta-8 THC (or Delta-8-tetrahydrocannabinol), kratom, ingestible CBD/cannabidiol products, Electronic Nicotine Delivery Systems (ENDS), and/or ENDS-related products and/or any materials that can be used in Electronic Nicotine Delivery Systems;
- (2) Any retailer or wholesale establishment that holds itself out as, or otherwise promotes or markets itself as, a "tobacco store," a "smoke shop," a "vape shop," a "cigar shop" or a similar establishment selling Tobacco Products and/or Vape Products or predominantly advertises Tobacco Products or Vape Products on its storefront or website;
- (3) A Hookah Bar, regardless of whether Tobacco Products or Vape Products are sold from the premises.

TOBACCO PRODUCTS

Any substance containing tobacco leaf or accessory items used with or for tobacco consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, shisha, snuff, chewing tobacco, dipping tobacco, other noncombustible tobacco products, matches, lighters, grinders, hookahs, pipes, cigarette rolling machines or papers, ashtrays, pipe tools, pipe supplies and pipe accessories.

VAPE PRODUCTS

Products containing E-liquids that are inhaled from a device designed for such purpose and/or products used to assist with the inhalation of E-liquids including, but not limited to, any device designed or used to transform an e-liquid (that may contain nicotine) into an aerosol that the user inhales, e-liquids, e-cigarettes, vape or e-cigarette cartridges or refills, vaporizers, vape pens, vapor products, hookah pens, electronic cigarettes, e-cigs, e-pipes, Electronic Nicotine Delivery Systems (ENDS), and/or ENDS-related products and/or any materials that can be used in ENDS. Vape Products shall also be deemed a noncombustible tobacco product.

SECTION 2. Chapter 287 of the Borough Code, Article IX, C-1 Zoning, Section 287-37A, Use Regulations is hereby amended by adding Convenience Stores use, to read as follows:

(10). Convenience stores.

SECTION 3. Chapter 287 of the Borough Code, Article IX, C-1 Zoning, by amending Section 287-37D, entitled Conditional Use, by adding a new subsection (2) to read as follows:

(2). Significant Tobacco Retailer, provided the use is located at least 1,000 feet from another Significant Tobacco Retailer, a medical marijuana dispensary, medical marijuana grower/processor, school, religious use, public park, and day care center. This use shall also be subject to compliance with the regulations in Section 287-87.3

SECTION 4. Chapter 287 of the Borough Code, Article IX, C-2 Zoning, Section 287-42A, Use Regulations is hereby amended by adding Convenience Stores use, to read as follows:

(6). Convenience stores.

SECTION 5. Chapter 287 of the Borough Code, Article XI, C-3 Zoning, Section 287-47A, Use regulations, is hereby amended by adding Convenience stores, to read as follows:

(10). Convenience stores.

SECTION 6. Chapter 287 of the Borough Code, Article XI, C-3 Zoning, Section 287-47D, Conditional Uses, is hereby amended by adding Significant Tobacco Retailer with separation requirements applicable to Significant Tobacco Retailer, to read as follows:

- (5). Significant Tobacco Retailer, provided the use is located at least 1,000 feet from another Significant Tobacco Retailer, a medical marijuana dispensary, medical marijuana grower/processor, school, religious use, Public Park, and day care center. This use shall also be subject to compliance with the regulations in Section 287-87.3.
- (6). All other uses as determined by the Borough Council to be of the same general character as the uses permitted by right.

SECTION 7. Chapter 287 of the Borough Code, Article XII, I-1 Limited Industrial District, Section 287-53D, Use Regulations is hereby amended by adding new section (5) and (6), Significant Tobacco Retailer use and all other uses, to read as follows:

- (5). Significant Tobacco Retailer, provided the use is located at least 1,000 feet from another Significant Tobacco Retailer, a medical marijuana dispensary, medical marijuana grower/processor, school, religious use, Public Park, and day care center. This use shall also be subject to compliance with the regulations in Section 287-87.3.
- (6). All other uses as determined by the Borough Council to be of the same general character as the uses permitted by right.

SECTION 8. Chapter 287 of the Borough Code, Article XIII, I-3 General Industrial District, Section 287-69.2A, Use Regulations is hereby amended by adding new Subsection (11), Significant Tobacco Retailer use, and Subsection (12), accessory uses, to read as follows:

- (11). Significant Tobacco Retailer, provided the use is located at least 1,000 feet from another Significant Tobacco Retailer, a medical marijuana dispensary, medical marijuana grower/processor, school, religious use, Public Park, and day care center. This use shall also be subject to compliance with the regulations in Section 287-87.3.
- (12). Uses customarily accessory to the above permitted uses.

SECTION 9. The Code of the Borough of Downingtown, Chapter 287 thereof, being the Downingtown Borough Zoning Code, Article XVI, General Regulations, by adding a new § 287-87.3, entitled Specific Requirements for Significant Tobacco Retailers as follows:

287-87.3 Specific Requirements for Significant Tobacco Retailers

1. Significant Tobacco Retailers shall cease operations between the hours of 10:00 PM and 10:00 AM.
2. No alcoholic beverages shall be served or consumed within the premises of a Significant Tobacco Retailer.
3. The site or facility shall provide adequate policing/enforcement to prevent the sale of tobacco, vape, and other similar products to underage individuals.
4. No more than one Significant Tobacco Retailer shall be permitted on any one parcel or in any one building.
5. A Significant Tobacco Retailer may only dispense tobacco in an indoor, enclosed space.
6. Off-street parking shall be consistent with § 287-107 D (2), retail and service uses.
7. Loading and unloading shall be consistent with § 287-111 Off-street Loading.

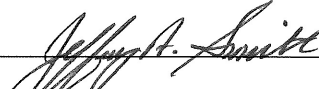
SECTION 10. Applicability. The provisions hereof shall supersede any ordinances or parts of ordinances which are inconsistent herewith.


SECTION 11. Severability. If any provision, sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.

SECTION 12. Effective Date. This Ordinance shall become effective five (5) days from enactment.

ENACTED AND ORDAINED this 6th day of August, 2025 by the Borough Council of
Downingtown.

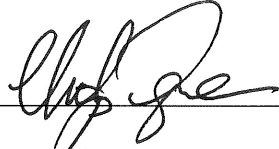
ATTEST:

By: 
Jeffrey A. Smith, Manager

By: 
Steven J. Plaugher, Council President

APPROVED by the Mayor on the 6th day of August, 2025.

SEAL


Phil Dague, Mayor