

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2022 Legislative Session

Reference No.: CB-103-2022

Draft No.: 1

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 10/19/2022

Action: FAV

REPORT:

Committee Vote: Favorable, 4-0 (In favor: Council Members Franklin, Glaros, Hawkins, and Turner)

The Planning, Housing and Economic Development (PHED) Committee convened on October 19, 2022, to consider CB-103-2022. 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 legislation amends the definition and Special Exception criteria for Tobacco Shops, Electronic Cigarette Shops, or Retail Tobacco Businesses selling products for off-site consumption in the County. The PHED Committee Director clarified that the legislation bypassed presentation and went straight to introduction; therefore, no substantive amendments could be made to the legislation during the Committee meeting.

The Planning Board opposed the bill in its current form and took no position on the policy goal of the bill as explained in a September 30, 2022, letter to the Council Chairman as follows:

“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. The distance standard only belongs under the special exception use regulations within the bill.

The proposed language imposing a minimum distance requirement on applicants who are using their prior zone and the prior zoning ordinance, should be placed under the transitional provisions. The Planning Board proposes language to achieve that goal in the full analysis.

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 Office of Law submitted an October 17, 2022, memorandum to the Committee with the following comments. The Office of law concurs with the Planning Board on the following two drafting issues:

1. The mile radius provision must come out of the definitions section because that particular provision does not apply to all tobacco shops county wide. Therefore, such a requirement belongs in the regulations portion of the Code. a. Pg. 2, Lines 7-11

2. For the same reason, the provision limiting the mile radius requirement to those shops processed under the transitional provisions must also be removed from the Definitions section because it does not apply to all tobacco shops county wide. a. Pg. 2, Line 11-13 The Office of Law also finds that if the presented interpretation of the legislative intent is correct in that the mile radius requirement applies only to new shops governed under the old Zoning Ordinance, then the Office of Law concurs with the suggested changes in the Planning Board Memo pertaining to the “Transitional Provision” clause. We advise striking the language from its current location (Pg. 3, Ln 5-6) and adding it to Sec. 27-1704 as a new section:

(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.

If, however, that is not the intended intent of the legislation, then this section needs further clarification and is legally ambiguous. As stated now, it is unclear if this provision pertains to only those new shops that remain governed by the old Zoning Ordinance and suggest clarifying this language.

The Chief Zoning Hearing Examiner addressed the Committee commenting on suggested amendments as follows:

First, Section 27-1700 et. seq., allowed these uses to continue under the 2019 Edition of the zoning ordinance if an application was accepted as complete before April 1, 2022, yet the bill will halt any approvals if the use is within a 5-mile radius of a similar use. Retroactive laws are frowned upon where they deny due process or impair vested rights. Such laws are not favored. Since these uses can often move into existing stores a court may not apply the usual vesting standard of having poured footings or other indicia that the building is taking place. Accordingly, amend p. 2, line 13 and p. 3, line 6 to add “subsequent to the effective date of this legislation” (or put in a date early next year) since that would stop new applications unless the setback is honored. This change could probably be allowed after third reading since it’s a limitation of what was advertised.

Secondly, p. 2 line 13 and p. 3 line 6 of the bill should probably reference Section 27-1900 of the latest Edition of the Zoning Ordinance since that Section allows Applicants to utilize the 2019 Edition of the Zoning Ordinance until 2024. This probably must occur in another bill next year.

Finally, the 2019 Edition actually has imposed time limits on the hours of operation, but the most recent Edition/Supplement does not.

Terry Bell, County Council Liaison, stated that the County Executive supports the legislation.

After discussion of agency comments and potential non-substantive amendments for consideration following the public hearing on the legislation, the Committee voted favorable on Draft-1.