

AN ORDINANCE

NO. _____

AN ORDINANCE To Amend The Code Of The Township Of Lower Merion, Chapter 155, Entitled Zoning, Article II, Definitions, § 155-2.1, Definitions Of Terms, To Create New Definitions For Food Hall, Hookah, Hookah Bar, Neighborhood Fulfillment And Distribution Center, Outdoor Temporary Sales Event, And Smoke Shop; Article III, General To Districts, § 155-3.5.D(1), Frontages, To Prohibit Structures In Primary Frontage Yards But Permit Structures In Secondary Frontage Yards If The Structures Meet Principle Building Setbacks; Article III, General To Districts, § 155-3.5.F(1), Frontages, To Limit The Prohibitions On Certain Structures And Equipment Contained Therein to Primary Frontage Yards; Table 5.1, Uses, And Table 5.3, Use Regulations, To Permit Outdoor Temporary Sales Events As A Regulated Commercial Use In The NC, VC, TC, LI, RHR, BMV, And CAD Districts And Establish Regulations For The Use; 5.1, Uses, And Table 5.3, Use Regulations, To Permit Neighborhood Fulfillment And Distribution Center As A Regulated Commercial Use In The VC, TC, LI, RHR, BMV, And CAD Districts And Establish Regulations For The Use; 5.1, Uses, And Table 5.3, Use Regulations, To Permit Food Hall As A Regulated Commercial Use In The VC, TC, LI, RHR, BMV, And CAD Districts And Establish Regulations For The Use; Table 5.3, Use Regulations, To Permit Smoke Shop And/Or Hookah Bar As A Specialty Retail In The NC, VC, TC, LI, RHR, BMV, And CAD Districts And Establish Regulations For The Use; And Table 8.1, Minimum Parking Requirements, and Table 8.1.1, Minimum Parking Requirements: Special District, To Base The Relevant Square Footage Calculation On Floor Area Rather Than Building Area.

The Board of Commissioners of the Township of Lower Merion hereby ordains:

Section 1. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article II, Definition, § 155-2.1, Definitions, is hereby amended to create new definitions for Food Hall, Hookah, Hookah Bar, Neighborhood Fulfillment Center, Outdoor Temporary Sales Event, and Smoke Shop, as follows:

FOOD HALL

An indoor communal eating space in which curated, artisanal cuisines and dining experiences, prepared fresh to order by multiple vendors, are provided; distinct from food courts, which are typically found in shopping malls and feature fast-food chains offering quick, standardized meals.

HOOKAH

A substance typically smoked through a water pipe with a smoke chamber, a bowl, a pipe, and a hose, and also known as “narghile,” “argileh,” “shisha,” “hubble-bubble,” and “goza,” or any similar substance.

HOOKAH BAR

An establishment which is, whether as its primary use or as an accessory use, devoted to, marketed as, or designed for the on-premises use of hookah. The term “hookah bar” includes, but is not limited to, establishments variously known as “hookah parlors,” “hookah cafes,” and “hookah lounges.”

NEIGHBORHOOD FULFILLMENT AND DISTRIBUTION CENTER

A commercial use where prepared food, beverages, and convenience products are both sold at retail and also temporarily stored onsite until they are sorted, packaged, and delivered directly to surrounding neighborhood residential properties in response to orders placed in store or via an automated system which limits sales to available, on-site inventory.

OUTDOOR TEMPORARY SALES EVENT

The outdoor sale of temporary or seasonal merchandise for a limited period of time and which not require the construction or alteration of any permanent structure and is also subordinate to the principal use of land or of a building on a lot customarily incidental thereto.

SMOKE SHOP

An establishment primarily engaged in or marketed as selling tobacco, tobacco products/accessories, and/or vaping products and accessories, including but not limited to a (1) retail sales or wholesale establishment which maintains 20% or more of its total merchandise as tobacco, tobacco products/accessories, and/or vaping products or accessories or (2) a retail or wholesale establishment which holds itself out as, or otherwise promotes or markets itself as, a “tobacco store,” “smoke shop,” “vape shop,” “cigar shop,” or other similar establishment.

- A. Examples of vaping products and accessories referred to herein shall include but not be limited to e-cigarette or vape cartridges or refills, vaporizers, vape pens, vapor products, hookah pens, electronic cigarettes, e-cigarettes, e-cigs, e-pipes, and any other electronic nicotine delivery system (“ENDS”).
- B. Tobacco products and accessories as referred herein shall include but not limited to any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, matches, lighters, grinders, hookahs, pipes, chewing tobacco, cigarette rolling machines or papers, ashtrays, pipe tools, pipe supplies and pipe accessories.

Section 2. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article III, General to Districts, § 155-3.5, Frontages, subsection (D), subsubsection (1) is hereby amended as follows:

§ 155-3.5. Frontages.

D. Frontage yards.

(2) (1) —Frontage yards shall be wholly open to the sky and unobstructed, except for permitted projections as specified in § 155-3.6, Projections. Structures are prohibited in the primary frontage yards.

(a) Structures are permitted in a secondary frontage but must meet the principle building setbacks.

Section 3. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article III, General to Districts, § 155-3.5, Frontages, subsection (F), subsubsection (1) is hereby amended as follows:

§ 155-3.5. Frontages.

F. Frontage yards are subject to the requirements of Table 3.5.1, Frontage Yard Types, and the following:

(1) The following structures and equipment are prohibited in primary frontage yards:

Section 4. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article V, Uses, is hereby amended, in relevant part, as follows:

1. Table 5.1, Uses, is hereby amended to add Outdoor Temporary Sales Event as a regulated commercial use in the NC, VC, TC, LI, RHR, BMV, and CAD Districts. The relevant portion of Table 5.1 shall hereafter read consistent with the following:

Table 5.1. Uses												
Uses	LDR	MDR	NC	VC	TC	I	LI	MC	BMMD	RHR	BMV	CAD
Mixed Use			R	R	R		R			R	R	R
<u>Outdoor Temporary Sales Event</u>			<u>R</u>	<u>R</u>	<u>R</u>		<u>R</u>			<u>R</u>	<u>R</u>	<u>R</u>

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2. Table 5.3, Use Regulations, is hereby amended to add Outdoor Temporary Sales Event as a regulated commercial use in the NC, VC, TC, LI, RHR, BMV, and CAD Districts, subject to the following regulations. Where applicable, Table 5.3 shall hereafter include rows applicable to the aforementioned Districts which are consistent with the following:

USES	USE PERMITTED			VC/ NC	TC1	TC2
	VC	NC	TC			
COMMERCIAL (CONT'D)						
<u>Outdoor Temporary Sales Event</u>	<u>R</u>	<u>R</u>	<u>R</u>	<p><u>Outdoor temporary sales event (OTSE) shall be permitted subject to the following provisions:</u></p> <ul style="list-style-type: none"> · <u>The area utilized for the OTSE shall be limited to 3,000 square feet.</u> · <u>No more than one OTSE shall be permitted at any one time.</u> · <u>An OTSE shall be limited to four weeks or less.</u> · <u>A maximum of three OTSEs are permitted within any twelve (12) month period.</u> · <u>The applicant for a zoning permit seeking to operate an OTSE shall prove to the Zoning Officer that adequate parking and traffic control will be available for both the OTSE and any other use of the property. The Zoning Officer may place conditions upon the permit to address parking and traffic control.</u> · <u>The OTSE shall be setback at least twenty (20) feet from all surrounding residential uses.</u> · <u>Trash enclosures for the OTSE shall be provided and screened from view.</u> · <u>OTSEs shall cease daily operations prior to 10:00pm each day.</u> · <u>One sign with a maximum sign area of 25 square feet shall be permitted.</u> 		

Section 5. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article V, Uses, is hereby amended, in relevant part, as follows:

1. Table 5.1, Uses, is hereby amended to add Neighborhood Fulfillment and Distribution Center as a regulated commercial use in the VC, TC, LI, RHR, BMV, and CAD Districts. The relevant portion of Table 5.1 shall hereafter read consistent with the follows:

Table 5.1. Uses												
Uses	LDR	MDR	NC	VC	TC	I	LI	MC	BMMD	RHR	BMV	CAD
Mixed Use			R	R	R		R			R	R	R
<u>Neighborhood Fulfillment and Distribution Center</u>				<u>R</u>	<u>R</u>		<u>R</u>			<u>R</u>	<u>R</u>	<u>R</u>

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2. Table 5.3, Use Regulations, is hereby amended to add Neighborhood Fulfillment and Distribution Center as a regulated commercial use in the VC, TC, LI, RHR, BMV, and CAD Districts, subject to the following regulations. Where applicable, Table 5.3 shall hereafter include rows applicable to the aforementioned Districts which are consistent with the following:

USES	USE PERMITTED			VC/ NC	TC1	TC2
	VC	NC	TC			
COMMERCIAL (CONT'D)						
<u>Neighborhood Fulfillment and Distribution Center</u>	R		R	<u>Neighborhood Fulfillment and Distribution Center (NFDC) shall be permitted subject to the following provisions:</u> <ul style="list-style-type: none"> · <u>The NFDC shall front on a Primary or Secondary street.</u> · <u>Off-street parking shall be provided at a rate of 5 spaces per 1,000 square feet of floor area devoted to retail, storage, and distribution.</u> · <u>The retail portion of the business shall be open to the public whenever the fulfillment and distribution portion is operating.</u> · <u>The retail portion of the business shall occupy at least 80% of the front façade and operate to a depth of forty (40) feet.</u> 		

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Section 6. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article V, Uses, is hereby amended, in relevant part, as follows:

- Table 5.1, Uses, is hereby amended to add Food Hall as a regulated commercial use in the VC, TC, LI, RHR, BMV, and CAD Districts. The relevant portion of Table 5.1 shall hereafter read consistent with the follows:

Table 5.1. Uses												
Uses	LDR	MDR	NC	VC	TC	I	LI	MC	BMMD	RHR	BMV	CAD
Mixed Use			R	R	R		R			R	R	R
<u>Food Hall</u>				<u>R</u>	<u>R</u>		<u>R</u>			<u>R</u>	<u>R</u>	<u>R</u>

- Table 5.3, Use Regulations, is hereby amended to add Food Hall as a regulated commercial use in the VC, TC, LI, RHR, BMV, and CAD Districts, subject to the following regulations. Where applicable, Table 5.3 shall hereafter include rows applicable to the aforementioned Districts which are consistent with the following:

USES	USE PERMITTED			VC/ NC	TC1	TC2
	VC	NC	TC			
COMMERCIAL (CONT'D)						
<u>Food Hall</u>	<u>R</u>		<u>R</u>	<u>Food hall shall be permitted subject to the following provisions:</u> <ul style="list-style-type: none"> <u>The food hall shall front on a Primary or Secondary street.</u> <u>Off-street parking shall be provided at a rate of 5 spaces per 1,000 square feet of floor area.</u> 		

SECTION 7. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article V, Uses, is hereby amended, in relevant part, as follows:

1. Table 5.3, Use Regulations, is hereby amended to add Smoke Shop and/or Hookah Bar as a Specialized Retail which is or is to be a regulated commercial use, in the NC, VC, TC, LI, RHR, BMV, and CAD Districts, subject to the following regulations. Where applicable, Table 5.3 shall hereafter include rows applicable to the aforementioned Districts which are consistent with the following:

USES	USE PERMITTED	LI
COMMERCIAL		
<u>Specialized Retail</u>	_____ R	<p><u>Smoke Shop and/or Hookah Bar is subject to the following regulations:</u></p> <ul style="list-style-type: none"> · <u>A Smoke Shop and/or Hookah Bar shall be a minimum distance of 1,000 feet from any other Smoke Shop and/or Hookah Bar, measured along a straight line between the closest walls of each establishment.</u> · <u>Alcoholic beverages may not be brought onto the premises for on-premises consumption and the sale and service of alcohol shall comply with all federal, commonwealth, and local laws.</u> · <u>A Smoke Shop and/or Hookah Bar shall provide adequate ventilation such that the ventilation, at a minimum, must prevent smoke and vapors from migrating into adjacent buildings and/or suites and to outdoor public areas. A mechanical exhaust hood system shall be required if an establishment heats coals indoors.</u> · <u>A Smoke Shops and/or Hookah Bars shall comply with current Federal, Commonwealth, and local laws including, but not limited to the Clean Indoor Air Act.</u>

Section 8. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article VIII, Parking Standards, is hereby amended, in relevant part, as follows:

1. The notes for Table 8.1, Minimum Parking Requirements, are hereby amended to read as follows:

NOTES:

ADU = Accessory dwelling unit

Square feet refers to ~~building~~ the floor area devoted to the use.

If a use is a regulated use according to Table 5.1, Uses, and Table 5.2, Uses for Institution, and the use regulations in Table 5.3, Use Regulations, includes parking requirements which differ from Table 8.1, Minimum Parking Requirements, the use regulations shall prevail.

1. 1/5 fixed seats or 5/1,000 square feet, whichever is greater.
 2. 1/5 seats, or 50 square feet of floor area where seating is not installed, for the largest place of public assembly on the site, (except that parking for assembly places to be used no more than six times a year may be accommodated on unpaved areas, if their availability can be demonstrated.) + 1/staff or volunteer + 1.5/2 driving age students/participants + 1 visitor space/25 students/participants.
 3. 1/staff + 0.5/assisted living unit + 1.0/independent living unit.
2. The notes for Table 8.1.1, Minimum Parking Requirements: Special Districts, are hereby amended to read as follows:

NOTES:

1. For BMV parking requirements refer to § 155-6.4F.

Square feet refers to ~~building~~ the floor area devoted to the use.

If a use is a regulated use according to Table 5.1, Uses, and Table 5.2, Uses for Institution, and the regulations include parking requirements which differ from Table 8.1, Minimum Parking Requirements, the use regulations prevail.

Section 10. Nothing in this Ordinance or in Chapter 155 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 155 prior to the adoption of this amendment.

Section 11. Nothing in this Ordinance or in the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Code of the Township of Lower Merion prior to the adoption of this amendment.

Section 12. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 13. This Ordinance shall take effect and be in force from and after its approval as required by law.

Approved by the Board of Commissioners of the Township of Lower Merion this _____ day of _____, 20_____.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF LOWER MERION

Todd M. Sinai, President

ATTEST:

Jody L. Kelley, Secretary