

# Haverford Township - Board of Commissioners

Meeting: Monday, March 04, 2024

Time: 6:30 p.m.

Location: Commissioners Meeting Room -1014 Darby Rd., Havertown PA, 19083

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## Public Notice

NOTICE is hereby given that the Haverford Township Board of Commissioners will conduct a public hearing on Monday, March 4, 2024 at 6:30 PM in the Commissioners Meeting Room, 1014 Darby Road, Havertown, PA at which time the Board will receive public comment on an Ordinance amending the General Laws of the Township of Haverford, Chapter 47 entitled "Amusement Devices" to further regulate the premises within which such devices may be permitted and associated definitions; and amending Chapter 182 entitled "Zoning" to clarify the definition of Convenience Store, to define E-Liquids, Electronic Cigarettes, Electronic Nicotine Delivery Systems, Game of Skill Machines, Hookah Bars, Indoor Recreational or Amusement Facilities, Mechanical Amusement Devices, Significant Tobacco Retailers and Smoke Shops; to prohibit Mechanical Amusement Devices within the premises of Significant Tobacco Retailers and to prohibit Game of Skill Machines in Convenience Stores; to expressly prohibit Significant Tobacco Retailers in the C-2 Neighborhood Commercial District; to delete cigarette and tobacco as permitted to be sold in gift shops in the C-3 General Commercial District; to establish Significant Tobacco Retailers including Smoke Shops, Vape Shops and Hookah Lounges as a use permitted by Conditional Use in the C-5 Shopping Center Commercial District; and to establish the criteria for the approval of Significant Tobacco Retailers use. All interested parties are invited to attend and be heard in accordance with the rules and procedures of the Board. A copy of the proposed ordinance is available for public inspection on the township website at [www.havtwp.org](http://www.havtwp.org), and at 1014 Darby Road, Havertown, PA between the hours of 8:00 AM and 4:00 PM, Monday through Friday, except legal holidays. The Board expects to consider adoption of the first reading of this amendment during their regularly scheduled meeting on March 11, 2024 at 7:00 PM in the Commissioners Meeting Room, 1014 Darby Road, Havertown, PA. David R. Burman, Township Manager/Secretary.

Township of Haverford

David R. Burman

Township Manager

# Haverford Township Draft Ordinance Number P -2024

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An Ordinance amending Chapter 47 entitled “Amusement Devices” of the General Laws of the Township of Haverford to further regulate the premises within which such devices may be permitted and associated definitions; amending Chapter 182 entitled “Zoning” to clarify the definition of Convenience Store, to define E-Liquids, Electronic Cigarettes, Electronic Nicotine Delivery Systems, Game of Skill Machines, Hookah Bars, Indoor Recreational or Amusement Facilities, Mechanical Amusement Devices, Significant Tobacco Retailers and Smoke Shops; to prohibit Mechanical Amusement Devices within the premises of Significant Tobacco Retailers and to prohibit Game of Skill Machines in Convenience Stores; to expressly prohibit Significant Tobacco Retailers in the C-2 Neighborhood Commercial District; to delete cigarette and tobacco as permitted to be sold in gift shops in the C-3 General Commercial District; to establish Significant Tobacco Retailers including Smoke Shops, Vape Shops and Hookah Lounges as a use permitted by Conditional Use in the C-5 Shopping Center Commercial District; and to establish the criteria for the approval of a Significant Tobacco Retailers use.

WHEREAS, the Home Rule Charter of the Township of Haverford authorizes the Board of Commissioners to make and adopt ordinances consistent with the Constitution and laws of this Commonwealth and with the Charter;

WHEREAS, the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, et. seq., provides that municipalities are permitted to address the intensity of uses within a zoning district and provide for the promotion, protection and facilitation of public health, safety, morals, and the general welfare, and coordinate practical community development; and

WHEREAS, the Board of Commissioners desires to promote a complementary mix of uses that will generate pedestrian foot-traffic, disperse the intensity of uses throughout the Township, and promote the economic health of the Township; and

WHEREAS, the Board of Commissioners desires to prevent the over-concentration of certain uses within the Township; and

WHEREAS, tobacco use is still the leading cause of preventable death in the United States; and

WHEREAS, tobacco use places a huge financial cost on the nation’s healthcare system and constraints on productivity imposed on the nation’s economic system; and

WHEREAS, since 2014 electronic cigarettes have been the most commonly used tobacco products among the youth of the United States; and

WHEREAS, amusement devices and electronic games are commonly enjoyed and played by, and often attract, children and young adults who are not legally permitted to use tobacco products; and

WHEREAS, the use of Game of Skill machines are believed to have a deleterious impact on children, may encourage gambling, and continual use of such machines may increase the risk of crime and endanger employees and customers of a business; and

WHEREAS, the Board of Commissioners desires to clarify the definition of Convenience Store, to define E-Liquids, Electronic Cigarettes, Electronic Nicotine Delivery Systems, Game of Skill Machines, Hookah Bars, Indoor Recreational or Amusement Facilities, Mechanical Amusement Devices, Significant Tobacco Retailers and Smoke Shops; to prohibit Mechanical Amusement Devices within the premises of Significant Tobacco Retailers and to prohibit Game of Skill Machines in Convenience Stores; to expressly prohibit Significant Tobacco Retailers in the C-2 Neighborhood Commercial District; to delete cigarette and tobacco as permitted to be sold in gift shops in the C-3 General Commercial District; to establish Significant Tobacco Retailers including Smoke Shops, Vape Shops and Hookah Lounges as a use permitted by Conditional Use in the C-5 Shopping Center Commercial District; and to establish the criteria for the approval of a Significant Tobacco Retailers use.

WHEREAS, the Board of Commissioners has met the procedural requirements of the Pennsylvania Municipalities Planning Code for the adoption of the proposed ordinance, including advertising and holding a public hearing;

WHEREAS, the Board of Commissioners, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of Haverford Township will be served by this amendment of the Township's Code.

NOW, THEREFORE, the Board of Commissioners of the Township of Haverford hereby ordains and enacts as follows:

#### SECTION I. Code Amendments.

A. Chapter 47, Amusements and Entertainments, Article I, Amusement Devices, is hereby amended as follows:

i. Section 47-1, Definitions, is amended to provide for a revised definition of "Mechanical Amusement Device" and a new definition of "Game of Skill Machine" to state:

#### MECHANICAL AMUSEMENT DEVICE

Any machine, apparatus, or device which, upon the insertion of a coin, slug, token, plate, card, disk or key into any slot, crevice or other opening, or by the payment of any price, may be operated or used as a game, entertainment or amusement, whether or not registering a score and whether or not a prize or redeemable tickets or points are offered. It shall include, without limitation, such devices as Game of Skill Machines, skill games, marble machines, pinball machines, skill ball, skee ball, mechanical grab or "claw" machines, mechanical or video bowling machines, electronic dart boards, golf simulator games, photoelectric or video shooting games or target machines, electronic video games, air-hockey tables, football games or other ball, disk, or bag throwing, rolling, or kicking games, riding or driving games or devices, virtual reality games, and all other games, operations, or transactions similar thereto under whatever name they may be designated or described. It shall not include devices or machines which dispense candy or merchandise unrelated to playing a game or Pennsylvania Lottery kiosks or devices. No Mechanical Amusement Device shall be permitted within the same premises as a Significant Tobacco Retailer.

## GAME OF SKILL MACHINE

A gaming machine, apparatus, or device that resembles and often functions like casino slot machines, in that a player inserts money, tokens or a card for the chance to win more money, credits, or a similar benefit, but where the outcome is determined mainly by mental or physical skill, rather than chance. No Game of Skill Machine shall be permitted within the same premises as a Significant Tobacco Retailer or Convenience Store.

ii. Section 47-5, Regulations for premises and operation of devices, is hereby amended to amend subsection E and to provide for new subsections F and G as follows:

E. Any premises or places of business primarily or substantially devoted to the display or maintenance of Mechanical Amusement Devices, Game of Skill Machines or pool tables shall be subject to provisions of the Zoning Ordinance relating to indoor recreational or amusement facilities. For the purposes of this subsection, any premises within which are displayed or maintained more than three Mechanical Amusement Devices, Game of Skill Machines and/or pool tables shall be considered an indoor recreational or amusement facility.

F. No Mechanical Amusement Devices shall be permitted within the same premises as a Significant Tobacco Retailer, as defined under Chapter 182.

G. No Game of Skill Machines shall be permitted within the same premises as a Convenience Store, as defined under Chapter 182.

B. Chapter 182, Zoning, Section 182-106, Definitions and word usage; interpretation of regulations, is hereby amended as follows:

i. The definition of CONVENIENCE STORE shall be deleted and replaced with the following:

## CONVENIENCE STORE

A mini food market designed to attract and serve a large volume of stop-and-go traffic, specializing in fast sales of bread, dairy, luncheon meats, as well as both made-to-order and ready-to-consume sandwiches, meals and beverages intended for consumption off the premises, and providing a limited supply of grocery store stock as a convenience to its patrons, with less than 10% of its retail floor area or display area dedicated to, or which maintains 20% or more of its total merchandise, whether on display or in stock, for products containing tobacco, tobacco paraphernalia, Delta-8 THC (or Delta-8-tetrahydrocannabinol) products, kratom, ingestible CBD/cannabidiol products, and/or Electronic Nicotine Delivery Systems (ENDS), ENDS-related products and/or any materials that can be used in Electronic Nicotine Delivery Systems. A store exceeding this 10% requirement shall be considered a Significant Tobacco Retailer. No Game of Skill Machines shall be permitted within the same premises as a Convenience Store.

ii. The following definitions shall be added to Section 182-106:

#### E-LIQUID

Any liquid that contains vegetable glycerin, propylene glycol, nicotine, water, and possibly flavoring that can be used in Electronic Nicotine Delivery Systems (ENDS) devices. E-liquids can also be referred to as “vape” or “vape juice.”

#### ELECTRONIC CIGARETTE

(1) An electronic oral device, such as one composed of a heating element and battery or electronic circuit, or both, which provides a vapor of nicotine or any other substance and the use or inhalation of which simulates smoking.

(2) The term includes any ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS) device, notwithstanding whether the device is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar and e-pipe or under any other product, name or description.

#### ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS)

Any device designed or used to transform an e-liquid (that may contain nicotine) into an aerosol that the user inhales. ENDS can also be referred to as “vapes,” “vaporizers,” “vape pens,” “hookah pens,” “electronic cigarettes,” “e-cigarettes,” “e-cigs,” and “e-pipes.”

#### GAME OF SKILL MACHINE

A gaming machine, apparatus, or device that resembles and often functions like casino slot machines, in that a player inserts money, tokens or a card for the chance to win more money, credits or a similar benefit, but where the outcome is determined mainly by mental or physical skill, rather than chance.

#### HOOKAH BAR

Any establishment that is devoted to, marketed as, or designed for, whether as its primary use or as an accessory use, the on-premises use of smoking through a water pipe with a smoke chamber, a bowl, a pipe and a hose, commonly referred to as a “hookah,” and also known as narghile, argileh, shisha, hubble-bubble and/or goza, or any similar device used for on-premises smoking. The term “hookah bar” includes, but is not limited to, establishments variously known as hookah parlors, hookah cafes, and hookah lounges. A Hookah Bar shall be considered a Significant Tobacco Retailer.

#### INDOOR RECREATIONAL OR AMUSEMENT FACILITIES

An establishment containing an indoor premises or place of business that primarily or substantially offers indoor recreational and/or amusement activities including, without limitation, movie and live theaters, bowling alleys, sports fields or playing courts, video arcades, billiards, playground equipment, laser tag, go-carts, golf game simulators, mini-golf, ax/knife throwing, virtual reality experiences, trampolines, batting cages, or similar indoor facilities. Devices and facilities used solely for retail sales product testing or demonstrations,

playgrounds used accessory to an eating/drinking establishment, and private sports clubs or gyms that require at least monthly memberships to participate shall not be considered Indoor Recreation or Amusement Facilities.

#### MECHANICAL AMUSEMENT DEVICE

Any machine, apparatus, or device which, upon the insertion of a coin, slug, token, plate, card, disk or key into any slot, crevice or other opening, or by the payment of any price, may be operated or used as a game, entertainment or amusement, whether or not registering a score and whether or not a prize or redeemable tickets or points are offered. It shall include, without limitation, such devices as Game of Skill Machines, skill games, marble machines, pinball machines, skill ball, skee ball, mechanical grab or "claw" machines, mechanical or video bowling machines, electronic dart boards, golf simulator games, photoelectric or video shooting games or target machines, electronic video games, air-hockey tables, football games or other ball, disk, or bag throwing, rolling, or kicking games, riding or driving games or devices, virtual reality games, and all other games, operations, or transactions similar thereto under whatever name they may be designated or described. It shall not include devices or machines which dispense candy or merchandise unrelated to playing a game or Pennsylvania Lottery kiosks or devices. No Mechanical Amusement Device shall be permitted within the same premises as a Significant Tobacco Retailer.

#### SIGNIFICANT TOBACCO RETAILER

Any of the following establishments:

- (1) Any retailer or wholesale establishment that devotes 10% or more of floor area or display area to, or 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.

#### TOBACCO PRODUCTS

Any substance containing tobacco leaf or accessory items used with or for tobacco consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, other noncombustible tobacco products, matches, lighters, grinders, hookahs, pipes, cigarette rolling machines or papers, ashtrays, pipe tools, pipe supplies and pipe accessories.

## VAPE PRODUCTS

Products containing nicotine and/or nicotine flavoring that are inhaled from a device designed for such purpose and/or products used to assist with the inhalation of nicotine including, but not limited to, any device designed or used to transform an e-liquid (that may contain nicotine) into an aerosol that the user inhales, e-liquids, e-cigarettes, vape or e-cigarette cartridges or refills, vaporizers, vape pens, vapor products, hookah pens, electronic cigarettes, e-cigs, e-pipes, Electronic Nicotine Delivery Systems (ENDS), and/or ENDS-related products and/or any materials that can be used in ENDS. Vape Products shall also be deemed a noncombustible tobacco product.

C. Chapter 182, Section 182-403, Neighborhood Commercial District, B. Use Regulations, (1) uses by right, subsection (b) shall be amended to add “but specifically excluding Significant Tobacco Retailers”, as follows:

a. Convenience stores, including the sale of grocery and food products, hardware, newspapers and magazines, drugs, variety items and beer, but specifically excluding Significant Tobacco Retailers.

D. Chapter 182, Section 182-404 C-3 General Commercial District, B. Use Regulations, (1) uses by right, subsection (f) shall be amended by deleting the words “cigarette and tobacco”, reflected as follows:

Gift shops, including camera, book, stationery, antique, musical supply, cosmetic, candy, cigarette and tobacco, flower, hobby, jewelry, leather and luggage shops.

E. Chapter 182, Section 182-406 C-5 Shopping Center Commercial District, B. Use Regulations, (4) conditional uses, (d) Significant Tobacco Retailer shall be added, as follows:

(d) Significant Tobacco Retailer. A Significant Tobacco Retailer (including a Hookah Bar, Vape Shop, Smoke Shop, or similar establishment) shall be permitted as a conditional use in accordance with the specific standards set forth in § 182-1209, standards applicable to Significant Tobacco Retailer uses, of this chapter.

F. Chapter 182, Section 182-1209, Standards applicable to Significant Tobacco Retailers, shall be added, as follows:

A. A Significant Tobacco Retailer shall not be located within 1,000 feet of the boundary of any institutional zoning district or the property line of any parcel containing an institutional zoning use, including, but not limited to, public, private and parochial schools and day-care centers. This distance shall be measured in a straight line from the closest exterior wall of the building or portion thereof in which the Significant Tobacco Retailer is located to the closest property line of the protected district or use, regardless of the municipality or zoning district in which it is located.

B. A Significant Tobacco Retailer shall be a minimum distance of 1,000 feet from the next nearest Significant Tobacco Retailer, measured along a straight line between the closest walls of each of the two facilities.

C. Significant Tobacco Retailers shall cease operations between the hours of 11:00 PM and 10:00 AM.

D. No Mechanical Amusement Devices shall be permitted within the premises of a Significant Tobacco Retailer.

E. No alcoholic beverages shall be served or consumed within the premises of a Significant Tobacco Retailer.

**Section II. Repealer.** In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict with or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

**Section III. Severability.** In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude, or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

**Section IV. Failure to Enforce Not a Waiver.** The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**Section V. Effective Date.** This Ordinance shall become effective 10 days following final adoption by the Board of Commissioners and publication as required by law.

Adopted this (insert approval day) day of (insert approval Month) , 2024.

Attest: Township of Haverford

By: C. Lawrence Holmes, President, Board of Commissioners

By: David R. Burman, Township Manager/Secretary