

AN ORDINANCE

NO. 4326

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 Hookah Bar And Significant Tobacco Retailer; Table 5.3, Use Regulations, To Permit Significant Tobacco Retailer As A Specialty Retail In The NC, VC, TC, LI, RHR, BMV, And CAD Districts And Establish Regulations For The Use; And Article III, General to Districts, § 155-3.4, Lot Occupation, Subsection F, To Restore Regulations For Maximum Height For Accessory Buildings In The Principal Building Envelope And For Those Built In The Reduced Side And Rear Setbacks.

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 Hookah Bar and Significant Tobacco Retailer, as follows:

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, which is 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. The term “hookah bar” includes, but is not limited to, establishments variously known as “hookah parlors,” “hookah cafes,” and “hookah lounges.”

SIGNIFICANT TOBACCO RETAILER

Any of the following establishments:

- (1) Any retailer or wholesale establishment that (a) devotes 10% or more of floor area or display area to or (b) maintains 20% or more of its total merchandise, whether on display or in stock, for: tobacco products, vape products, Delta-8 THC (or Delta-8-tetrahydrocannabinol), kratom, ingestible CBD/cannabidiol products, electronic nicotine delivery systems (ENDS), and/or ENDS-related products and/or any materials that can be used in electronic nicotine delivery systems.

- (2) Any retailer or wholesale establishment that holds itself out as, or otherwise promotes or markets itself as, a "tobacco store," a "smoke shop," a "vape shop," a "cigar shop" or a similar establishment selling tobacco products and/or vape products or predominantly advertises tobacco products or vape products on its storefront or website.
- (3) A hookah bar, regardless of whether tobacco products or vape products are sold from the premises.

Section 2. 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 Significant Tobacco Retailer 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		
Specialized Retail	R	Significant Tobacco Retailer is subject to the following regulations: <ul style="list-style-type: none"> • A Significant Tobacco Retailer shall be a minimum distance of 1,000 feet from any other Significant Tobacco Retailer, measured along a straight line between the closest walls of each establishment. • A Significant Tobacco Retailer 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. • A Significant Tobacco Retailer shall comply with current Federal, Commonwealth, and local laws including, but not limited to the Clean Indoor Air Act. • A Significant Tobacco Retailer shall be a minimum distance of 1,000 feet from any public school or private school, measured along a straight line between the closest walls of each establishment.

Section 3. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article III, General to Districts, § 155-3.4, Lot Occupation, Subsection F, is hereby amended now and also, to the extent permitted by law, retroactive to April 17, 2024, in order to correct a drafting error in Ordinance No. 4289, to read as follows:

- F. Accessory buildings and structures shall be erected to the rear of the principal building and may project into the reduced side or rear yard setback as established in the form tables of the underlying district, subject to compliance with the following:
- (1) Accessory buildings in the principal building envelope shall be limited to two stories or 20 feet in height.
 - (2) Accessory buildings built in the reduced side and rear setback shall be limited in height to one story or 15 feet.
 - (3) Accessory buildings shall be designed to be similar to and compatible with the principal building.
 - (4) Exception. If there is 45 feet or less between the rear of the principal building and the rear lot line, the minimum setback from the rear of the principal building shall be reduced to 10 feet.

Section 4. 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 5. 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 6. 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 7. This Ordinance shall take affect 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 17th day of December, 2025.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF LOWER MERION

Todd M. Sinai, President

ATTEST:

Jody L. Kelley, Secretary