

Ordinance No.: 19-10
Zoning Text Amendment No.: 19-06
Concerning: Vape Shops
Draft No. & Date: 4 – 3/26/20
Introduced: September 17, 2019
Public Hearing: November 5, 2019
Adopted: March 31, 2020
Effective: June 29, 2020

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmembers Alborno and Rice
Co-Sponsors: Councilmember Jawando, Council President Navarro, Councilmembers Hucker,
Riemer, and Friedson, Council Vice President Katz, and Councilmember Glass

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- add Vape Shop as a use allowed in certain zones; and
- establish the standards for a Vape Shop

By amending the following sections of the Montgomery County Zoning Ordinance,
Chapter 59 of the Montgomery County Code:

Division 1.4. “Defined Terms”
Section 1.4.2. “Specific Terms and Phrases Defined”
Division 3.1. “Use Table”
Section 3.1.6. “Use Table”
Division 3.5. “Commercial Uses”
Section 3.5.11. “Retail Sales and Service”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[Double boldface brackets] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment (ZTA) 19-06, lead sponsors Councilmembers Alborno and Rice, co-sponsors Councilmember Jawando, then-Council President Navarro, Councilmembers Hucker, Riemer and Friedson, then-Council Vice President Katz, and Councilmember Glass, was introduced on September 17, 2019. ZTA 19-06 as introduced would add Vape Shop as a limited use allowed only in certain zones and would establish the standards for the Vape Shop.

In the ZTA as introduced, Vape Shop was defined as any Retail or Service Establishment that devotes 51% of its floor area to the sale and display of electronic cigarettes or allows vaping on site. An electronic cigarette is any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term electronic cigarette includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

The use is allowed as a limited use in any Commercial/Residential zone (CRN, CRT, CR), Employment zone (GR, NR, LSC, EOF), Industrial zone (IL, IM, IH) and R-10. The standards that must be met for a Vape Shop are that access to the shop must be prohibited to any person under 21, it must be located at least 0.5 miles from a property on which a middle or high school is located as a principal use, and in the IL and IM zones, a vape shop may occupy a maximum of 35% of the mapped FAR on the subject site. A vape shop that exists on the effective date of the ZTA that does not conform to the requirements of the ZTA may continue to operate for 24 months, but after that date may continue to operate only if it meets the requirements of ZTA.

In its report to the Council, the Montgomery County Planning Board and Planning staff recommended approval of the ZTA with 2 amendments:

- 1) clarify that a Vape Shop is a retail or service establishment that devotes *at least 51%* of its floor area to the sale and display of electronic cigarettes or allows vaping on site; and
- 2) clarify language allowing certain Vape Shops to continue as a nonconforming use if a middle or high school is established after the Vape Shop was established by tying the provision to the issuance of a use and occupancy permit.

The Council's public hearing was conducted on November 5, 2019. There were 8 speakers, including the Planning Board Chair.

The Council referred the ZTA to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

The PHED Committee held a worksession on March 4, 2020. The Committee recommended approving ZTA 19-06 as recommended by the Planning Board.

The Council agreed with the recommendation of the Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 19-06 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Division 1.4 is amended as follows:**

2 **Division 1.4. Defined Terms**

3 **Section 1.4.2. Specific Terms and Phrases Defined**

4 * * *

5 **Vape Shop:** See Section 3.5.11.E.1.

6 * * *

7 **Sec. 2. Division 3.1 is amended as follows:**

8 **Division 3.1. Use Table**

9 * * *

10 **Section 3.1.6. Use Table**

11 The following Use Table identifies uses allowed in each zone. Uses may be
12 modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential		Residential													Commercial/ Residential			Employment				Industrial			
					Residential Detached								Residential Townhouse			Residential Multi-Unit												
					AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF

COMMERCIAL																												

Retail Sales and Service	3.5.11																											

Retail/Service Establishment (Up to 5,000 SF)	3.5.11.B																L	P	P	P	P	P	L	L	L	L	L	

Vape Shop	3.5.11E																	L	L	L	L	L	L	L	L	L	L	

13 Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

14 **Sec. 3. Division 3.5 is amended as follows:**

15 **Division 3.5. Commercial Uses**

16 * * *

17 **Section 3.5.11. Retail Sales and Service**

18 * * *

19 **E. Vape Shop**

20 **1. Defined**

21 Vape Shop means any Retail or Service Establishment that devotes at
22 least 51% of its floor area to the sale and display of electronic
23 cigarettes or allows vaping on site. An electronic cigarette is any
24 product containing or delivering nicotine or any other substance
25 intended for human consumption that can be used by a person to
26 simulate smoking through inhalation of vapor or aerosol from the
27 product. The term electronic cigarette includes any such device,
28 whether manufactured, distributed, marketed, or sold as an e-cigarette,
29 e-cigar, e-pipe, e-hookah, or vape pen, or under any other product
30 name or descriptor.

31 **2. Use Standards**

32 Where a Vape Shop is allowed as a limited use, it must satisfy the
33 following standards:

- 34 a. Access to the Vape Shop must be prohibited to any person
35 under the age of 21 years old.
- 36 b. The Vape Shop must be located a minimum of 0.5 miles from
37 any property on which a middle school or high school is located
38 as a principal use.
- 39 c. A Vape Shop may continue as a nonconforming use if a middle
40 or high school is established within 0.5 miles of a Vape Shop

41 after the Vape Shop was established. For purposes of these
42 standards, a Vape Shop or school is established when the
43 Department of Permitting Services issues a use-and-occupancy
44 permit.

45 d. In the IL and IM zones, a Vape Shop may occupy a maximum
46 of 35% of the mapped FAR on the subject site.

47 **3. Amortization period**

48 To provide for a reasonable period of amortization and to prevent
49 unreasonable economic loss, any Vape Shop existing on June 29,
50 2020 which does not conform to the requirements of this section may
51 continue to operate for 24 months following the effective date of the
52 amendment. On or after that date, a Vape Shop may continue in
53 operation only if it meets the requirements of Section 59.3.5.11E.

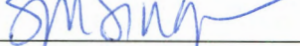
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55 **Sec. 4. Effective date.** This ordinance becomes effective 90 days after the
56 date of Council adoption.

57

58 This is a correct copy of Council action.

59

60 

61 Selena Mendy Singleton, Esq.
62 Clerk of the Council