



City of Racine, Wisconsin
Agenda Briefing Memorandum
ZORD 0001-26 – Tobacco or Smoke Shop

AGENDA DATE:

Planning Heritage and Design Commission:
February 16, 2026
Public Hearing and Final Action Council
Date: March 3, 2026

PREPARED BY: Brian D Van Schyndel, Assistant City Attorney

REVIEWED BY: Scott R. Letteney, City Attorney

SUBJECT: Communication sponsored by Mayor Mason requesting an ordinance to amend Chapter 114, Article I, Section 114-1, Chapter 114, Article V, Section 114-447, and to create Chapter 114, Article V, Section 114-487(b)(30).

BACKGROUND & ANALYSIS:

As it currently exists, Racine Ordinances section 114-447(b) details the permitted uses allowed in B1 Neighborhood Convenience Districts. Tobacco Shops are one of the enumerated permitted uses under section 114-447(b)(36). Other than limiting Tobacco Shops to B1 Neighborhood Convenience Districts, and as B1 permitted uses may be permitted in B2, B3, B4, and B5 districts, the current Zoning Code does not further limit where these Tobacco Shops may be located, nor does it define what is included under the umbrella of Tobacco Shops. Further, the current Zoning Code does not reflect the growing prevalence of e-cigarette (vape) use and the dangers the ready availability of these vape products pose to the children of the City of Racine.

The proposed ordinance change would remove Tobacco Shops as a permitted use in B1 Neighborhood Convenience Districts (and B2, B3, B4, and B5 districts) and create a new permitted use under section 114-487 in B3 General Commercial Districts, and thus B5 District. The proposed section 114-487(b)(30) changes the permitted use from simply “Tobacco Shops” to a specifically-defined “Tobacco, Cigarette, or Electronic Vaping Device Vendors” and imposes stricter standards of where such businesses may be located, with the specific purpose of limiting access of children to tobacco and vape products. The proposed ordinance also clearly defines the terms Cigarette, Tobacco Products, Electronic Vaping Device, and Tobacco, Cigarette, or Electronic Vaping Vendors, consistent with the definitions contained within the Wisconsin Statutes.

The proposed ordinance does not prevent the continued sale of Cigarette, Tobacco Products, and Electronic Vaping Devices by vendors licensed to do so prior to the adoption of this ordinance. These previously licensed vendors would be grandfathered in as a prior non-conforming use. However, pursuant to section 114-213 of the Code, if the non-conforming use is discontinued for a continuous period of 12 months, the license shall not be renewed. Regarding prior non-conforming uses, the Wisconsin Court of Appeals recently elaborated further, in *Doubleday v. C. Goeman Props. V LLC*, that not only is resuming a non-conforming business within 12 months sufficient to retain the vendor’s grandfathered status, selling the premises to a new company that will engage in business substantially similar to the prior non-conforming use will also maintain the grandfathered status and the City will be required to allow them to continue. The court further stated, however, that *de minimis* transactions do not count for extending the above-referenced 12-month window.

Set forth below are the amended sections 114-1 and 114-447 of the Code and layered on top are the changes proposed by this legislation. Also set forth below is the new proposed section 114-487(b)(30).

ZORD 0001-26 – Tobacco, Cigarette, or Electronic Vaping Vendors

An ordinance to amend Chapter 114, Article I, Section 114-1, Chapter 114, Article V, Section 114-447, and to create Chapter 114, Article V, Section 114-487(b)(30).

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Chapter 114, Article V, Section 114-1 is hereby amended as follows:

Sec. 114-1(b) shall include the following definitions of terms:

Cigarette means any roll of tobacco wrapped in paper or any substance other than tobacco.

Electronic Vaping Device means a device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. “Electronic vaping device” includes a component, part, or accessory of the device, and includes a liquid or other substance that may be aerosolized or vaporized by such device, regardless of whether the liquid or other substance contains nicotine. “Electronic vaping device” does not include a battery or battery charger when sold separately. “Electronic vaping device” does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Tobacco, Cigarette, or Electronic Vaping Vendors means any retail business that makes available for sale any Cigarettes, Tobacco Products, or Electronic Vaping Devices as defined in this section.

Tobacco Products means cigars; pipe tobacco; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco products” does not include cigarettes.

Part 2: Chapter 114, Article V, Section 114-447 is hereby amended as follows:

Sec. 114-447(b)(36) is repealed and reserved. (Note: This is the provision that would remove Tobacco Shops as permitted uses in B1 districts.)

Part 3: Chapter 114, Article V, Section 114-487(b)(30) is created as follows:

(30) Tobacco, Cigarette, or Electronic Vaping Vendors subject to the following conditions:

a. The subject location shall not be located closer than 1,000 feet from another Tobacco, Cigarette, or Electronic Vaping Vendor as defined in Sec. 114-1(b). Said distances are measured from lot line to lot line.

b. The subject location shall not be located closer than 1,000 feet from any active place of worship, licensed day care center, school, community center, or other facility predominantly attended by individuals under the age set forth in Wis. Stat. § 134.66(2). Said distances are measured from lot line to lot line.

Part 4: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: No change.

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.

RECOMMENDED ACTION: To approve.

FISCAL NOTE & BUDGETARY IMPACT: N/A