

**TOWNSHIP OF UPPER PROVIDENCE
COUNTY OF DELAWARE
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE No. 555

AN ORDINANCE OF THE TOWNSHIP OF UPPER PROVIDENCE, COUNTY OF DELAWARE, COMMONWEALTH OF PENNSYLVANIA, AMENDING THE ZONING ORDINANCE BY ESTABLISHING CERTAIN DEFINITIONS AND FURTHER REGULATING THE LOCATION OF MEDICAL MARIJUANA DISPENSARIES, MEDICAL MARIJUANA GROWERS/PROCESSORS, SIGNIFICANT TOBACCO RETAILERS, UNREGULATED CANNABINOID SUBSTANCES AND KRATOM RETAILERS, AND VAPE SHOPS.

WHEREAS, in April 2016 the Pennsylvania General Assembly enacted the Medical Marijuana Act, Act No. 16 of 2016, which provides for access to medical marijuana for patients suffering from certain medical conditions; and

WHEREAS, the Upper Providence Township Council believes it to be in the best interest of the Township and its residents to regulate the location and nature of licensed organizations, growing, acquiring, possessing, manufacturing, selling, delivering, transporting, dispensing and/or distributing medical marijuana within the Township; and

WHEREAS, the Medical Marijuana Act provides for two (2) distinct land uses: Medical Marijuana Grower/Processor and Medical Marijuana Dispensary; and

WHEREAS, the Medical Marijuana Act provides that a Medical Marijuana Grower/Processor “shall meet the same municipal zoning and land use requirements as other manufacturing, processing and production facilities as are located in the same zoning district”; and

WHEREAS, the Medical Marijuana Act provides that a Medical Marijuana Dispensary “shall meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same zoning district”; and

WHEREAS, there has been a proliferation of “Vape Shops” within Delaware County specializing in the sale of Electronic Cigarettes and Electronic Nicotine Delivery Systems which is a use that was not existent at the time of drafting of the zoning ordinance; and

WHEREAS, Electronic Cigarettes and Electronic Nicotine Delivery Systems present substantial health threats to residents and particularly to minors; and

WHEREAS, the Upper Providence Township Council has determined that it is in the best interest of the Township and its residents to amend the Upper Providence Township Zoning Ordinance, as amended, to establish definitions for a Medical Marijuana Dispensary use, Medical Marijuana Grower/Processor use, and Vape Shop use; and to further amend the Upper Providence Township Zoning Ordinance to provide regulations for such uses.

WHEREAS, the Upper Providence Township Council (Council) hereby finds that mitragynine and 7-hydroxymitragynine, also known as Kratom, and Delta-8 THC have the potential for abuse and can pose a health, welfare, and safety concern to the community and its residents; and

WHEREAS, the use and/or sale of Kratom has been banned in six states and other local municipalities based upon information which has indicated its use is a health and safety risk; and

WHEREAS, on September 11, 2018, the U.S. Food and Drug Administration (FDA) issued a warning about Kratom because of its opioid properties which could, if misused, expose users to risks of addiction, abuse, and dependence; and

WHEREAS, the use and or sale of Delta-8 THC products have been either restricted or banned in eighteen (18) states and there is some ambiguity as to the legality of other THC compounds such as Delta-10 and Delta-11; and

WHEREAS, the FDA and the Centers for Disease Control and Prevention issued drug warnings to the public regarding potential health risks of using Delta-8 THC products on September 14, 2021; and

WHEREAS, the FDA issued its warning because: 1) Delta-8 THC products have not been evaluated or approved by the FDA for safe use and may be marketed in ways that put the public at risk; 2) the FDA has received adverse event reports involving Delta-8 THC products; 3) Delta-8 THC has psychoactive and intoxicating effects; 4) Delta-8 THC products often involve use of potentially harmful chemicals to create the concentrations of Delta-8 THC claimed in the marketplace; and 5) Delta-8 THC products should be kept out of reach of children and pets; and

WHEREAS, the Board hereby finds that the manufacturers of Delta-8 THC and Kratom products are packaging and labeling these products in ways that appeal to children, such as gummies, chocolates, cookies, candies; and

WHEREAS, neither the federal government nor the Commonwealth of Pennsylvania have established rules or regulations governing the production of Kratom or Delta-8 THC nor its use by or sale to minors; and

WHEREAS, it has been determined that it is in the best interests of the health, welfare, and safety of Upper Providence Township to address the sale of tobacco and unregulated substances such as Kratom, Delta-8 THC, Delta 10 TCH, and Delta 11 TCH at locations within Upper Providence Township in close proximity to schools, playgrounds, and daycare facilities.

BE IT ORDAINED AND ENACTED, by the Township Council of the Township of Upper Providence as follows:

Section 1. Amendments to Zoning Ordinance.

A. Section 1256.04 of the Code of the Township of Upper Providence, entitled "Use definitions and standards," is hereby amended as follows:

1. By amending and restating in their entirety the following Commercial Uses set forth in Subsection 1256.04(E) as follows:

E22. VAPE SHOP - Any establishment whose principal product line for retail sale are Vape Products and/or Electronic Nicotine Delivery Systems (ENDS) devices, parts, components, or e-liquids. "Principal" means that the Vape Products or ENDS-related products constitute at least 25% of the establishment's aggregate retail sales, provided:

- a. Persons under the age of 18 shall not be permitted to enter the facility. Businesses shall be responsible for verifying the age of consumers including checking photo identification.
- b. A Vape Shop may not be located within 1,000 feet of any school, playground, or daycare facility within Upper Providence Township. This separation distance shall be measured from the shortest line between the property line of the Vape Shop location to the property line of the school, playground, or daycare.
- c. Hours of operation shall not extend outside the hours of 7 am to 11 pm.

E23. SIGNIFICANT TOBACCO RETAILERS - Any tobacco retailer that either devotes twenty (20) percent or more of floor area or display area to, or derives seventy-five (75) percent or more of gross sales receipts from, the sale or exchange of Tobacco Products and/or tobacco paraphernalia at the subject location, including, without limitation, smoke shops and hookah lounges.

- a. Persons under the age of 18 shall not be permitted to enter the facility. Businesses shall be responsible for verifying the age of consumers including checking photo identification.
- b. A Significant Tobacco Retailer may not be located within 1,000 feet of any school, playground, or daycare facility within Upper Providence Township. This separation distance shall be measured from the shortest line between the property line of the Retailer location to the property line of the school, playground, or daycare.
- c. Hours of operation shall not extend outside the hours of 7 am to 11 pm.

E24. UNREGULATED CANNABINOID SUBSTANCES AND KRATOM RETAILERS

A retailer that sells, prepares, maintains, or otherwise distributes Kratom and/or Unregulated Cannabinoid Substances including but not limited to Delta-8 THC, products or that advertises, represents, or holds itself out as selling, preparing, maintaining, or otherwise distributing such products, including but not limited to Kratom or Delta-8 THC

products, from a physical location within Upper Providence Township. It is the specific finding of Upper Providence Township that such substances may have a dangerous effect upon anyone using and/or ingesting said substances and that such substances should not be made available for retail sale to minors.

- a. Persons under the age of 21 shall not be permitted to enter the facility. Businesses shall be responsible for verifying the age of consumers including checking photo identification.
- b. An Unregulated Cannabinoid Substances and Kratom Retailer may not be located within 1,000 feet of any school, playground, or daycare facility within Upper Providence Township. This separation distance shall be measured from the shortest line between the property line of the Retailer location to the property line of the school, playground or daycare.
- c. It shall be unlawful to offer, sell, give, deliver, distribute, or otherwise provide an Unregulated Cannabinoid product, Kratom product or Delta-8 THC product to any person under the age of twenty-one (21) years.
- d. Hours of operation shall not extend outside the hours of 7 am to 11 pm.

2. All prior uses of the term “Unregulated Cannabinoid Substances Retailer” are hereby removed and replaced with the term “Unregulated Cannabinoid Substances and Kratom Retailers.”

B. The following rows of Section 1256.02 of the Code of the Township of Upper Providence, entitled “Uses by right, special exception, conditional use, and uses not permitted”, at Table A is hereby amended to restrict by Significant Tobacco Retailers uses as follows:

#	Use*	R-1	R-2	R-3	R-4	R-5	R-6	B	LI	POC	RO	PRD	Flood Plain	References
Commercial Uses														
E22	Vape Shop	N	N	N	N	N	N	N	P	N	N	N	N	§ 1256.04.E22
E23	Significant Tobacco Retailers	N	N	N	N	N	N	N	P	N	N	N	N	§ 1256.04.E23

C. Section 1252.02 of the Code of the Township of Upper Providence, entitled “Terms defined,” is hereby amended by adding the following definitions in alphabetical order:

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.

UNREGULATED CANNABINOID SUBSTANCES: Cannabinoids that are not specifically regulated or controlled under existing laws of the United States or Commonwealth of Pennsylvania, including, but not limited to Delta-8 THC, Delta-10 THC, and Delta-11 THC.

VAPE PRODUCTS – Products containing nicotine and/or nicotine flavoring or other unregulated cannabinoid substances including, but not limited to Delta-8 THC, that are inhaled from a device designed for such purpose and/or products used to assist with the inhalation of nicotine 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, Electronic Nicotine Delivery Systems (ENDS) 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: Other Ordinances.

Nothing in this Ordinance shall be interpreted to relieve any individual from compliance with all other ordinances, resolutions, laws and regulations of the Township, of the County of Delaware, the Commonwealth of Pennsylvania or the United States.

SECTION 3. Repealer.

All ordinances, resolutions and parts of ordinances and resolutions inconsistent herewith, are hereby repealed.

SECTION 4. Severability.

The provisions of this ordinance are severable, and if any section, sentence, clause, part, or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, or parts of this Ordinance. It is hereby declared to be the intent of the Township Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional sections, sentence, clause, part, or provision had not been included therein.

SECTION 5. Adoption.

This ordinance shall become effective five (5) business days after passage.

ENACTED AND ORDAINED this 27th day of August, 2024.

TOWNSHIP OF UPPER PROVIDENCE:

Christen Rexing,
Council Chairman

Attest: _____
Barry Lubber,
Township Secretary