

CB-103-2022 – Planning Board Analysis (Attachment 1)

This bill modifies the definition and creates a minimum distance requirement for tobacco shops, electronic cigarette shops, or retail tobacco businesses that sell products for offsite consumption.

The Planning Board has the following comments for consideration by the District Council:

Policy Analysis:

First, the bill alters the definition of tobacco shops, electronic cigarette shops, or retail tobacco businesses (hereinafter collectively "tobacco shop"), found in section 27-2500, to state that a tobacco shop may not be located within five miles of another tobacco shop. A minimum distance requirement of this type is a development standard, not a definition. Including a five-mile standard in the definition will render the existing definition for tobacco shop unclear and ambiguous and may make it impossible to implement any of the zoning regulations that govern tobacco shops. A minimum distance standard belongs in the use regulations of the ordinance, which this bill in fact accomplishes in a later section of the bill.

Second, the bill alters section 27-5402 to add a new use regulation for tobacco shops, which states that a tobacco shop may not be located within five miles of another tobacco shop. This is a policy decision of the District Council upon which planning staff take no position.

Third, the bill imposes the five-mile minimum distance requirement on "applications processed under the Transitional Provisions of Section 27-1700." The Planning Board believes that the purpose of this language is to impose the minimum distance requirement on applicants who are using their prior zone and the prior zoning ordinance, even though the prior ordinance did not contain a minimum distance requirement. If so, then this provision belongs in the transitional provisions and not the use regulations; the Planning Board proposes language effective to achieve that goal below.

In summary, the following changes are needed to the bill to make it implementable in the new zoning ordinance:

- Delete the language on page 2, lines 7 through 11, requiring a tobacco shop, electronic cigarette shop, or retail tobacco shop to be located within a five-mile radius of another tobacco shop, electronic cigarette shop, or retail tobacco shop, because this language cannot be located within a use definition. The language pertaining to a distance requirement is listed in the proper location on page 3, lines 1 through 5, under the additional special exception regulations for specific uses.
- Delete the language on page 2, lines 11 through 13, and page 3, lines 5 through 6, from Section 27-5402 and place it under Section 27-1704 (Projects Which Received Development or Permit Approval Prior to the Effective Date of this Ordinance) if the intent is to apply the five-mile radius prohibition to new applications for tobacco and electronic cigarette businesses using the transitional provisions for projects still subject to the prior Zoning Ordinance.

The revised language could read as follows:

Section 27-1704. Projects Which Received Development or Permit Approval Prior to the Effective Date of this Ordinance

(m) Notwithstanding the provisions specified within this section, no tobacco shop, electronic cigarette shop, or retail tobacco business that sells tobacco or electronic cigarette products for offsite use may be approved if it is located within a five-mile radius of another tobacco shop, electronic cigarette shop, or retail tobacco business that also sells tobacco or electronic cigarette products for offsite use.

Impacted Property:

The proposed legislation will affect all future tobacco shops, electronic cigarette shops, or retail tobacco businesses.

Following discussion, the Planning Board voted (1) oppose CB-103-2022 in its current form because its drafting problems would prevent implementation of the bill; and (2) take no position on the policy goal of the bill.