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ZONING ORDINANCE AMENDMENT OF THE NEW HAVEN BOARD OF ALDERS TO ESTABLISH ZONING REGULATIONS FOR RETAILERS OF TOBACCO AND SMOKING PRODUCTS, SMOKE SHOPS, AND SMOKING PLACES.

..BODY

WHEREAS, zoning regulations for retailers of tobacco and smoking products, smoke shops, and smoking places are not part of the current New Haven Zoning Ordinance;

WHEREAS, there has been a growing number of smoke shops and smoking places throughout our city;

WHEREAS, in recent years, many businesses that sell tobacco and smoking products have opened around the city, frequently close to other similar establishments or sensitive locations such as schools, parks, and houses of worship;

WHEREAS, the many new establishments of this kind that have opened throughout our city present challenges to public health and safety because these businesses can encourage the use of products that may be harmful and addictive, especially for youth in our community;

WHEREAS, the unregulated operations of these establishments are a concern to New Haven citizens;

WHEREAS, to limit the harms caused by tobacco and smoking products, there is a need to establish regulations regarding where new retailers of tobacco and smoking products, smoke shops, and smoking places may open in our city, in line with similar regulations that exist for the sale of other potentially harmful and addictive products such as alcohol and cannabis;

WHEREAS, this ordinance amendment establishes new use definitions under the zoning code for "Retailer of Tobacco and Smoking Products," "Smoke Shop," and "Smoking Place;"

WHEREAS, this ordinance amendment disallows the opening of a new smoke shop within 1,000 feet of the property line of any school, house of worship, or public park and disallows the opening of a new smoke shop within 3,000 feet of an existing smoke shop;

WHEREAS, this ordinance amendment would regulate and prevent the opening of new smoke shops near sensitive locations where youth are likely to spend time;

WHEREAS, preventing the clustering of smoke shops in certain parts of the city limits the negative public health and safety impacts that these establishments can have on our neighborhoods;

WHEREAS, this ordinance amendment would require that all smoke shops in New Haven obtain a "Tobacco and Smoking Products License" from the city under a new licensing program that will be created under a separate ordinance amendment;

WHEREAS, the licensing requirement will ensure that tobacco and smoking products are only being advertised, stored, and sold in a safe manner that improves safety and sanitation at retailers of tobacco and smoking products, smoke shops, and smoking places and reduces the risk that youth will illegally purchase tobacco and smoking products;

WHEREAS, this ordinance amendment would establish storefront and signage regulations for retailers of tobacco and smoking products, smoke shops, and smoking places that limit the type of signage that can be used at these establishments and restrict the display of tobacco and smoking products in street-facing store windows; and

WHEREAS, the Board of Alders held a public hearing with the City Plan Department, Corporation Counsel, Health Department, and any other applicable city departments or agencies to establish the necessary language to incorporate in the New Haven Zoning Ordinance and general Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the New Haven Board of Alders that the New Haven Zoning Ordinance be amended by updating Article I, Section 1 to add definitions; Article IV, Section 31 to remove the reference to tobacco; Article V, Section 42, Use Table 3; Section 42.5 to add reference to tobacco; and establishing Section 42.7 under Article V, "Restriction on the sale of tobacco and smoking products," of the Zoning Ordinance of the City of New Haven as incorporated by reference as follows:

Article I. DEFINITIONS

Section 1. – Definitions

RETAILER OF TOBACCO AND SMOKING PRODUCTS OR RETAILER: Any retailer whose business involves the sale of *tobacco and smoking products*. *Retailer of tobacco and smoking products* also means businesses that hold a Cigarette Dealers, Dealer of Electronic Nicotine Delivery System, or Vapor Product License.

SMOKE SHOP: A smoke shop means a retailer dedicated to the sale of tobacco and smoking products. Examples of such products include but are not limited to: tobacco, cigarettes, cigars, smokeless tobacco (such as dip and chewing tobacco), rolling papers, smoking pipes, bongos, hookahs, e-cigarettes, and vaping devices.

SMOKING PLACE: A smoking place means any establishment that offers the sale of tobacco and smoking products for on-site consumption. Examples of such uses include hookah lounges and cigar lounges.

TOBACCO AND SMOKING PRODUCTS means any of the following:

- (1) a product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, snorted, sniffed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, cigarettes, e-liquids, cigars, little cigars, pipe tobacco, smoking products, chewing tobacco, snuff, snus, nicotine pouches, or vapors;
- (2) electronic delivery systems, including any device used to deliver nicotine or any other substance to the user of the device including, but not limited to: e-cigarettes, e-cigars, e-pipes, vapor products, or e-hookahs; or

- (3) any component or accessory used in the consumption of tobacco and smoking products, whether they contain nicotine, including, but not limited to, filters, cartridges, pods, pens, rolling papers, pouches, or pipes.

Tobacco and smoking products does not mean drugs, devices, or combination products authorized for sale as a tobacco and smoking products cessation product approved by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act (FD&C Act).

ARTICLE IV. - RESIDENCE DISTRICTS: GENERAL PROVISIONS

Section 31. - Special provision for convenience goods and services in residence districts.

(a) *Statement of purpose.* This provision exists to provide for the continued availability in certain residential neighborhoods of convenience goods and services to meet the daily needs of neighborhood residents within a short distance of their homes. It is intended that the **uses** allowed be limited to those which are both necessary to the neighborhood and so arranged that they will cause minimum conflict with the residential character of the area.

(b) *Uses provided for.* Where provided for in the District Regulations, the supplying of any of the following convenience goods and services, entirely at retail, shall be considered a **use** which may be permitted by special exception under the conditions of this Section 31:

- (1) **Convenience stores**, groceries and related goods, including incidental seating for a maximum of six people. No additional parking shall be required for incidental seating.
- (2) Baked goods, including incidental seating for a maximum of six people. No additional parking shall be required for incidental seating.
- (3) Package liquor, subject to Section 42.1 of this zoning ordinance.
- (4) Drugs or cosmetics, with or without an incidental soda fountain or lunch counter.
- (5) Barbering.
- (6) Beautician services.
- (7) Laundering, cleaning, dyeing, with all business at retail on the premises, including pick-up station and any self-service laundromat.
- (8) Tailoring.
- (9) Shoe repair.
- (10) News.

(11) **Accessory uses**, customarily incidental to the above permitted **uses**, occupying no more than 25 percent of the gross floor area of the establishment.

(12) One or two game machines as an **accessory use** provided the hours of operation shall not exceed those of the principal **use**, and meeting the general standards of Section 42.2(b) of the zoning ordinance.

(13) Seasonal outdoor seating for a maximum of 15 seats may be provided on private property as an **accessory use** to shops selling baked goods and groceries and related goods, and **convenience stores**. A maximum of 15 indoor and outdoor seats is permitted and no additional parking shall be required for seasonal outdoor seating. The City Plan Commission may adopt administrative regulations regarding the placement, spacing and storage of tables and chairs and other operational limits as it deems necessary. Special consideration shall be given to the placement, spacing and storage of tables and chairs and other operational limits on outdoor seating that is proposed to extend into the public right-of-way.

(c) Existing **uses** of the above types may continue, but:

(1) The rules of subparagraph 67(c)(6).b of this ordinance shall determine whether any **use** has been abandoned, and any such **use** that has been abandoned shall not be reestablished except as a new **use** under subsection (d) below.

(2) Conversion from one of the above permitted **uses** to another such **use** shall be considered the establishment of a new **use** under subsection (d) below.

(3) No alteration of a **structure** or of the remainder of the premises shall be made which creates or increases any nonconformity under the provisions of this ordinance.

(4) Any expansion of the amount of floor area and/or **lot area** occupied by the **use** or by functions incidental to it (such as parking and loading) shall be subject to the provisions of subsection (d) below.

(d) New **uses** of the above types may be established, and existing **uses** expanded, only by special exception under subsection 63(d) of this ordinance, subject to the following standards in addition to others which may be applicable:

(1) There must be a finding by the City Plan Commission that space for such a **use** is not available in nearby areas which are zoned for business, and that such new **use** or expansion of an existing **use** is necessary to serve the immediate neighborhood adequately with convenience goods or services, giving due consideration, among other things, to the character of the neighborhood, the density of development, the shopping habits of neighborhood residents, and the availability of public and private transportation. The clustering of two or more **uses** of diverse types, rather than scattering of such **uses**, shall generally be regarded as an advantage, but the existence nearby of a **use** of the same type as one which is proposed shall require a more extensive showing of necessity for the proposed **use**. As a general rule, clustering of **uses** shall not exceed 10,000 square feet of **net floor area** for all **uses** in a cluster.

- (2) The **net floor area** used for sales or other business purposes in any establishment (excluding space used for storage and similar purposes) shall not exceed 1,500 square feet.
- (3) In the case of new construction and additions and alterations, the **yard** requirements and other applicable Building Requirements in the District Regulations shall control.
- (4) If the City Plan Commission determines that off-street parking is necessary, such parking shall be supplied in the quantity specified by the City Plan Commission, complying with the standards of Section 29 of this ordinance.
- (5) No business shall be conducted, and no goods, materials or equipment shall be stored, except in a fully enclosed **building**.
- (6) Establishments of the "drive-in" type, offering goods or services directly to customers waiting in parked vehicles, shall not be permitted.
- (7) The exterior presentation and design of storefront(s) shall be submitted as part of the special exception review. The following shall not be allowed on the exterior of a building or grounds: telephones; on-premises or off-premises signs, banners, or temporary advertising materials except those permitted pursuant to Section 29(a)(9) [these regulations]; security gates covering window and door openings; and vending machines.
- (8) The ground-floor storefront shall consist, at a minimum, 50% non-opaque visible windows.
- (9) The establishment shall maintain the property free of trash and debris, shall provide a regular maintenance schedule.

(e) All **uses** permitted by this section shall comply with the requirements for signs in Section 27 of this ordinance.

ARTICLE V. BUSINESS AND INDUSTRIAL DISTRICTS

Section 42.5. Special provisions for certain uses operating between 11:00 p.m. and 6:00 a.m.

These provisions exist to minimize conflict of businesses with adjacent residential uses and the surrounding area, and to assure the peace, tranquility, health and safety of the public. It is recognized that some uses because of their nature have serious objectionable operating characteristics, particularly when close to residential uses, thereby having a deleterious effect on the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or deterioration of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing or limiting late night traffic, noise, loitering, littering and crime in business places which are located adjacent to residential uses.

- (a) *Applicability.* The standards contained herein shall be applied to certain **uses** found in Section 42, Use regulations for business and industrial districts, except if located in a Business D or Business D-1 District:

- (1) All uses found in Section 42.C: Sale of food, drink and pharmaceuticals.
 - (2) Pawn shop or swap shop.
 - (3) All uses found in Section 42.B: Transient lodging.
 - (4) Adult entertainment establishments.
 - (5) Gun shops and accessory goods sales.
 - (6) All uses found in Section 42.L: Amusements
 - (7) All uses found in Section 42.M: Automotive
 - (8) Smoke Shops or Smoking Places
- (b) *General standards and review of uses to operate between 11:00 p.m. and 6:00 a.m.* A **use** listed in Section 42.5.(a) shall be closed between the hours of 11:00 p.m. and 6:00 a.m. unless located in a Business D or Business D-1 District or granted a special exception by the Board of Zoning Appeals pursuant to Section 63(d). Application for a special exception may be made by a current or proposed operator only with written consent of the owner of the property. The special exception, if granted, is not transferable and may only be granted for a maximum of three (3) years.
- (1) Specific standards:
 - a. The applicant must demonstrate the need to service the community between the hours of 11:00 p.m. and 6:00 a.m.;
 - b. The applicant must demonstrate that the proposed hours of operation will not contribute to illegal activity at or near the proposed use. The Board of Zoning Appeals shall consider the presence of loiterers, drugs sales or prostitution or other criminal activities and/or nuisances in close proximity to the location proposed, given the character of surrounding uses and past history in the immediate area as may be presented by the Department of Police Services, neighborhood organizations and area residents and business people;
 - c. The applicant must demonstrate that the proposed hours of operation will not have an adverse effect on abutting or proximate uses, including places of worship, parks, playgrounds, youth services facilities, or residences; and
 - d. The applicant must identify all other uses within 200 feet of the proposed location which are operating between the hours of 11:00 a.m. and 6:00 p.m. The Board shall consider the potential clustering of uses in a manner that may be inconsistent or inappropriate for the surrounding area.
- (c) *Special conditions of approval.* The Board may impose conditions of approval including but not limited to special lighting, fencing, landscaping, signage, supervised parking, trash receptacles, or outside staff/official and unofficial security for some or all hours of late-night operation.

Section 42.7. - Restriction on sale of tobacco and smoking products.

- (a) *Applicability.* All Retailers of Tobacco and Smoking Products, Smoke Shops, and Smoking Places as defined in these regulations shall be required to obtain a Tobacco and Smoking Products License through the New Haven Health Department. Such businesses must maintain all relevant state licenses required by the Department of Revenue Services and the Department of Consumer Protection.

(b) *Measurement of distance between retailers of tobacco and smoking products, smoke shops, and smoking places.* The distance between **retailers of tobacco and smoking products, smoke shops, and smoking places** shall be measured from outside entrance to outside entrance. However, where a **retailer of tobacco and smoking products, smoke shop, or smoking place** is located within a structure of more than 50,000 square feet, the outside entrance of such location shall be the outer perimeter of the selling area under the permit, as shown on the approved floor plan signed by the Zoning Enforcement Officer.

(c) *Distance restrictions.*

(1) *Distance limit to school, religious institution, public park.* No **retailer of tobacco and smoking products, smoke shop, or smoking place** shall be permitted to locate, relocate, or remove to any location where the outside entrance of such location is within 1,000 feet from the property line of any public or private elementary or secondary school, house of worship, or public park.

(2) *Distance limit between retailers of tobacco and smoking products, smoke shops, and smoking places.* No **retailer of tobacco and smoking products, smoke shop, or smoking place** shall be permitted to locate within 3,000 feet of another **retailer of tobacco and smoking products, smoke shop, and smoking place** except as provided in Section 42.7(e).

(d) *Storefront and Signage requirements.* In addition to the sign regulations set forth in Section 60.3 and exterior lighting regulations set forth in Section 60.1, the uses defined in this section must comply with the following.

(1) Window signs on the inside or outside of windows cannot be greater than 50 percent of the area of the window it occupies. No more than 20 percent of continuous windows may be covered with signs. De minimis signage displaying the hours of operation, and whether open or closed, does not count toward this computation. D

(2) Lights that flash, shimmer, glitter, or lights that give the appearance of flashing, shimmering or glittering are prohibited. Window signs may be Directly Illuminated.

(3) Merchandise being sold within these establishments must not be seen from the public right of way.

(e) *Relocation or removal of license.* Except as prohibited by the distance restrictions to a school, religious institution, or public park in subsection 42.7(c)(1) above, a retailer of tobacco and smoking license, smoke shop, or smoking place may be relocated or removed as follows:

(1) *Permit relocation limit.* A permittee may relocate a **retailer of tobacco and smoking products, smoke shop, or smoking place** within a five hundred (500) foot radius, provided said relocation shall be in accordance with all relevant state licenses, rules, and regulations required by the Department of Revenue Services or Department of Consumer Protection.

(2) *Removal due to condemnation for public or semi-public use.* The relocation distance of a **retailer of tobacco and smoking products, smoke shop, or smoking place** that is removed from such use for a public or semi-public use by condemnation proceedings may be increased to a radius of 750 feet from the present site provided said removal shall be in accordance with all

relevant state licenses, rules, and regulations required by the Department of Revenue Services or Department of Consumer Protection.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the provisions of this Subsection 42.7(e)(2) concerning the removal of any **retailer of tobacco and smoking products, smoke shop, or smoking place** only as a result of condemnation proceedings for public or semi-public use, the Board of Zoning Appeals may, after public notice and hearing in a specific case, waive said provisions provided that the requirements set forth below are met:

- a. The proposed location shall not be within a radius of 500 feet of another **retailer of tobacco and smoking products, smoke shop, or smoking place**; and
- b. Sufficient evidence shall be presented to prove that no suitable location is available within a radius of 750 feet of the original location; and
- c. Said removal shall be in accordance with all relevant state licenses, rules, and regulations required by the Department of Revenue Services.

(f) *Renewal of nonconforming licensed retailer of tobacco and smoking products allowed.* A permittee holding a **tobacco and smoking products license** as a **nonconforming use** within the aforesaid 3,000-foot radius may continue the nonconforming use (at that location only) when the license expires, and application is made and granted for renewal of the same exact type of license.

(g) *Expiration, lapse, removal, or revocation of license.* If an establishment operating with a Tobacco and Smoking Products License fails to maintain the license by way of expiration or lapse of previous license or if the license is revoked or removed by any local, state, or federal agencies; the regulations set forth in this section, including the distance restrictions, need to be satisfied for the issuance of a new license.

Section 42 Table 3. Use Table

| | B A | BA -1 | CG D | BA -2 | B C | B D | B D- 1 | B D- 2 | B D- 3 | B E | MU/MU LW | TO C | I L | I M | I H |
|---|--------|----------|---------|----------|--------|--------|--------------|--------------|--------------|--------|-------------|---------|--------|--------|--------|
| H. Personal Goods | | | | | | | | | | | | | | | |
| SPECIALTY STORE SELLING OR RENTING ITS GOODS PREDOMINANTLY AT RETAIL ON THE PREMISES, INCLUDING BUT NOT LIMITED TO THE FOLLOWING LINES: | | | | | | | | | | | | | | | |
| Books, News, Gifts, Cards, Art supplies, Stationery, Pets, Toys, Coins, Flowers, Jewelry, Leather goods, Luggage, Novelties, Sporting goods, Bicycles, Stamps, Hobbies, Art Work, Photo supplies, Music, Musical Instruments, Optical goods, Religious articles | R | R | R | R | S E | R | R | R | R | X | R | R | X | X | X |
| Retailer of Tobacco and Smoking Products | S E | SE | SE | SE | S E | SE | SE | SE | SE | X | SE | X | X | X | X |
| Smoke shop | S E | SE | SE | SE | S E | SE | SE | SE | SE | X | SE | X | X | X | X |

| | | | | | | | | | | | | | | | | |
|----------------|--------|----|----|----|--------|----|----|----|----|---|----|--|---|---|---|---|
| Smoking Places | S E | SE | SE | SE | S E | SE | SE | SE | SE | X | SE | | X | X | X | X |
|----------------|--------|----|----|----|--------|----|----|----|----|---|----|--|---|---|---|---|