

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2022 Legislative Session

Reference No.: CB-080-2022

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 9/15/2022

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 5-0 (In favor: Council Members Franklin, Glaros, Harrison, Hawkins, and Turner)

The Planning, Housing and Economic Development (PHED) Committee convened on September 13, 2022, and September 15, 2022, to consider CB-80-2022. At the September 13 Committee worksession, the Planning, Housing and Economic Development (PHED) Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill amends the Zoning Ordinance definition of convenience store to exclude those uses that primarily sell tobacco, tobacco-related products, and electronic cigarette products for on or off-site consumption, as well as adds Principal Use regulations to guard against use saturation in furtherance of the public safety, health, and welfare of the residents of Prince George's County.

The Planning Board took no position on the legislation with recommended amendments as explained in a September 8, 2022, letter to the Council Chairman as follows:

“The Planning Board notes the description of the bill is not fully reflective of the conventions appropriate for the new Zoning Ordinance. There is no need to capitalize “convenience” in the purpose statement. The reference to “use regulations” should not be capitalized and should instead read “use-specific standards.” Finally, it is unnecessary to mention “renumbering Section 27-5102 of the Zoning Ordinance” because the bill already indicates amending the use-specific standards (“use regulations”), of which any numbering in Section 27-5102 is a consequence of adding use-specific standards and should not be called out in the purpose statement.

CB-80-2022 amends the definition of convenience store to prohibit more than 50 percent of the retail sales to be garnered from the sale of tobacco, tobacco products or accessories, electronic cigarettes, or other electronic devices for on or off-site consumption.

The prohibition of sales of tobacco and tobacco products is a policy decision to be made by the District Council. The District Council should also note that the proposed legislation could be difficult to enforce. How will a determination be made on how sales within the convenience store relate to tobacco, tobacco products or accessories, electronic cigarettes, or other electronic devices? Who will measure and enforce the proposed distance criteria to other convenience stores? How are “convenience stores” to be determined – by use and occupancy permit review? By another means? The Planning Department defers to the Department of Permitting, Inspections, and Enforcement staff for additional comments on these important operational issues.

If the District Council moves forward with the proposed legislation the language on page 3, lines 13 through 14, prohibiting a convenience store from being within 2,000 feet of another convenience store, tobacco shop, electronic cigarette shop or retail tobacco business should be amended. The proposed use-specific standard should require the permit site plan or detailed site plan to show that the boundaries of the convenience store property are not within 2,000 feet of another convenience store, tobacco shop, electronic cigarette shop or retail tobacco business.

Importantly, should the Council move forward with CB-80-2022, the bill must be revised to incorporate all four principal use tables in Part 27-5 to provide the necessary cross reference in the “use-specific standards” column of the use tables to the proposed new Section 27-5102(e)(9)(D) use-specific standards.

Finally, staff notes the new Zoning Ordinance already requires special exception approval for any proposed tobacco, electronic cigarette, or retail tobacco business, which provides the maximum opportunity to regulate these uses through zoning. No zone permits these uses by-right.”

The Zoning Hearing Examiner submitted a September 5, 2022, memorandum with the following comments:

“Thank you for the opportunity to provide the following comment on the abovereferenced bill that amends the definition in the Zoning Ordinance for “Convenience Store” and adds certain requirements for the use. I recommend the following revisions to the bill as drafted, all technical in nature.

The description line on p.1, line 2, should be revised to simply state “Convenience Store” in keeping with the legislative bill drafting format consistently used over the years.

The revised definition for “Convenience Store” on p. 2, lines 21-25, appears to limit the items sold to similar items listed within the definition for “Tobacco Shop, Electronic Cigarette Shop or Retail Tobacco Business” also found within Section 27-2500 of the Zoning Ordinance. I suggest that a reference to that definition be included and all of the descriptive language in the bill removed. I also urge that the percentage used as a cutoff for the sale of tobacco products be lowered to forty-nine percent because that number is the maximum percentage used to ensure that any use is accessory to the primary use and not an additional primary use.

The revised language would provide as follows:

A convenience store shall not allow more than 49% of the gross floor area to be used as a Tobacco Shop, Electronic Cigarette Shop or Retail Tobacco Business as defined herein”

After public testimony in support of the legislation and Committee discussion, Council Member Medlock, the bill sponsor, requested that the bill be held until the next PHED Committee meeting to allow time for him to propose amendments to address referral comments received as well as those received during Committee discussion.

During the September 15 meeting, the Committee reviewed a Proposed DR-2 with amendments described by the Council’s Zoning and Legislative Counsel as follows:

Sec. 27-2500. Definitions.

The following words, terms, and phrases, when used in this Ordinance, shall have the

meaning ascribed to them in this Section.

* * * * *

Convenience store

A retail sales and service store with less than 5,000 square feet of floor area that primarily sells grocery or deli items and miscellaneous day-to-day goods, such as bottled drinks, candy, canned foods, bread, milk, cheese, [tobacco products,] beer, wine, papers and magazines, [and] general hardware articles, AND THE INCIDENTAL SALES OF TOBACCO OR TOBACCO ACCESSORIES NOT TO INCLUDE HOOKAHS, PROVIDED THAT THE AREA OF THE TOBACCO PRODUCTS IS NOT MORE THAN SIXTY-FOUR (64) SQUARE FEET (8' X 8') OR TWENTY-FIVE PERCENT (25%) OF THE GROSS FLOOR AREA, WHICHEVER IS LESS. Quick-service food may be offered as an accessory use. A convenience store may also contain another principal use, such as a restaurant if such other use is also permitted in the same zone. A convenience store shall not sell gas or have gas pumps. A convenience store shall not have more than fifty percent (50%) of its retail sales attributed to the sale of, for on or off site consumption, tobacco, tobacco products or tobacco accessories, electronic cigarettes, or any other electronic device that can be used to deliver nicotine or other substance to the person inhaling from the device.

(e) Commercial Uses

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(9) Retail Sales and Service Uses

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(D) Convenience Store

A Convenience store use that sells tobacco products may not be located within 2,000 feet ONE MILE of another convenience store, tobacco shop, electronic cigarette shop, or a retail tobacco business, AS SHOWN ON THE APPLICABLE PERMIT OR SITE PLAN.

Based on review of Proposed DR-2 and comments received from the Department of Permitting, Inspections and Enforcement Director and Committee discussion, Subsection (9)(D) was further amended as follows:

(D) Convenience Store

A Convenience store use that sells tobacco products may not be located within three miles, measured from the property line, of another convenience store, tobacco shop,

electronic cigarette shop, or a retail tobacco business, as shown on the applicable permit or site plan.

In response to Council Member Turner's inquiry, the Zoning and Legislative Counsel informed the Committee that the provisions of this legislation are prospective and applicable to new uses, and it is not the intent to create non-conforming uses.

Council Member Medlock acknowledged that there will be continued dialogue concerning signage for the uses as this issue was raised during discussion of the bill.

After discussion, on a motion by Council Member Harrison and second by Council Member Glaros, the Committee voted favorable, 5-0, on CB-80-2022 Proposed DR-2 with the additional amendments in Subsection (9)(D); and the technical cross-references within the Principal Use Tables of Part 27-5, as recommended by the Planning Board.