

COAL CITY PLANNING AND ZONING BOARD MEETING

**MONDAY
February 19, 2024
7:00 P.M.**

AGENDA

1. Call Meeting to Order
2. Approval of Minutes January 15, 2024
3. Public Comment
4. ZONING BOARD OF APPEALS
Public Hearing
Consideration of Text Amendment to Limit Tobacco Sales
 - i. Presentation of Amendment
 - ii. Public Comment
 - iii. Board Consideration
 - iv. Action
5. 2024 Zoning Map Adoption
6. Planning & Zoning Training with the Village Attorney
7. Adjourn

MEMO

TO: Planning & Zoning Board Members

FROM: Matthew T. Fritz
Village Administrator

MEETING DATE: February 19, 2024

RE: **FEBRUARY 19th MEETING AGENDA ITEMS**

Text Amendment Consideration regarding Retail Sales of Tobacco

Retail sales within smaller communities can be difficult and the convenience sale of items seem to possess a competitive advantage above other types of retailers. Coal City already regulates the sale of alcohol via a liquor license permitting process. This process ensures that any gaming concept must come before the zoning board to receive a conditional use prior to opening a retail establishment. However, there are no restrictions within the land use code regarding the retail sale of tobacco. Prior to a standalone tobacco retail establishment attempting to open, the Village Attorney provided a means of updating the village code to negate such an opportunity.

The first step is to adopt a moratorium upon such a retail utilization in the short-term. Adopting a moratorium will assist with defending any future challenges to the village's limitation on these types of defined locations. The attached draft ordinance is prepared to allow the Board of Trustees to adopt the moratorium at its last meeting in February following a public hearing by the Planning & Zoning Board. Following the Board's adoption of this ordinance, the permanent text amendment would be adopted and incorporated prior to the end of the moratorium in October.

Annual Zoning Map Review

Reviewing the annual zoning map was discussed at a previous meeting; there do not look to be any changes over the one that had been adopted in 2023. The easiest means of reviewing the current map is to click onto the current map at the village's website – www.coalcity-il.gov > click on *About* on the links at the top > click on the *Zoning Map* button > and then click on the existing 2023 map OR use this link -

<https://coalcity-il.gov/wp-content/uploads/2020/12/Zoning-map-2023.pdf>

A recommendation to the Board of Trustees is in order so this annual requirement is fulfilled.

Training Session on Monday

Mark Heinle, the Village Attorney, will lead the Planning & Zoning Board through some training to review some concepts and discuss other hot button issues currently occurring for municipalities.

Remaining Work Items

Downtown Remodeling Permits
Carbon Hill Rd/113 Annexation
Metal Siding
Anti-Monotony Provisions

DRAFT

THE VILLAGE OF COAL CITY
GRUNDY & WILL COUNTIES, ILLINOIS

ORDINANCE
NUMBER _____

**AN ORDINANCE DEFINING “TOBACCO SHOPS” AND ESTABLISHING A
TEMPORARY ZONING MORATORIUM ON NEW TOBACCO SHOPS**

DAVID SPESIA, Village President
ALEXIS STONE, Village Clerk

SARAH BEACH
TIMOTHY BRADLEY
DANIEL GREGGAIN
BILL MINCEY
PAMELA NOFFSINGER
DAVID TOGLIATTI
Village Trustees

Published in pamphlet form by authority of the President and Board of Trustees of the Village of
Coal City

on _____, 2024

ORDINANCE NO. _____

**AN ORDINANCE DEFINING “TOBACCO SHOPS” AND ESTABLISHING A
TEMPORARY ZONING MORATORIUM ON NEW TOBACCO SHOPS**

WHEREAS, the Village of Coal City (hereinafter, the “*Village*”) is an Illinois municipal corporation organized and operated under the laws of the State of Illinois; and

WHEREAS, the Village is a non-home rule municipality and, as such, may exercise delegated statutory and Constitutional powers and such powers as are necessarily implied therefrom; and

WHEREAS, pursuant to 65 ILCS 5/11-13-1 *et seq.*, the Village has enacted zoning regulations that have been codified in Chapter 156 of the Village Code (the “*Zoning Code*”); and

WHEREAS, the Village defines, regulates, licenses and zones tobacco shops, which are not defined in the Village’s Zoning Code;

WHEREAS, there has been a recent proliferation of tobacco shops in the Village, including businesses that allow smoking on premises and businesses that primarily sell or market tobacco products, alternative nicotine products, and smoking paraphernalia; and

WHEREAS, the Village wishes to define the term “tobacco shop” to include contemporary usage, including the sale and use of alternative nicotine products, e-cigarettes, and vaping, as well as traditional forms, and to provide for a moratorium on the establishment of new tobacco shops primarily engaged in the retail sale of tobacco, tobacco products, alternative nicotine products, electronic cigarettes, vape or vaping products including, without limitation, vapes, vaporizers, vape pens, vapor cigarettes and alternative vapor transmission modalities and related paraphernalia; and

WHEREAS, Chapter 156 of the Village Code (the “*Zoning Code*”) comprehensively divides the Village into districts and defines, classifies, regulates and restricts the location of land uses by reference to such districts; and

WHEREAS, tobacco shops uses not presently defined, but are permitted uses in the C-3 zoning district; and

WHEREAS, a clear definition of “tobacco shop” is critical to allowing business owners to understand the regulatory climate and for Village staff to administer the Village’s regulations; and

WHEREAS, the Village President and Board of Trustees (the “*Corporate Authorities*”) of the Village desire to carefully review and consider the externalities associated with tobacco shops and their impact on the public health, safety, comfort, morals and welfare in order to protect the vitality and character of development in the Village; and

WHEREAS, the Corporate Authorities have determined that the Zoning Code requires study and possible revision for proper regulation of tobacco shops and to study the possible effects of such uses of property and that such review will promote and enhance the public health, safety, and welfare of the Village and its residents; and

WHEREAS, the Village has commenced a process of evaluation with the use of its planning and zoning staff and Village Attorney to determine whether there should be any additional, different, or relaxed limitations on the location and operation of such tobacco shops; and

WHEREAS, to preserve the status quo while the Village conducts the evaluation process, it desires to enforce a zoning moratorium on tobacco shops which is not expected to last more than eight (8) months from the effective date of this Ordinance; and

WHEREAS, in accordance with Sections 156-27(E)(1)(a), 156-271, and 156-313(A)(1)(a) of the Zoning Code, the Proposed Amendment to the Zoning Code was referred to the Zoning Board of Appeals (“**ZBA**”) for a public hearing and recommendation thereon; and,

WHEREAS, pursuant to notice duly published, the ZBA conducted a public hearing on February 19, 2024, for the purpose of hearing and considering testimony on the Proposed Amendment; and

WHEREAS, at the conclusion of the public hearing, the ZBA recommended that the Village Board adopt the Proposed Amendment and moratorium by a vote of [REDACTED]; and

WHEREAS, following deliberation on the evidence and testimony elicited during the public hearing the Planning and Zoning Commission has considered and recommended approval of the proposed moratorium and definitional text amendment, pursuant to those written findings of fact contained in the ZBA’s Findings of Fact and Recommendation attached hereto as **Exhibit A** and made part of this ordinance by this reference; and

WHEREAS, to prevent long-term or irreversible changes in the character of the commercial areas of the Village, the Corporate Authorities hereby find and determine that it is necessary and in the best interests of the Village and its residents to impose a temporary moratorium on the filing for and/or consideration of rezonings, permitted uses, building permits or business licenses authorizing, and zoning certificates of occupancy related to the establishment of any new tobacco shop as defined in the Village Code and set forth in this Ordinance.

WHEREAS, the President and the Board of Trustees of the Village have determined that it is the best interest of the health, safety, and welfare of the Village and its residents to amend the Zoning Code as set forth herein; and

WHEREAS, the President and Board of Trustees have considered the recommendation of the ZBA and determined that it is in furtherance of the public health, safety and welfare and in the best interests of the Village and its residents to approve the amendment and moratorium as set forth in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Coal City, Counties of Will and Grundy, Illinois, as follows:

SECTION 1. RECITALS. That the foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

SECTION 2. AMENDMENTS TO TITLE 15, CHAPTER 156. Title 15 (“Land Usage”), Chapter 156 (“Zoning Code”), Section 156-3(B) (“Definitions”) of the Coal City Village Code is hereby amended to add the following new defined terms, with all existing defined terms continuing in full force and effect as currently written unless expressly stated otherwise (additions **underlined in bold font**, deletions marked with **~~bold strikethrough~~**):

(Omitted text is unaffected by this ordinance)

156.3. Rules of interpretation; definitions.

...

B. Definitions. . . .

ALTERNATIVE NICOTINE PRODUCT: Any product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. The term "alternative nicotine product" excludes any product approved by the United States Food and Drug Administration as a non-tobacco product for sale as a

tobacco use cessation product or for other medical purposes, and is being marketed and sold solely for that approved purpose.

ELECTRONIC CIGARETTE or "E-CIGARETTE":

- (1) Any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;
- (2) Any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or
- (3) Any solution or substance, whether or not it contains nicotine intended for use in the device.

The term "electronic cigarette" or "e-cigarette" includes, without limitation, any electronic nicotine delivery system, vapes, vaporizers, vape pens, vapor cigarettes, alternative vapor transmission modalities, e-cigars, hookah pens, electronic hookahs, electronic pipes, electronic cigars, and electronic cigarillos and any similar product or device, and any components or parts that can be used to build the product or device.

TOBACCO PRODUCT: Any product containing or made from tobacco that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, and any other smokeless tobacco product which contains tobacco that is finely cut, ground, powdered, or leaf and intended to be placed in the oral cavity. "Tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

TOBACCO SHOP: A retail establishment principally engaged in the retail sale or display of tobacco, tobacco products, alternative nicotine products, electronic cigarettes, vape or vaping products including, without limitation, vapes, vaporizers, vape pens, vapor cigarettes and alternative vapor transmission modalities and paraphernalia associated with any of the foregoing insofar as it either (i) devotes ten (10) percent or more of floor area or display area to or (ii) derives more than sixty (60) percent of its gross revenue from the sale of tobacco, tobacco products, alternative nicotine products, electronic cigarettes, vape or vaping products including, without limitation, vapes, vaporizers, vape

pens, vapor cigarettes and alternative vapor transmission modalities and paraphernalia associated with any of the foregoing. The term "tobacco shop" shall also include smoking lounges, which are retail establishments dedicated in whole or in part to entertaining smokers and users of tobacco. The term "tobacco shop" does not include cannabis business establishments. "Tobacco shop" also does not include establishments that incidentally sell or display such products as an accessory use, subordinate in purpose to the principal use served, such as a larger commercial establishment that incidentally includes a tobacco department or display incidental to the principal use of the premises.

VAPE (verb): The use of an alternative nicotine product to inhale and/or exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation.

VAPES (noun), VAPORIZERS, VAPE PENS, VAPOR CIGARETTES, and ALTERNATIVE VAPOR TRANSMISSION MODALITIES are electronically-operated devices which contain a cartridge or open space filled with nicotine and/or other chemicals which are turned into vapor or steam that is inhaled and exhaled by the user.

SECTION 3. ESTABLISHMENT OF TEMPORARY MORATORIUM.

A. A temporary moratorium ("*Temporary Moratorium*") is hereby established on the receipt of applications for the processing of, the approval of, and the issuance of any type of permit for a tobacco shop on any property located in the Village.

B. The Temporary Moratorium established herein will be, and is hereby, established for a period of eight months from this Ordinance's effective date, and the Temporary Moratorium will expire at 12:01 a.m. on October 14, 2024, unless, prior to that time, the Village Board extends this Temporary Moratorium by ordinance duly adopted in accordance with Section 2(c).

C. The Village Board may adopt an ordinance on or before October 14, 2024, extending the Temporary Moratorium's term for up to an additional 90 days without need for further public hearing upon the Village Board finding that: (1) the Village's study of regulatory strategies for tobacco shops is incomplete; and/or (2) the Village Board has not yet adopted

updated regulations governing tobacco shops. All other extensions to the Temporary Moratorium's term may only be approved after the Planning and Zoning Commission conducts a public hearing and makes a recommendation to the Village Board.

SECTION 4. EXISTING APPROVED PERMITS. Nothing in this Ordinance will affect the rights of any person or entity presently operating a tobacco shop within the Village of Coal City on or before this Ordinance's effective date.

SECTION 5. CONDITIONAL PROCESSING OF NEW APPLICATIONS. Any proposal to operate a tobacco shop within any commercially-zoned district may still be presented to the Village for consideration, and such applications will be processed conditionally during the term of the Temporary Moratorium, but no such application will be finally approved until (a) the expiration or termination of the Temporary Moratorium's term and (b) the Village confirming that the application complies with the applicable regulations in effect following the expiration or termination of the Temporary Moratorium's term. Persons or entities filing an application pursuant to this Section do so at their own risk.

SECTION 6. HARDSHIP APPEALS PROCESS. An applicant seeking to establish a tobacco shop within any commercial district during the Temporary Moratorium's term may seek an exception from the Temporary Moratorium as follows:

- A. Filing a written request for relief with the Village Clerk on forms provided by the Village.

B. A request for an exception from the Temporary Moratorium will be considered at a public hearing conducted by the Planning and Zoning Commission, properly noticed in accordance with the Village's Zoning Regulations, as amended.

C. Based on the evidence presented at such hearing and the factors set forth in Section 5(E) below, the ZBA will make a recommendation on the hardship application to the Village Board.

D. Following receipt of the ZBA's recommendation, the Village Board may, at a regularly scheduled meeting and by ordinance duly adopted, grant the applicant an exception to the provisions of the Temporary Moratorium.

E. To obtain an exception to the provisions of the Temporary Moratorium, an applicant must demonstrate by clear evidence, and the Village must determine that:

(1) the effect of the Temporary Moratorium has caused or will cause an economic hardship on the applicant;

(2) the property in question has no other reasonable use other than as the proposed Tobacco Shop;

(3) the applicant has made substantial investment in the development of the Tobacco Shop that is affected by the Temporary Moratorium, which investment was made in reasonable reliance on the regulations in effect prior to the Temporary Moratorium and without knowledge of pending changes in such regulations (including this Temporary Moratorium), and based on a reasonable probability of zoning or other approvals from the Village; and

(4) the Tobacco Shop as proposed complies with all applicable Village ordinances, regulations, and rules.

SECTION 7. RESOLUTION OF CONFLICTS.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 8. SAVING CLAUSE. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

SO ORDAINED this _____ day of _____, 2024, at Coal City, Grundy and Will Counties, Illinois.

AYES:

ABSENT:

NAYS:

ABSTAIN:

VILLAGE OF COAL CITY

David A. Spesia, President

Attest:

Alexis Stone, Clerk