



**Department of City Development**  
City Plan Commission  
Redevelopment Authority of the City of Milwaukee  
Neighborhood Improvement Development Corporation

**Lafayette L. Crump**  
Commissioner

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Deputy Commissioner

## MEMO

Date: May 18, 2023  
To: CC File No. 230097 (Zoning regulations for tobacco and e-cigarette retailers)  
Prepared By: Department of City Development – Planning Division  
Re: E-cigarette and Tobacco Retail Use Zoning Regulation Research Summary

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The Common Council adopted CC #221499 on February 7, 2023 placing a moratorium on the issuance of occupancy certificates for establishments that sell electronic smoking devices or electronic smoking device paraphernalia. This moratorium is in place until August 1, 2023, and was passed in order to provide the Common Council time to analyze the impact of such land uses and decide if further regulatory action is necessary. In recent months, a number of alders have expressed a variety of concerns to DCD regarding tobacco, e-cigarette, and vapor product retailers and asked DCD Planning to explore whether there are potential zoning code adjustments that the Common Council could consider in order to regulate these particular uses. The purpose of this memo is to outline research findings related to the impacts of this land use on the health, safety and welfare of the public, precedents of established regulations from other municipalities, and options for how to approach potential zoning regulations on this land use within the City of Milwaukee.

### LAND USE IMPACTS

The consumption of tobacco through various methods including e-cigarettes (also known as “vape”) has been deemed unsafe by the Centers for Disease Control (CDC) as it leads to addiction, disease, disability, and other lasting health outcomes.<sup>1</sup> In addition to the direct health impacts, there are also findings that suggest the presence of tobacco-related retail uses have impacts on the general health, safety and welfare of the public within the areas those uses are located.

Retailers that focus on selling tobacco related products have outsized impacts on youth in particular. One study showed that the presence of tobacco retailers was the best predictor that youth would experiment with cigarettes.<sup>2</sup> The presence of tobacco and vape shops are an indication to children that tobacco products are easily available, even if they are technically illegal to obtain. This increases the likelihood that they may use and abuse the substance. Additionally, much of the advertising for tobacco and vape products is done at the retail level, or point of sale, which makes this specific retail land use a mechanism for the promotion of tobacco use.<sup>3</sup> A study from 2014 showed that almost 70% of middle and high school students were exposed to advertisements for e-cigarettes and vape products through various means, with the majority of that exposure occurring at retail stores. There is also a positive correlation between the increase of spending on e-cigarette advertisement and the increase of children using e-cigarette products in the US. This suggests that children are at a higher risk of using tobacco and e-cigarette products simply through exposure to these retail land uses.<sup>4</sup>

Similarly, high densities of tobacco retailers can create the perception of easy access to tobacco related products for people of all ages. With a concentration of these uses, product prices may also decrease, creating easier opportunities to obtain tobacco products. For those who currently use tobacco, the ease of access to tobacco retailers can prevent quitting and encourage impulse purchases, which ultimately



leads to negative health outcomes for users.<sup>3</sup> A joint letter signed by local chapters of the American Lung Association, the American Heart Association, the American Cancer Society, and the Campaign for Tobacco Free Kids was submitted to the Common Council in support of CC #221499 and further describes some of the negative public health impacts associated with retail facilities selling these products.

#### ZONING PRECEDENTS

Many organizations studying the impacts of tobacco retailers have made suggestions for how municipalities may regulate such land uses through zoning. The general consensus of these reports has been to recommend limiting tobacco retail uses near youth-oriented land uses and limiting tobacco retail uses within proximity of one another. While zoning regulations like these are uncommon in Wisconsin, the City of Madison has defined tobacco related retailers separately from general retail uses. DCD Planning staff have analyzed a number of ordinances across the country, and the Madison approach is instructive because it both aligns with national recommendations and also exists within the zoning regulatory framework applicable to Wisconsin municipalities.

Madison has created a unique land use definition for “Tobacco Retailer” in the Zoning Code, further defining the terms “Tobacco Products” and “Tobacco Paraphernalia.” These definitions are as follows:

*Tobacco Retailer. A tobacco retailer is any establishment that either devotes twenty percent (20%) or more of floor area or display area to the sale or exchange of tobacco products or tobacco paraphernalia. (Cr. by ORD-15-00054, 5-27-15)*

*Tobacco Products. Tobacco products means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, bidis, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco. Tobacco products includes e-liquids such as propylene glycol, glycerin, nicotine, flavorings, or other products for use in electronic cigarettes, personal vaporizers, or electronic nicotine delivery systems. (Cr. by ORD-15-00054, 5-27-15)*

*Tobacco Paraphernalia. Tobacco paraphernalia means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products. Tobacco paraphernalia includes electronic cigarettes, personal vaporizers, electronic nicotine delivery systems, or any item designed to atomize liquid solutions that simulate smoking. (Cr. by ORD-15-00054, 5-27-15)<sup>5</sup>*

The land use definition for a Tobacco Retailer uses floor or display area used for product sales as a means of determining whether a given retailer falls into this category. The subsequent definitions more specifically detail the range of product types that would be considered tobacco-related.

Furthermore, Madison’s Zoning Code places Supplemental Regulations on certain uses (similar to “limited use standards” in Milwaukee’s zoning code), including Tobacco Retailers. Supplemental Regulations can apply to permitted uses as well as uses requiring a conditional use permit (similar to a “special use” permit in Milwaukee’s code). The Supplemental Regulations that apply to Tobacco Retailers in Madison are as follows:

*(a) No tobacco retailer shall be located within one thousand (1,000) feet of the boundary of any residential zone or parcel occupied by:*

- 1. A public or private kindergarten, elementary, middle, junior high or high school;*
- 2. A licensed child-care facility or preschool other than a family day care facility;*
- 3. Playground;*
- 4. Youth center;*

5. *Park;*
6. *Library; or*
7. *Health care facility.*

*(b) No tobacco retailer shall be located on a site which is within five hundred (500) feet of a site occupied by another tobacco retailer or any establishment selling tobacco products or tobacco paraphernalia, as measured in a straight line from the two properties nearest parcel boundaries.*

*(c) The tobacco retailer shall comply with local, state, and federal laws regarding sales, advertising or display of tobacco products and tobacco paraphernalia including posting prominently near the cash register or other point of sale the legal age to buy tobacco products and tobacco paraphernalia, and checking the identification of all purchasers to ensure they are of legal age.*

*(d) Sampling of tobacco products by individuals under eighteen (18) years of age shall not be permitted. Therefore, tobacco products shall not be given or sold to individuals under eighteen (18) years of age.<sup>6</sup>*

Tobacco Retailers are permitted in most Mixed Use and Commercial districts, as long as location meets the Supplemental Regulations outlined above.<sup>7</sup> Tobacco Retailers are prohibited in all Residential Districts, Downtown and Urban Districts, Employment Districts, and other Special Districts.

There are a number of additional municipalities near Milwaukee that regulate tobacco retailers as well, including Wauwatosa and West Allis. Both of these municipalities have similar use definitions as Madison, using the percentage of floor area used for sale of tobacco products to determine whether the use is classified as a tobacco related retailer.

## CONCLUSIONS

Milwaukee's zoning code currently classifies tobacco retailers as "Retail Establishments, General," meaning they are permitted as a matter of right wherever retail uses are permitted. However, the research cited in this memorandum and precedents in other communities suggest that retailers focusing on the sale and advertisement of tobacco and e-cigarette products have distinct land use and public health impacts that differ from other general retail uses, and that policy makers can elect to regulate them in a manner designed to mitigate these impacts. As suggested by local and national precedents, these regulations can include restricting the concentration of tobacco and e-cigarette related retailers and the proximity of those uses to youth-focused land uses.

Based on the research and precedents described in this memorandum, DCD Planning concludes that there is public policy and public health-based rationale for the Common Council to consider enacting zoning legislation to regulate tobacco and e-cigarette focused retail uses. There is established precedent in other Wisconsin municipalities for creating a new use definition for Tobacco Retailer and creating limited use standards to regulate the proximity of these uses to one another and to certain youth focused land uses already defined in the zoning code. This could include the regulations proposed within CC File No. 230097 which have been crafted to mitigate the public health, safety, and welfare impacts of these uses.

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<sup>1</sup> Centers for Disease Control and Prevention, Office on Smoking and Health. (2020). Smoking & Tobacco Use. <https://www.cdc.gov/tobacco/>

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<sup>2</sup> Ashe, M., Jernigan, D., Kline, R., & Galaz, R. (2003). Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants. *American journal of public health*, 93(9), 1404–1408.

<https://doi.org/10.2105/ajph.93.9.1404>

<sup>3</sup> Counter Tools. n.d. *Policy Solutions: Licensing, Zoning, and Retailer Density*. Accessed January 13, 2023.

<https://countertobacco.org/policy/licensing-and-zoning/>

<sup>4</sup> Centers for Disease Control and Prevention, National Centers for Chronic Disease Prevention and Health Promotion. (2017). E-cigarette Ads and Youth. <https://www.cdc.gov/vitalsigns/ecigarette-ads/index.html>

<sup>5</sup> City of Madison. Zoning Code; Definitions. Chapter 28O, 28.211

<sup>6</sup> City of Madison. Zoning Code; Supplemental Regulations. Chapter 28.151

<sup>7</sup> City of Madison, Wisconsin. Zoning Code, Chapter 28.061. Mixed-Use and Commercial Districts.