

AN ORDINANCE TO ENACT A TEMPORARY MORATORIUM ON SMOKE SHOPS WITHIN THE CITY OF WILMINGTON

#0168

Sponsor: **WHEREAS**, City Council is empowered by the City Charter to enact legislation that preserves, protects, and promotes the general health, safety, and welfare of the residents of the City of Wilmington; and

Council Member Johnson

WHEREAS, City Council has observed a proliferation of smoke shops, or establishments specializing in the sale of tobacco products, particularly in low-income and minority neighborhoods; and

WHEREAS, after the legalization of marijuana in Delaware, but prior to retail implementation, many of these tobacco selling businesses began advertising and selling marijuana-adjacent products, like Delta-8 and Delta-9; and

WHEREAS, smoke shops can be a target for theft and vandalism, and may be affiliated with the sale of illegal marijuana-adjacent products; and

WHEREAS, the residents of these neighborhoods have repeatedly expressed concern over the disproportionate presence of these businesses, which contribute to poor public health outcomes, and often operate without meaningful community engagement; and

WHEREAS, other municipalities have banned or amended their zoning codes to specifically regulate the location of smoke shops; and

WHEREAS, currently, there are no stringent zoning regulations for smoke shops like there are for alcohol and marijuana; and

WHEREAS, smoke shops are allowed under all current commercial and manufacturing zoning districts listed in the City Code; and

WHEREAS, smoke shops are allowed with Zoning Board of Adjustment Approval under all waterfront zoning districts listed in the City Code; and

WHEREAS, in residential districts, including R-3 and R-5-A-1 districts, smoke shops could be approved by zoning board of adjustment at a public hearing if it fit into the use of a corner property, as defined in the City Code.

WHEREAS, City Council believes that an equity impact assessment should be conducted by the Department of Land Use and Planning that identifies the areas in the City with an oversaturation of smoke shops, the impact on public health, public safety, and local economic development, and any community interest in alternative retail businesses, including grocery stores, food co-ops, and culturally relevant businesses; and

WHEREAS, the equity impact assessment can then be utilized to prepare amendments to the zoning code that, among other things, require public notice and community input before any new smoke shops may open in the City (including both commercial and residential districts), establish buffer zones and/or caps on the number of corner properties per neighborhood or section of the City, and prioritize businesses that support healthy choices and neighborhood revitalization; and

WHEREAS, City Council finds that a one-year moratorium on issuing business licenses for businesses seeking to operate as smoke shops is necessary and appropriate to provide time for the Department of Land Use and Planning to complete an equity impact assessment; and

WHEREAS, the implementation of a temporary moratorium on issuing business licenses for new smoke shops does not constitute a Constitutional violation nor does it conflict with or exceed the City's legal authority.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Temporary Moratorium Established. A temporary moratorium is hereby established on the issuance of any new business licenses for corner properties, as defined in the City Code. During the period in which the moratorium is in effect, the zoning board of adjustment shall not consider any application for permission to establish a new smoke shop, or any application or request for a variance or special exception to establish a new smoke shop, unless the applicant can show undue hardship.

SECTION 2. Equity Impact Analysis. The Department of Land Use and Planning is hereby ordered to perform an equity impact assessment. At minimum, the assessment shall identify the areas in the City with an oversaturation of smoke shops, their impact on public health, public safety, and local economic development, and any community interest in alternative retail businesses.

SECTION 2. Effective Period of Temporary Moratorium. The temporary moratorium set forth in Section 1 shall become effective on the date that the Mayor signs this Ordinance and shall last for one year, or until such time an equity impact assessment is completed by the Department of Land Use and Planning, unless this City Council repeals this moratorium.

SECTION 3. Effective Date. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....January 15, 2026
Second Reading.....January 15, 2026
Third Reading.....

Passed by the City Council,

President of City Council

ATTEST: _____

City Clerk

Approved this _____ day of _____, 2026

Mayor

SYNOPSIS: This Ordinance issues a temporary moratorium on the issuance of business licenses for smoke shops, or businesses selling tobacco products, in the city. The moratorium will be in effect for one year, or until such time that an impact assessment has been completed by the Department of Land Use and Planning, unless repealed earlier by City Council. During the period in which the moratorium is in effect, the zoning board of adjustment shall not consider any application for permission, variance, or special exception for the establishment of a smoke shop. The zoning board of adjustment may consider applications for a hardship exception to the moratorium.

FISCAL IMPACT: This Ordinance is expected to have a minor fiscal impact, as the Department of Land Use and Planning will have to contract with a company to perform the equity impact assessment.

Approved as to form this 15th day of January 2026.

/s/ John D. Stant II
Assistant City Solicitor