Agenda

Huntington Planning Commission

Monday, December 7, 2026 – 5:30pm

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1. Preliminaries

2. Call to Order

3. Roll Call

4. Approval of the November 2, 2026 Minutes

5. New Business

PC 26-14

Issue: Plan review a proposed development of a parcel of ±7.15 acres located on 24th St. and Oley St. The property is zoned I-1 Light Industrial Commercial District.

Property Location: NW corner of 24th St. at Oley St.

Petitioner/Property Owner: West Virginia American Water, 1600 Pennsylvania Ave., Charleston, WV 25302

PC 26-15

Issue: A petition to make the following changes to the City of Huntington Zoning Ordinance as they relate to smoke shop/tobacco store/vape shop:

1. Amend Article 1315 Definitions and Measurements
2. Amend Article 1341.55 Smoke Shop/Tobacco Store standards.

Petitioner: City of Huntington, 800 5th Ave, Huntington, WV 25717

PC 26-16

Issue: A petition to make the following changes to the City of Huntington Zoning Ordinance as they relate to signs:

1. Amend Article 1315 Definitions and Measurements
2. Amend Article 1345 Sign Regulations and Site Lighting standards.

Petitioner: City of Huntington, 800 5th Ave, Huntington, WV 25717

6. Good and Welfare

7. Other Business or Announcements

8. Adjournment

Minutes
Huntington Planning Commission
November 2, 2026

A meeting of the City of Huntington Planning Commission was held on November 3, 2026 at 5:30 p.m. in the City Council Chambers, 800 5th Avenue, Huntington, WV 25701.

Members Present: Holly Mount, Ford Rucker, CW Dolin, Sharon Pell, Jean Simmons, Robert Sellards, and Matthew White

Members Absent: Charles Shaw, Ursulette Ward

Staff Present: Steven Curry, Planner II
Zane Parsley, Planning Director
Ericka Hernandez, Assistant City Attorney

Ms. Ward motioned to approve the September 8, 2026 minutes. *Mr. Rucker* seconded the motion. All were in favor, Minutes were approved.

New Business

PC 26-12
Issue: A site plan review for an industrial building, which is approximately 3.82 acres. The parcel is zoned I-1 Commercial/Light Industrial.

Mr. Curry read the staff report.

Thomas Good of 1104 1st Street, Huntington, WV 25701, spoke on behalf of Shean Properties, LLC. He discussed plans for the site and added that they have maintained the existing alley since acquiring ownership of the property.

Ms. Mount asked for those in favor of the petition to speak. No one spoke.

Ms. Mount asked for those in opposition of the petition to speak. No one spoke.

Ms. Mount closed public comment and opened discussion for the Commission.

Ms. Simmons motioned to approve the site plan. *Mr. Rucker* seconded the motion. All were in favor, PC 26-12 forwarded to City Council with a favorable recommendation.

PC 26-13
Issue: Plan review a proposed development of eight consolidated parcels of ±1.2 acres located along 20th Street between 6th Avenue and 5 ½ Alley. The property is zoned C-2 Highway Commercial District.

Mr. Curry read the staff report.

Casey Arthur of 1 Iverness Way, Huntington, WV 25705 spoke on behalf of Stadium Properties, LLC engineers and architects. He was open to field any questions from the board and the public.

Ms. Mount asked for those in favor of the petition to speak. No one spoke.

Ms. Mount asked for those in opposition of the petition to speak. No one spoke.

Ms. Mount closed public comment and opened discussion for the Commission.

Mr. Rucker motioned to approve the site plan and waive the setback on 20th Street. *Mr. White* seconded the motion. All were in favor, PC 26-13 was approved with a waiver for the 20th Street setback.

Meeting adjourned at 5:43 pm.

Date approved: _____

Chairperson: _____ Prepared by: _____

Holly Mount, Chair Steve Curry, Planner II

City of Huntington Planning Commission **December 7, 2026**
Staff Report: Public Hearing for Preliminary Site Plan Review.

PC 26-14
Issue: Plan review a proposed development of a parcel of ±7.15 acres located at the north end of 24th Street adjacent to West Virginia American Water's existing facility.

Property Location: Parcel ID 5-10-13.2., Huntington, WV 25703

Petitioner/Property Owner: West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, WV 25302

Planning Commission Role
PC 26-14 is the public hearing for a preliminary site plan review. The site is over one (1) acre, therefore the plan must be approved through a public hearing before the Planning Commission. The Planning Commission's responsibility includes:

1. Receiving recommendations from staff and responding agencies and utilities.
2. Reviewing the design of future developments early in its design.
3. Ensuring that the requirements of the development design standards in the development ordinance are met.
4. Conformity with the Comprehensive Plan.
5. Reviewing waiver requests, when applicable.

Planning Commission Duties
Upon presentation of the preliminary plan at the public hearing, the Planning Commission will review recommendations from staff, other agencies, and experts, if used, and then approve, conditionally approve, disapprove, or require that the developer provide more information about the preliminary plans.

The Planning Commission provides the final decision and the item will ***not*** go before City Council. If approved, the developer will be authorized to apply for a building permit.

Public Notification
- Property owners and tenants within a 400 ft. radius of this property were notified of the proposed development and hearing via letter.
- A legal ad was posted in the Herald Dispatch.

Existing Conditions/Background
The parcel was part of the larger ACF property previously owned by the Huntington Municipal Development Authority. West Virginia American Water acquired the property in 2024 to expand their existing operations on the other side of 24th Street. The property has been vacant for over a year.

Proposed Conditions
The petitioner is proposing to build an expansion of the existing water treatment plant that includes a ~2,000 square foot office building, a chemical and disinfection building, GAC filter building, a new filter building, process pump building, stormwater

ponds, a future GAC filter building, and two clearwells.

Development Ordinance
The Development Ordinance designates any commercial development of one (1) acre or more as a major development, triggering special requirements and review.

The Planning Commission may only consider evidence presented for the record which is relevant to authorized grounds for approval.

If applicant meets all requirements, the Commission is required to approve the plat.

Comprehensive Plan2035
Plan2035 designates this area as Light Industrial and Commercial. The purpose of this designation is to provide a lower intensity industrial area that allows creative reuse of industrial sites that can complement certain residential areas. This type of area is intended to include:

- Medium-sized lots near railroad tracks or the riverfront
- Industrial properties that are close to residential uses
- Allows mixed light industrial, commercial, and residential uses
- Transition large industry to smaller industrial uses if viable

Department/Agency Comments

- AEP – No Comment
- Huntington Sanitary Board (HSB) – No Comment
- Huntington Stormwater Utility – Still reviewing plans and do not anticipate any issues.
- City of Huntington Public Works - No Comment
- Mountaineer Gas Company – No issues.

Pictures


View of the proposed site from 24th Street looking southwest.


View of the proposed site from 24th Street looking northwest.

Staff Comments
This area is zoned as I-1 Light Industrial and Commercial District. West Virginia American Water's proposed expansion of the existing water treatment facility is permitted by right. As this property is set closer to proposed additional development of the American Car Foundry (ACF) site, the transition from the I-2 Heavy Industrial District of the current facility to the use and

I-1 Light Industrial and Commercial District is a complement to the development taking shape in this area.

Staff Recommendation

Staff recommends that this project be approved as submitted.

Attachments

- Application
- Site Plan
- Aerial Map
- Zoning Map
- Future Land Use Map

Major Subdivision Application

Huntington Planning Commission

800 5th Avenue
Huntington, WV 25717-1659

This application should be used for a division of a tract/parcel of land that involves the following:

- Commercial, industrial, governmental, religious, non-profit or public, and multi-family residential developments of one (1) acre or more.
- Single-family residential developments of 4 or more lots. Single-family residential developments of 1-3 lots that fall under Article 1389 Hillside Regulations.
- Any development requiring any streets or extension of the local governmental facilities, or the creation of any public improvement.

Please complete and return this application along with a Plat/Survey of the subdivision, a Metes & Bounds Description prepared by a Certified Surveyor, two (2) copies of the Preliminary Plans and a $150 processing fee to the Planning and Zoning Office located in Room 2 of City Hall.

The Planning Commission, Public Works Director, and Cabell County Health Department will review the application. If you have any questions, please contact the Planning Department at 304-696-5540 opt. 3 or by email at

PART ONE: PROPERTY INFORMATION

Street Address of Subject Property (s): 24 Street

District: 5 Tax Map: 10 Parcel(s): 13.2

Zoning Classification: Industrial

PART TWO: APPLICANT/OWNER INFORMATION

Name: West Virginia American Water

Street Address: 1600 Pennsylvania Avenue

City: Charleston State: WV Zip Code: 25302

Telephone: 304-546-4795 Email: Amanda.Sutphin@amwater.com

All plats/surveys are to be completed by a Registered Surveyor and shall meet the West Virginia Board of Professional Surveyors Minimum Standards for Boundary Surveys, which include, but are not limited to:

- Map Number and Parcels
- Lot Numbers
- Lot Dimensions
- Parent Tract Identification
- Name of Subdivision
- District or Municipality, County, and State
- Check of Error of Closure and Area
- Monumentation
- Scale, North Arrow, Basis of Bearings
- Adjoining Owners — Deed Reference
- Adjoining Subdivision(s) — Plat Reference
- Name and Width of Adjoining Right-of-Ways
- Owner Name
- Name and Stamp/Seal of Registered Surveyor
- Date of Survey

By signing below, the applicant agrees that they have read and completed the Major Subdivision Application, and to the best of their knowledge the information reflected here and in the Survey and Metes & Bounds Description is correct.

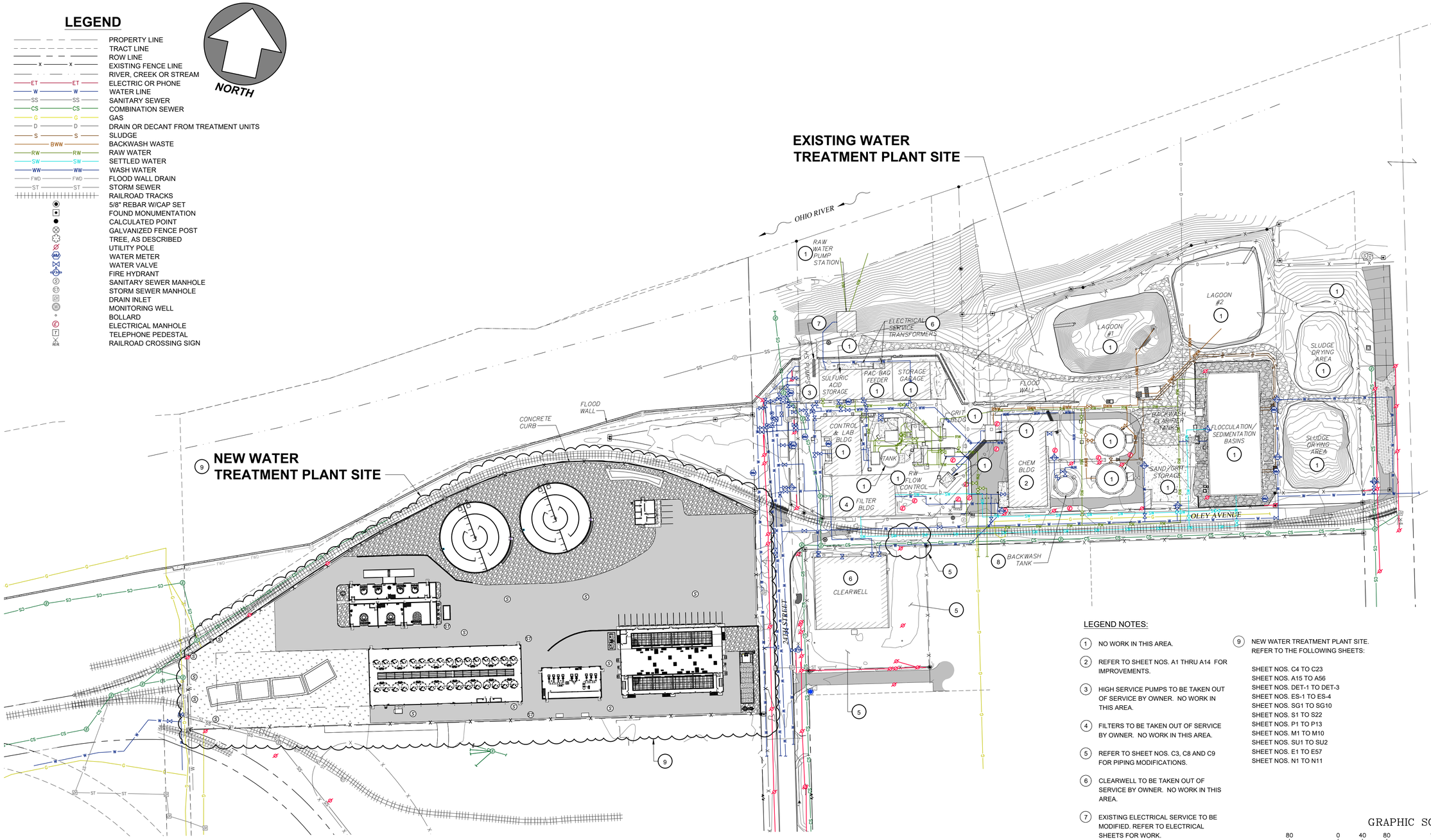
Amanda Sutphin 10/20/2026

Applicant's Signature Date

LEGEND

- PROPERTY LINE
- TRACT LINE
- ROW LINE
- EXISTING FENCE LINE
- RIVER, CREEK OR STREAM
- ELECTRIC OR PHONE
- WATER LINE
- SANITARY SEWER
- COMBINATION SEWER
- GAS
- DRAIN OR DECANT FROM TREATMENT UNITS
- SLUDGE
- BACKWASH WASTE
- RAW WATER
- SETTLED WATER
- WASH WATER
- FLOOD WALL DRAIN
- STORM SEWER
- RAILROAD TRACKS
- 5/8" REBAR W/CAP SET
- FOUND MONUMENTATION
- CALCULATED POINT
- GALVANIZED FENCE POST
- TREE, AS DESCRIBED
- UTILITY POLE
- WATER METER
- WATER VALVE
- FIRE HYDRANT
- SANITARY SEWER MANHOLE
- STORM SEWER MANHOLE
- DRAIN INLET
- MONITORING WELL
- BOLLARD
- ELECTRICAL MANHOLE
- TELEPHONE PEDESTAL
- RAILROAD CROSSING SIGN

NORTH



LEGEND NOTES:

1. NO WORK IN THIS AREA.
2. REFER TO SHEET NOS. A1 THRU A14 FOR IMPROVEMENTS.
3. HIGH SERVICE PUMPS TO BE TAKEN OUT OF SERVICE BY OWNER. NO WORK IN THIS AREA.
4. FILTERS TO BE TAKEN OUT OF SERVICE BY OWNER. NO WORK IN THIS AREA.
5. REFER TO SHEET NOS. C3, C8 AND C9 FOR PIPING MODIFICATIONS.
6. CLEARWELL TO BE TAKEN OUT OF SERVICE BY OWNER. NO WORK IN THIS AREA.
7. EXISTING ELECTRICAL SERVICE TO BE MODIFIED. REFER TO ELECTRICAL SHEETS FOR WORK.
8. WASH WATER TANK TO BE REMOVED (REFER TO SHEET NO. C2).
9. NEW WATER TREATMENT PLANT SITE. REFER TO THE FOLLOWING SHEETS:

   SHEET NOS. C4 TO C23
   SHEET NOS. A15 TO A56
   SHEET NOS. DET-1 TO DET-3
   SHEET NOS. ES-1 TO ES-4
   SHEET NOS. SG1 TO SG10
   SHEET NOS. S1 TO S22
   SHEET NOS. P1 TO P13
   SHEET NOS. M1 TO M10
   SHEET NOS. SU1 TO SU2
   SHEET NOS. E1 TO E57
   SHEET NOS. N1 TO N11

GRAPHIC SCALE

80 0 40 80 160 320

(IN FEET)
1 inch = 80 ft.

100 YR. FLOOD ELEVATION - 552.90'
500 YR. FLOOD ELEVATION - 559.00'
TOP OF FLOOD WALL ELEVATION - 563.20'

NO.	DATE	REVISIONS

GHOSH ENGINEERS
O: 304.343.5300 | F: 304.343.5912
1 DUNBAR PLAZA, SUITE 200 | DUNBAR, WV 25064

WEST VIRGINIA AMERICAN WATER COMPANY
HUNTINGTON WTP IMPROVEMENTS
CABELL COUNTY, WEST VIRGINIA

OVERALL TREATMENT PLANT SITE INDEX

JEFFREY D. EKSTROM — REGISTERED — No. 13101 — STATE OF WEST VIRGINIA — PROFESSIONAL ENGINEER

SCALE: 1" = 80'
DATE: MAY 2026
DRAWN BY: KJW
DESIGNED BY: JDE
CHECKED BY: JDE

SHEET NO.
C1

P:\WVAW\WVAW - HUNTINGTON WTP\CAD\WVAW - HUNTINGTON WTP - C01 - OVERALL SITE INDEX.dwg, SHEET C1, 10/5/2026 3:47:43 PM, DWG To PDF.pc3, ANSI full bleed D (34.00 x 22.00 Inches), Kate

NORTH

100 YR. FLOOD ELEVATION - 552.90'
500 YR. FLOOD ELEVATION - 559.00'
TOP OF FLOOD WALL ELEVATION - 563.20'

STORMWATER POND
N: 524200.5785
E: 1562210.2121

CENTER OF TANK
N: 524054.0544
E: 1561970.4533

CENTER OF TANK
N: 524107.9424
E: 1562094.8378

CLEARWELL NO. 1

CLEARWELL NO. 2

TREATMENT PLANT OFFICE BUILDING

CHEMICAL AND DISINFECTION BUILDING

FUTURE GAC FILTER BUILDING

STORMWATER PONDS

GAC FILTER BUILDING

PROCESS PUMP BUILDING

NEW FILTER BUILDING

N: 523941.7642
E: 1561778.8630

N: 523892.5383
E: 1561663.7260

N: 523812.5233
E: 1561680.1150

N: 523843.0870
E: 1561829.2831

N: 523902.0907
E: 1561933.9822

N: 523893.4645
E: 1562075.1755

N: 523862.1040
E: 1562114.7797

N: 523946.1936
E: 1562230.7875

N: 523944.9885
E: 1562430.9349

N: 524166.2398
E: 1562250.4222

N: 524168.0541
E: 1562259.2778

N: 524151.6053
E: 1562305.0626

N: 524120.3257
E: 1562225.8660

N: 524172.3771
E: 1562414.3054

N: 523784.8681
E: 1561757.3082

N: 523727.3731
E: 1561606.9402

N: 523743.5120
E: 1561656.7917

N: 523758.7223
E: 1561709.2175

N: 523750.9997
E: 1561848.1496

N: 523801.3773
E: 1562094.0420

N: 523830.8314
E: 1562221.2223

N: 523874.6054
E: 1562417.1396

N: 523853.4848
E: 1562456.3629

N: 523865.0251
E: 1562469.9447

TOP: 554.6'

TOP: 554.5'
INV: 552.1'

CONTROL POINT NO. 2

DI
TOP: 554.8'
INV: 550.3'

DI
TOP: 554.8'
INV: 553.1'

299.70'
251.00'
163.22'
167.81'
60.17'

LEGEND NOTES:

1. RETAINING WALL (REFER TO SHEET NOS. C6-1 AND C6-2).
2. 5'-0" WIDE X 4" THICK CONCRETE SIDEWALK.
3. ASPHALT PAVEMENT.
4. GRAVEL PAVEMENT.
5. 4" WIDE X 6" HIGH CONCRETE CURB.
6. PLASTIC GRAY PARKING STOP (72"L X 6"W X 3"H ULINE MODEL NO. H-2309GR) TOTAL OF 17.
7. AIR SCOUR BLOWERS (REFER TO SHEET NOS. A29 & A30).
8. STORM WATER PUMP STATION (REFER TO SHEET NO. DET-3).
9. 5'-0" X 5'-0" X 4" THICK CONCRETE PAD.
10. REMOVE EXISTING CONCRETE WALL/PILASTERS.
11. CHEMICAL INJECTION VAULT (REFER TO SHEET NO. DET-3).
12. WHITE PAVEMENT MARKINGS @ 10'-0" SPACING X 20'-0" LONG (TYP. OF 22).
13. CHEMICAL CONTAINMENT SYSTEM (REFER TO SHEET NO. C23).
14. 8'-0" X 5'-0" X 4" THICK CONCRETE PAD.
15. EXISTING RETAINING WALL TO REMAIN AND BE RESTORED WITH CONCRETE PARGE SYSTEM (REFER TO SHEET NO. S18).
16. 3'-0" W X 6'-0" L X 6" THK. CONCRETE SPLASH PAD WITH 6X6 WL4XWL4 W.W.F. OVER 4" COMPACTED AGGREGATE BASE.

PAVEMENT LEGEND

- GRAVEL PAVEMENT
- ASPHALT PAVEMENT
- CONCRETE SIDEWALK
- CONCRETE CURB
- GRASS

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)
1 inch = 40 ft.

NO.	DATE	REVISIONS

GHOSH ENGINEERS
o: 304.343.5300 | f: 304.343.5912
1 DUNBAR PLAZA, SUITE 200 | DUNBAR, WV 25064

WEST VIRGINIA AMERICAN WATER COMPANY

HUNTINGTON WTP IMPROVEMENTS
CABELL COUNTY, WEST VIRGINIA

NEW TREATMENT PLANT SITE
LAYOUT PLAN

JEFFERY D. FERROW
REGISTERED
No. 13101
STATE OF
WEST VIRGINIA
PROFESSIONAL ENGINEER

SCALE: 1" = 40'
DATE: MAY 2026
DRAWN BY: KJW
DESIGNED BY: JDE
CHECKED BY: JDE

SHEET NO.
C4

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100 YR. FLOOD ELEVATION - 552.90'
500 YR. FLOOD ELEVATION - 559.00'
TOP OF FLOOD WALL ELEVATION - 563.20'

NORTH

STORMWATER POND

CLEARWELL NO. 1
- F.F.E. 556.50'

CLEARWELL NO. 2
- F.F.E. 556.50'

TP OFFICE BUILDING -
F.F.E. 556.25'

CHEMICAL AND
DISINFECTION BUILDING
- F.F.E. 548.25'

GAC FILTER BUILDING - F.F.E. 548.25'

PROCESS PUMP
BUILDING -
F.F.E. 548.25'

NEW FILTER
BUILDING -
F.F.E. 556.00'

FUTURE GAC
FILTER BUILDING

STORMWATER
PONDS

TOP: 554.6'

TOP: 554.5'
INV: 552.1'

CONTROL
POINT
NO. 2

DI
TOP: 554.8'
INV: 550.3'

DI
TOP: 554.8'
INV: 553.1'

CONTROL
POINT
NO. 1

STRUCTURE LEGEND NOTES:

A RETAINING WALL.

B TRANSFORMER PAD.

C BACKWASH WATER WASTE PUMP STATION.

D CHEMICAL INJECTION VAULT (REFER TO SHEET NO. DET-3).

E STORM WATER PUMP STATION.

F EXISTING RETAINING WALL TO REMAIN AND BE RESTORED WITH CONCRETE PARGE SYSTEM (REFER TO SHEET NO. S18).

G CHEMICAL CONTAINMENT SYSTEM (REFER TO SHEET NO. C23).

GRAPHIC SCALE

40 0 20 40 80 160

(IN FEET)
1 inch = 40 ft.

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o: 304.343.5300 | f: 304.343.5912
1 DUNBAR PLAZA, SUITE 200 | DUNBAR, WV 25064

WEST VIRGINIA AMERICAN WATER COMPANY
HUNTINGTON WTP IMPROVEMENTS
CABELL COUNTY, WEST VIRGINIA

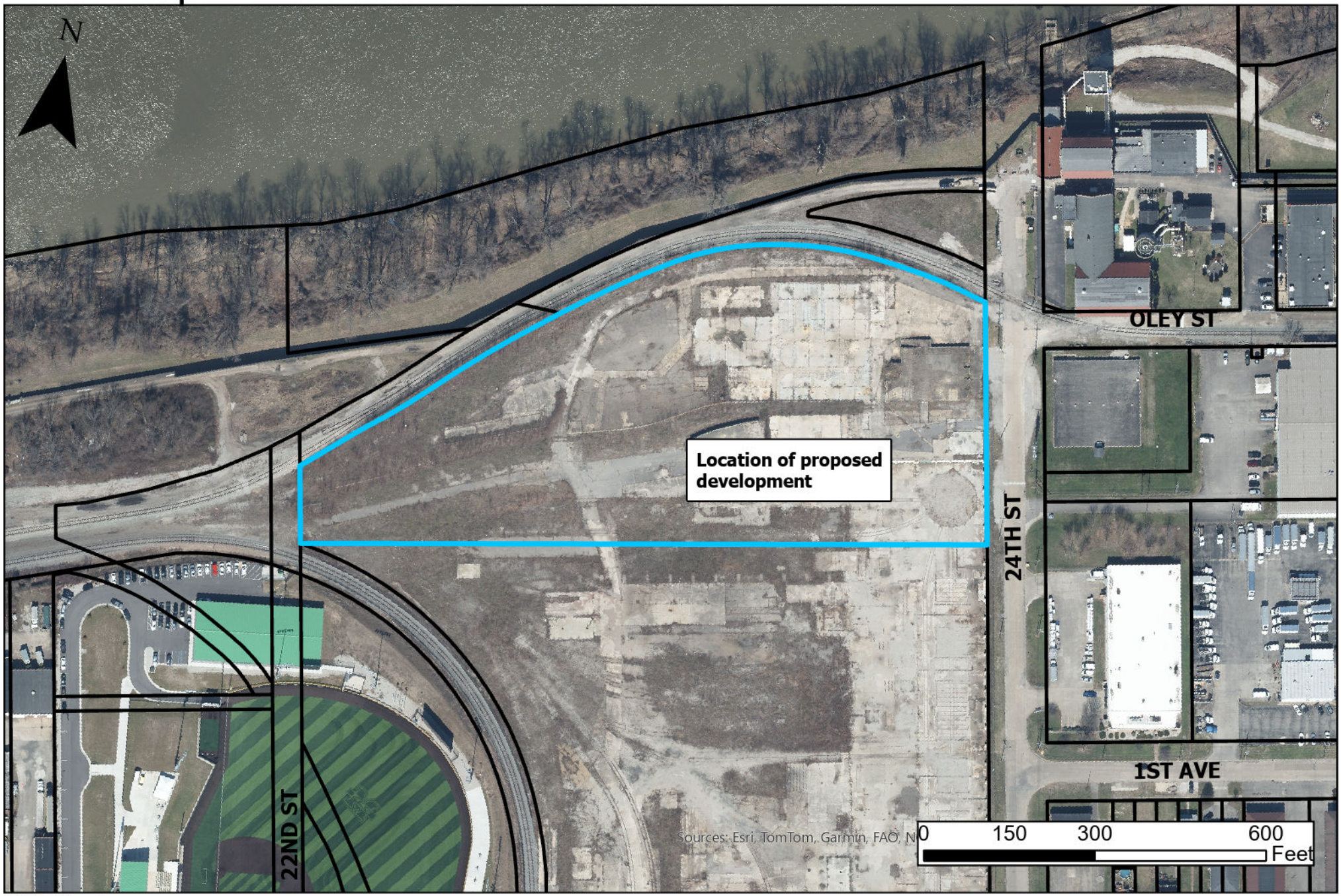
NEW TREATMENT PLANT SITE
GRADING PLAN

JEFFERY D. EASTERLING
REGISTERED
No. 13101
STATE OF
WEST VIRGINIA
PROFESSIONAL ENGINEER

SCALE:	1" = 40'
DATE:	MAY 2026
DRAWN BY:	KJW
DESIGNED BY:	JDE
CHECKED BY:	JDE

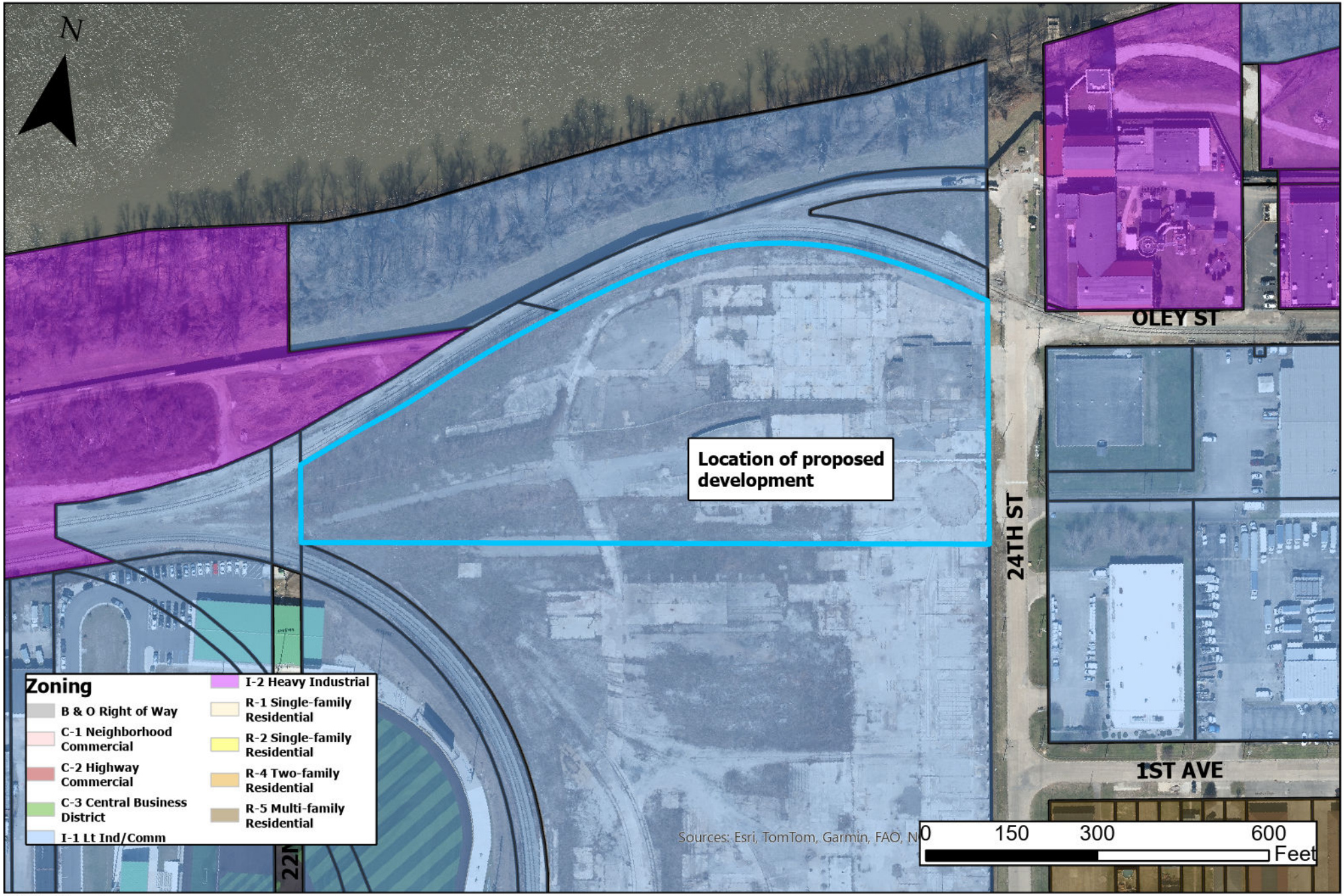
SHEET NO.
C5

Aerial Map



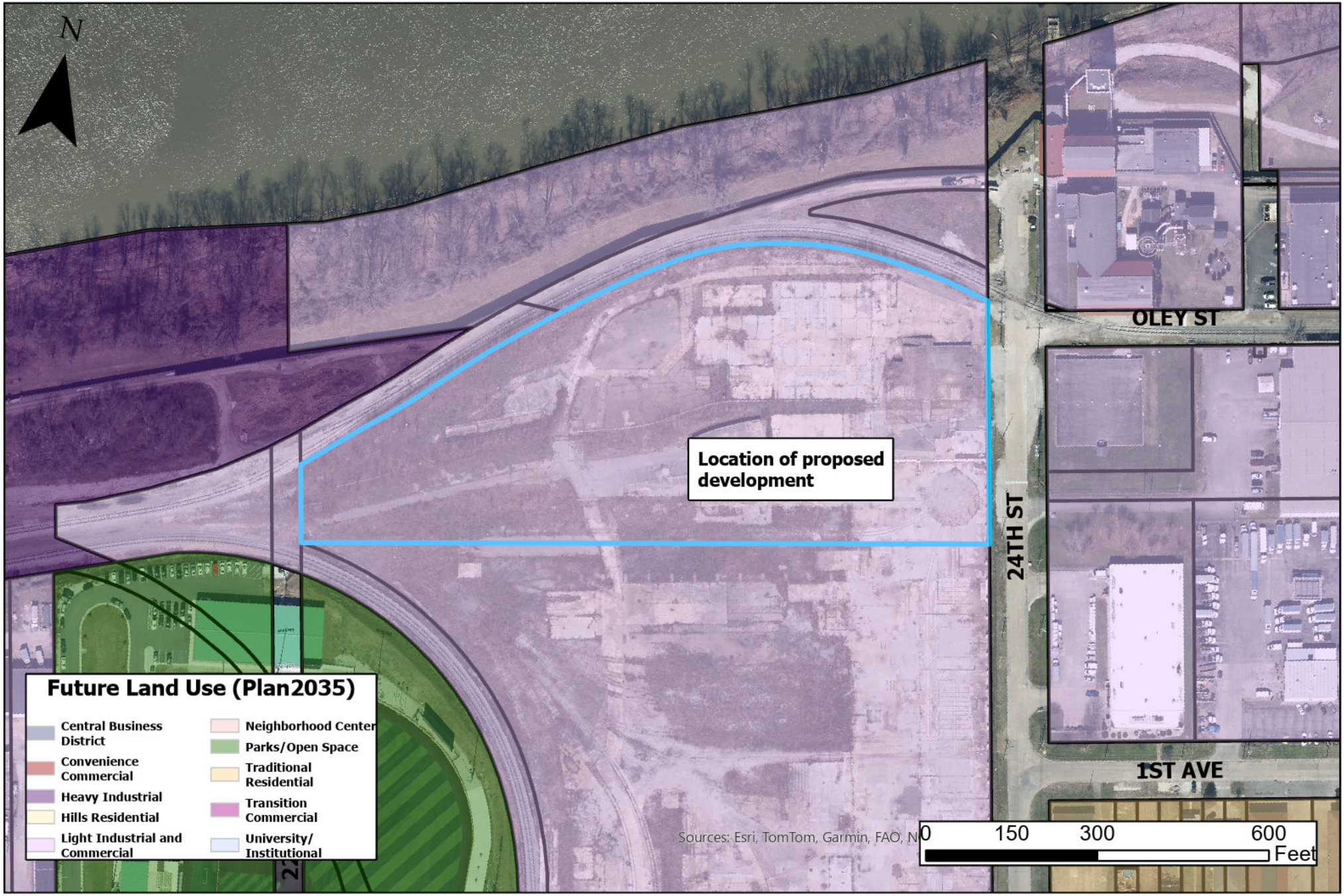
24th Street
Cabell County Tax District 5 Map 10 Parcel 13.2
PC 26-14
Plan review of a proposed development of a parcel of ±7.15 acres located at the northern end of 24th Street.

Zoning Map



24th Street
Cabell County Tax District 5 Map 10 Parcel 13.2
PC 26-14
Plan review of a proposed development of a parcel of ±7.15 acres located at the northern end of 24th Street.

Future Land Use Map



24th Street
Cabell County Tax District 5 Map 10 Parcel 13.2
PC 26-14
Plan review of a proposed development of a parcel of ±7.15 acres located at the northern end of 24th Street.

City of Huntington Planning Commission **December 7, 2026**

Staff Report: A petition to amend Articles 1315 and 1341.55 of the Zoning Ordinance.

PC 26-15

Issue: A petition to make the following changes to the City of Huntington Zoning Ordinance as they relate to smoke shop/tobacco store/vape shop:

1. Amend Article 1315 Definitions and Measurements
2. Amend Article 1341.55 Smoke Shop/Tobacco Store standard

Petitioner: City of Huntington, 800 5th Avenue, Huntington, WV 25701

Introduction

This is a petition to update the City of Huntington's zoning ordinance to amend the regulations specific to smoke shop/tobacco store to align with current State code.

The regulations regarding smoke shop/tobacco store/vape shop are being amended in response to WV House bill 5437, the Vape Safety Act, which went into effect on June 11, 2026.

Existing Code

Under the existing code, the regulations refer specifically to smoke shop/tobacco store. By definition, businesses that do less than 25% of retail sales of tobacco products are not considered a smoke shop/tobacco store.

Proposed Code Changes

1315.02 MEANING OF WORDS.

The introduction of the Vape Safety Act in WV State Code created new definitions, such as alternative nicotine product and vapor product, amended current definitions and removed others, such as tobacco paraphernalia and e-cigarette liquid. These changes have been incorporated into the City of Huntington zoning code definitions to align with the requirements of State code.

Previously under the smoke shop definition, City zoning code said retailers doing less than 25% of retail sales in tobacco products "shall not be defined as a smoke shop and tobacco store". The Vape Safety Act has brought a change where the definition of smoke shop/tobacco store/vape shop is based on a percentage of floor space used for nicotine products. The regulations under the Act are still working its way through the rule making process, but based on available drafts, is expected to be complex. The current recommendation is to remove the 25% of retail sales

from City zoning code but not include the 33% of floor space as adherence to State code is required and the addition would be redundant.

ARTICLE 1341 GENERAL REGULATIONS

1341.55 SMOKE SHOP/TOBACCO STORE/VAPE STORE.

The changes to this section of City zoning code are more administrative with the addition of "vape store" to the name and qualifying by date the non-conforming status of existing retailers.

Comprehensive Plan

Within the Action Plan of Plan2035, there are objectives to "diversify Huntington's economic base" and "create a diverse retail and business environment". The amendment of these specific regulations will assist the City in continuing to seek employers that offer a diverse range of wage and skill levels as well as identify and market properties toward retailers with specific layout needs.

Staff Comments

Staff recommends the amendments to the Zoning Code to comply with State code.

Attachments

- House bill 5437
- Draft Ordinance 2026-O-79

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5437

BY DELEGATES MCCORMICK, MAYNOR, KYLE, AKERS,

CLARK, FEHRENBACHER, HECKERT, DRENNAN, WORRELL,

AND PINSON

[Passed March 13, 2026; in effect 90 days from

passage (June 11, 2026)]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §16-9H-1, §16-9H-2, §16-9H-3, §16-9H-4, §16-9H-5, §16-9H-6, §16-9H-7, §16-9H-8, §16-9H-9, §16-9H-10, §16-9H-11, §16-9H-12, §16-9H-13, §16-9H-14, §16-9H-15, §16-9H-16, §16-9H-17, and §16-9H-18, relating to regulating vape or smoke shops; defining terms; requiring license; addressing penalties; addressing jurisdiction; setting forth license requirements; establishing fee; setting forth enforcement; prohibiting use of vape or smoke shop as a residence; setting forth violations; prohibiting the sale of certain vapor products; establishing advertising standards; regulating locations; setting forth violations; setting forth enforcement; addressing service of process; requiring reporting; requiring rulemaking regarding labeling; establishing criminal penalties; establishing administrative sanctions; setting forth appeals process; addressing applicability in reference to cigar stores; and permitting general rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9H. VAPE SAFETY ACT.

§16-9H-1. Short title.

This article shall be known as the Vape and Smoke Retailer Location and Operating Requirements Act.

§16-9H-2. Definitions.

"Abandonment" and "abandoned" mean that the use with respect to a premises, regardless of intent of the user, has ceased or has discontinued for a period of at least 30 days, or an explicit declaration by the user of a premises that it has ceased a use with respect to the premises that is non-conforming to this article.

"Adult " means a person who is the age of 21 years or older.

"Alternative nicotine product" means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

"Commissioner" means the Alcohol Beverage Control Commissioner or a duly authorized agent thereof.

"Electronic cigarette" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term "electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

"Improvement" means any building or structure, excluding fence, whether existing on the effective date located on a premises or, if there is a vested right to erect such structure or building, to be located within or upon a premises.

"Manager" means the individual person whom an applicant for a license has designated to attest to the information in the license application, who meets all the requirements of this article, and who is responsible for violations of this article.

"Person" means any individual, corporation, limited liability company, general partnership, limited partnership, joint venture, limited liability partnership, trust, estate, or any other legal entity that is duly organized or existing and authorized to transact business in the State of West Virginia.

"Premises" means a tract or tracts of land, whether containing existing or proposed improvements, within the territorial limits that are identified as a parcel or parcels on a tax district map or maps on file with the office of the county health department.

"Residence" means a detached or undetached dwelling for one or more persons and in which there is not a predominating commercial or non-housing use, and shall not mean a motel, hotel, inn, or other lodging facility for transient persons.

"Tobacco-derived product" means any product containing, made or derived from tobacco, or containing nicotine derived from tobacco, that is intended for human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed, or ingested by any other means, including but not limited to, cigarettes, pipe tobacco, snuff, snus, chewing

tobacco, or other common tobacco-containing products. A "tobacco-derived product" includes electronic cigarettes or similar devices, alternative nicotine products, and vapor products.

"Vape or smoke retailer" means a retail establishment that sells tobacco products and accessories, as well as tobacco-derived and alternative nicotine products or vapor products and accessories. These retailers may cater to individuals who use electronic cigarettes (e-cigarettes) or other vaping products and/or devices. These retailers may sometimes allow vaping on site.

"Vape or smoke shop" means a vape or smoke retailer that devotes at least 33 percent of its floor space to selling tobacco products and accessories, as well as tobacco-derived and alternative nicotine products or vapor products and accessories. These shops may cater to individuals who use electronic cigarettes (e-cigarettes) or other vaping products and/or devices. These shops may sometimes allow vaping on site.

"Vapor product" means any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution or other form. A "vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electric pipe, or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

"Violation" means the failure to be fully compliant with all requirements of this article.

§16-9H-3. License required; compliance with laws; penalties.

(a) A person, firm, or corporation shall not operate as a vape or smoke shop in or on any premises in the state without first obtaining a license issued by the commissioner pursuant to this article.

(b) Any person who, by himself or herself or through another, directly or indirectly, violates §16-9H-3(a) of this code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 and confined in jail for not more than one year.

§16-9H-4. Jurisdiction.

By obtaining a vape or smoke shop license, the licensee is deemed to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia, and the Kanawha County Circuit Court, concerning enforcement of this article and any other related laws or rules.

§16-9H-5. License application; information required; application to be accompanied by fees; bond.

(a) No vape or smoke shop license or license renewal may be granted unless the commissioner has determined that the applicant satisfies all of the following qualifications:

(1) The applicant is a United States citizen and a person of good character, honesty, and integrity;

(2) The applicant is a person whose background, criminal record, if any, reputation, habits, and associations, do not threaten to:

(A) Compromise the public interest of the citizens of the state; or

(B) Weaken the effective regulation and control of tobacco derived products or vapor products;

(3) The applicant has not been convicted of perjury, false swearing, or any crime punishable by imprisonment in excess of one year under the applicable law of this state or in any other state or foreign country;

(4) The applicant has disclosed to the commissioner the identity of each person who has control of the applicant and those persons satisfy all qualifications required by this section and any applicable qualifications required by the commissioner. For purposes of this subdivision, a "person who has control of the applicant" means:

(A) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary

course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation;

(B) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commissioner determines to have the ability to control the applicant; and

(C) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation;

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in §16-9H-5(e) of this code;

(6) A listed manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure; and

(7) The applicant has furnished all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials requested by the commissioner for purposes of determining qualifications for a license.

(b) Except as otherwise set forth in this article, the commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(c) Except as otherwise set forth in this article, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(d) An individual with a criminal record who has not previously applied for licensure may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The commissioner shall provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

(e) The commissioner may not request a background check of an applicant under this section unless the applicant first provides a set of fingerprints and completes and signs a statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document of the applicant;

(2) Declares that the applicant has not been convicted of a crime or, if the applicant has been convicted of a crime, contains a description of the crime and the particulars of the conviction. For the purposes of this section, an applicant has not been convicted of a crime if he or she was

convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in connection with a motor vehicle collision;

(3) Notifies the applicant that the commissioner will request a background check; and

(4) Notifies the applicant of the applicant's rights under §16-9H-5(i) of this code.

(f) The State Police shall establish and maintain an adequate system for background investigations that:

(1) Ensures that timely background investigations are conducted on applicants for a license to operate a vape or smoke shop, current licensees, and other persons required to be investigated by the commissioner in accordance with the provisions of this article or by legislative rules promulgated pursuant to this article;

(2) Provides for review and oversight of applicants, current licensees, and other persons on an ongoing basis;

(3) Provides that upon receipt of a background check report lacking disposition data, further research will be conducted in whatever state and local record-keeping systems are available in order to obtain complete data;

(4) Provides for prompt notification to the commissioner of the results of background investigations before the issuance or renewal of any license; and

(5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or reputation, habits, and associations are such as to pose a threat to the public interest or to the effective regulation of vape or smoke shops, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of vape or smoke shop operations, thereby rendering that person ineligible for licensing.

(g) The license required by this section may not be transferred from one person to another or from one premises to another. A new license is required when a vape or smoke shop has a change in ownership.

(h) The license required by this section shall be in addition to, and not in lieu of, any other requirements set forth in federal, state, or local laws.

(i) Each applicant who is the subject of a background check is entitled to a copy of his or her background investigation report, and has the right to challenge the accuracy and completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination is made by the commissioner that would deny issuance of a license or renewal of a license.

(j) The commissioner may propose rules for legislative approval in accordance with the provision of §29A-3-1 *et seq.* of this code as may be necessary to carry out the purposes of this article.

§16-9H-6. Annual license fee.

(a) The annual license fee for a license issued under the provisions of this article to operate a vape or smoke shop is $1,200.

(b) The fee for any license issued following January 1 of any year that expires on June 30 of that year is one half of the annual license fee prescribed by §16-9H-6(a) of this code.

(c) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional $150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in this article, all as determined by the commissioner.

(d) Funds derived from the fees shall be remitted by the commissioner to the State Treasurer and divided as follows:

(1) Fifty percent shall be credited to the Agricultural Fees Fund established by the provisions of §19-1-4c of this code; and

(2) Fifty percent shall be credited to the Alcohol Beverage Control Enforcement Fund established by the provisions of §60-7-13 of this code.

§16-9H-7. Administration and enforcement.

It shall be the duty of the commissioner to administer and enforce the provisions of the article, except as otherwise provided in this article.

(1) The commissioner shall perform the following duties:

(A) Receive and process all license applications;

(B) Endeavor to grant or deny the issuance of a vape or smoke shop license within 10 working days of receipt of a complete license application;

(C) Conduct investigations as necessary to determine compliance or conformance with or violation of this article;

(D) Abate any violation of this article;

(E) Seek the assistance of the office of the State Police, sheriff of the county, or the office of the prosecuting attorney of the county to abate or prosecute any violation of this article;

(F) Assist law enforcement officers to abate or prosecute any violation of this article;

(G) Provide information about this article upon the request of citizens and public agencies;

(H) Pursue enforcement of this article as it and other law provides; and

(I) Administer this article in all respects.

(2) No commission, board, agency, officer, or employee of the county shall issue, grant, or approve any permit, license, certificate, or any other authorization for any construction, reconstruction, alteration, enlargement, or relocation of any vape or smoke shop building or structure, or for any use of land or building, that does not comply with the provisions of this article.

(3) In administering this article, the standard rule of rounding numbers to the nearest whole shall apply. When the unit of measurement results in a fraction less than one-half or less than .5, the fraction shall be disregarded. When the unit of measurement results in a fraction of one-half or more, or .5 or over, the number shall be rounded up to the next nearest whole number.

§16-9H-8. Prohibition on use of vape or smoke shop as residence.

(a) No person may use, occupy, or permit the use or occupancy of any vape or smoke shop authorized for the retail sale of tobacco-derived products or vapor products as a residence, dwelling place, or location for human habitation.

(b) Notwithstanding any provision of this code to the contrary, a violation of §16-9H-8(a) of this code shall constitute grounds for the immediate suspension of operations at the premises by the Alcohol Beverage Commissioner or a duly authorized agent thereof until the violation is remedied.

§16-9H-9. Violations.

(a) The regulated aspects of a vape or smoke retailer, manufacturer, or wholesaler subject to this article shall be subject to periodic inspections by the commissioner for the purpose of verifying compliance with the terms and conditions of this article.

(b) Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint with the county magistrate court. The complaint must state fully and clearly the causes and basis thereof. The commissioner shall properly record such complaints, conduct appropriate investigation, and act thereon as this article provides.

(c) If the commissioner finds that any of the provisions of this article are violated, whether reported by any person or by any commission, board, agency, officer, or employee of the county commission, or by his or her own observation, he or she shall notify in writing the manager of the vape or smoke retailer. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the manager or by personal service by the office of the county sheriff or county health department personnel. The notice shall include the following:

(1) The street address or legal description of the property involved;

(2) A statement indicating the nature of the violation and the specific section of this article that has been violated;

(3) A description of the action required to correct the violation;

(4) A statement indicating the time within which compliance with this article must be accomplished; and

(5) A statement advising that upon failure to comply with the requirements within said time, the county shall take such enforcement procedures as may be required by this article.

(d) The commissioner is authorized to take any of the following actions:

(1) Order the discontinuance of illegal use of land or improvements;

(2) Order the removal of any vapor products sold in this state in violation of the provisions of §16-9H-10(a) or §16-9H-14 of this code, or any illegal improvements or structures of illegal additions, alterations, or structural changes;

(3) Order the discontinuance of any illegal work being done;

(4) Issue a written notice to the licensee who shall immediately cease and desist all use(s) which are not in compliance with this article;

(5) Any other action authorized by this article to ensure compliance with its provisions; and

(6) Any other remedies provided by law, including, without limitation, injunction, or abatement by judicial proceeding in the magistrate or circuit court of appropriate jurisdiction. Nothing contained in this article shall be deemed to prevent the commissioner from pursuing other lawful actions to prevent or remedy violations of this article. The Attorney General shall, upon request, provide legal counsel and services to the commissioner in all administrative proceedings and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals without additional compensation.

(e) In addition to any other remedies set forth in this article, the commissioner may impose a monetary fine of not less than $100 nor more than $500 against the manager or any person or persons who violate this article, or any order or notice issued thereunder. Each day during which any violation of this article continues constitutes a separate offense.

§16-9H-10. Prohibition of sales of certain vapor products.

(a) Beginning March 1, 2027, a manufacturer of a vapor product may not sell, either directly or through a distributor or wholesaler, vape or smoke retailer, or similar intermediary or intermediaries, a vapor product in this state that uses, in the name of the product, the labeling of the product, the packaging of the product, or the marketing of the product and of the following terms or references:

(1) "Candy", “candies”, or variants in spelling such as “kandy” or “kandeez”;

(2) "Bubble gum”, “cotton candy”, “gummy bear”, “gummy worm”, “lollipop”, or other variant of these terms;

(3) Cartoons, cartoon characters, superheroes, television shows, video games, movies, or other similar characters or references;

(4) References to or utilization of trade dress, trademarks, or other regulated imagery that imitate or replicate trade dress, trademarks, or other imagery of food brands or products that have been primarily marketed to minors such as brands of breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops; or

(5) References to or utilization of trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of school supplies such as USB drives or highlighters, smart phones or smart watches, headphones, any item of clothing, any toy, video game devices, or phone app integration features.

(b) Beginning July 1, 2027, a person, vape or smoke retailer, or other entity may not conduct advertising or promotional activities: *Provided*, That the person, vape, or smoke retailer may display a sign on the exterior of the establishment to identify the shop as a vape or smoke shop which sign is of uniform size and design, no greater than 18 inches by 18 inches: *Provided, however*, That the person, vape, or smoke retailer shall upon renewal of their license file a new application attesting to compliance with this subsection. The sign shall additionally conform to the following guidelines:

(1) The sign shall be affixed in one location on the outside of the licensed retail location;

(2) The sign can be double sided;

(3) The font shall be Helvetica or Arial and said font cannot exceed three inches in height or width per character;

(4) The sign can be illuminated but shall not have a flashing light or intermittent light.

(c) The vape or smoke retailer shall be located at least 300 feet from a church, school, or daycare center. This distance is to be calculated by measuring a straight line from the entrance to the property line of the nearest place in question.

(d) Includes a product label inconsistent with the requirements set forth in this article or contains an inaccurate or misleading product label; or

(e) No person manufacturing, processing, distributing, offering for sale, or selling any vape or vapor products in this state shall sell, give, or furnish, or cause to be sold, given, or furnished, any vape product, in any form, to any person younger than 21 years of age, which shall be verified by a valid driver's license, state identification card, or any valid and unexpired federally issued identification card such as a passport or military identification card.

§16-9H-11. Violations, fees and penalties for violations.

(a) The following fees and penalties apply to violations of this article:

(1) A distributor, wholesaler, or vape or smoke retailer, any other person or entity, who sells or offers for sale a vapor product in violation of this article shall be subject to a civil penalty of $100 per day for each vapor product offered for sale in violation of this section until the offending vapor product is removed from the market;

(2) In addition, any manufacturer, distributor, wholesaler, or vape or smoke retailer that sells vapor products in this state in violation of the provisions of §16-9H-10(a) or §16-9H-14 of this code shall be guilty of a misdemeanor for each violation.

(b) All fees and penalties collected by the Alcohol Beverage Control Commissioner pursuant to this section shall be used for administration and enforcement of this section.

§16-9H-12. Service of process; required appointment of agent for service of process by foreign manufacturers.

(a) Any foreign manufacturer of vapor products must register as an out of state, or foreign, business with the Secretary of State. A foreign manufacturer of vapor products shall appoint and continually engage without interruption the services of an agent for service of process in West Virginia to serve as such in any action or proceeding against it concerning or arising out of the enforcement of this article and who may be served in any manner authorized by law. Service of process upon this agent shall constitute legal and valid service of process on the manufacturer of vapor products. The manufacturer of a vapor product shall provide the name, address, telephone number, and proof of the appointment of the agent for service of process to the State Tax Commissioner and the Alcohol Beverage Control Commissioner.

(b) The manufacturer of a vapor product shall provide notice to the State Tax Commissioner and the Alcohol Beverage Control Commissioner 30 calendar days prior to termination of the appointment of an agent for service of process and shall further provide proof to the satisfaction of the commissioners of the appointment of a new agent for service of process no less than five calendar days prior to the termination of an existing agent for service of process appointment. If an agent for service of process terminates an agency appointment, the manufacturer of vapor product shall notify the commissioners of the termination within five calendar days and shall include proof to the satisfaction of the commissioners of the appointment of a new agent for service of process.

(c) Any manufacturer of a vapor product whose vapor products are sold in this state who has not appointed services of an agent for service of process, as required by this section, shall be deemed to have appointed the Secretary of State as its agent for service of process.

§16-9H-13. Reporting.

Beginning December 31, 2026, and annually thereafter, the Alcohol Beverage Control Commissioner shall file an annual report with the Joint Committee on Government and Finance

regarding the status of the manufacturers of vapor products, revenue and expenditures related to administration of this article, and a detailed summary of enforcement activities undertaken pursuant to this article.

§16-9H-14. Labeling.

The commissioner shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code developing labeling standards for vapor products to include, at a minimum:

(1) A warning of the potential harmful effects of the vapor product;

(2) The required age of an individual to legally purchase or attempt to purchase the vapor product;

(3) The prohibition against selling or furnishing, by purchase, gift, or other means, the vapor product to a minor;

(4) A warning to keep the vapor products away from minors;

(5) A disclosure of the common or usual names of each ingredient used in the manufacture of such product, listed in descending order or predominance; and

(6) The name, physical address, website, and principal mailing address of the manufacturer or the person responsible for distributing such product.

§16-9H-15. Criminal violations; penalties; and administrative sanctions.

(a) Any person who, by himself or herself or acting through another, directly or indirectly, violates any of the provisions of this article for which no other penalty is provided, shall, for the first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in jail for not more than 30 days, or both fined and confined.

(b) Any person who, by himself or herself or acting through another, directly or indirectly, and for the second and each subsequent violation of any of the provisions of this article for which no other penalty is provided, he or she shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail for not more than six months, or

both fined and confined. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license.

(c) A retailer who commits an act in violation of §16-9H-10 of this code and the labeling requirements of this article shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than $1,000 or confined in jail not more than one year: *Provided,* That a retailer who commits a second violation of §16-9H-10 of this code and the labeling requirements of this article, shall be guilty of a felony and, upon conviction thereof, be fined not less $5,000 or confined in jail not more than two years: *Provided, however*: That a retailer who commits a third violation of §16-9H-10 of this code and the labeling requirements of this article, shall guilty of a felony and, upon conviction thereof, be fined not less $10,000 or confined in jail not more than three years: *Provided further*, That upon each subsequent conviction after a third conviction, such individual shall be guilty of a felony and shall be imprisoned for not less than 10 years nor fined more than $100,000.

(d*) Administrative sanctions*. —

(1) In the case of any person or entity holding a permit issued by the commissioner under this article charged with any criminal violation enumerated in this section, in addition to such criminal penalties imposed, the commissioner may impose administrative sanctions including, but not limited to, permanent revocation of any one or more permits held by the violator, revocation of one or more permits held by the violator for a period of time to be determined by the commissioner, suspension of any one or more permits held by the violator for a period of time to be determined by the commissioner, fine or fines to any one or more permits held by the violator not to exceed $1,000 per each violation as determined by the commissioner, or non-issuance of a permit upon application of a violator. For purposes of this subsection, administrative sanctions may be imposed by the commissioner upon or against any alter ego, agent, representative, or person or entity acting on behalf of, or in the interest of, a violator.

(2) The commissioner may impose the administrative sanctions in §16-9H-15(d)(1) of this code upon any person or entity under indictment for any of the criminal violations during, and during the pendency of, a criminal trial therefor.

(e) Nothing in this article prohibits an authorized enforcement agent of the commissioner or a person who is at least 18 years of age from purchasing or possessing vapor product when he or she is acting upon the request of, or under the direction and control of any member of a state, federal, or local law-enforcement agency, or the commissioner while the agency is conducting an investigation or other activity relating to the criminal or administrative enforcement of this article.

§16-9H-16. Appeals.

Any person who is aggrieved by any order, requirement, decision, or determination made by the commissioner may appeal the decision pursuant to §29A-5-1 *et seq.* of this code. The appeal shall be filed on forms prescribed by the commissioner. The appeal shall specify the reasons for the appeal and shall be filed within 30 calendar days of the original action in question.

§16-9H-17. Applicability.

The provisions of this article do not apply to a cigar store as defined in legislative rule that does not sell vapor products.

§16-9H-18. Rulemaking.

The commissioner may propose rules for legislative approval in accordance with the provisions of this article.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

_____

The within is ..... this the.....

Day of ....., 2026.

.....
Governor

2026-O-79

AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING PART THIRTEEN, ARTICLES 1315 AND 1341, OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON, AS REVISED, AS THEY RELATE TO SMOKE SHOP/TOBACCO STORE/VAPE SHOP.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that Part Thirteen, Articles 1315 and 1341 of the Codified Ordinances of the City of Huntington, as revised, is hereby **AMENDED, MODIFIED AND RE-ENACTED** to read as follows:

PART THIRTEEN

PLANNING AND ZONING CODE

.....

ARTICLE 1315
DEFINITIONS

.....

1315.02 - MEANING OF WORDS.

Unless otherwise stated, the following words shall, for the purpose of this Ordinance have the following meanings:

ALTERNATIVE NICOTINE PRODUCT – Any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

ELECTRONIC CIGARETTE/E-CIGARETTE - An electrical or electronic device that provides a smoke, vapor, fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled, simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that is composed of a heating element, battery or electrical or electronic circuit, or a combination of heating element, battery and electrical or electronic circuit, which works in combination with e-cigarette liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so designed, or similarly designed,

product that is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term "simulates the activity of smoking," in the context of this definition, means replicating, mimicking or reproducing an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other product or material that can be used in a similar fashion.

~~**E-CIGARETTE LIQUID** - Any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid, vape juice, or e-liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin, nicotine from any source or flavorings.~~

SMOKE SHOP/TOBACCO STORE/VAPE STORE - Any business that sells at retail ~~tobacco, tobacco products, vape products, e-cigarette devices, vape juice, e-cigarettes, e-cigarette liquids or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes, vape products, e-cigarettes or tobacco as less than 25% of retail sales shall not be defined as a "smoke shop and tobacco store~~ tobacco products and accessories, as well as tobacco-derived and alternative nicotine products or vapor products and accessories as determined by the West Virginia Alcohol Beverage Control Administration to be a smoke shop/tobacco store/vape store. These retailers may cater to individuals who use electronic cigarettes (e-cigarettes) and other vaping products and/or devices. This definition shall include any references in City ordinance to “smoke shop/tobacco store”.

~~**TOBACCO PARAPHERNALIA** - Any equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bongs, water bongs, e-cigarettes,~~

~~electronic cigars, electronic hookahs, electronic bongs and electronic pipes, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar or electronic pipe, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia. This definition shall not apply to medical treatments prescribed or administered by medical professionals.~~

TOBACCO PRODUCT AND ACCESSORIES - Any product ~~in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, breathed, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. For the purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose~~ used to light or ignite a tobacco product, or otherwise used in smoking of tobacco products, including, but not limited to: ashtrays, rolling papers, rolling tips, matches, lighters, butane, electronic lighters, charging cables and power blocks, glass pipes, pipes, bongs, hookahs, e-hookahs, candles, aerosols, knives, and drug paraphernalia as defined in W.Va. Code § 47-19-3.

VAPOR PRODUCT - Any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution or other form. A “vapor product” includes any electronic cigarette, electronic cigar, electronic cigarillo, electric pipe, or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device which can also include vapable hemp products and kratom products.

VAPOR PRODUCTS ACCESSORIES - Any component, part, or add-on intended for use in an electronic smoking device or to enhance the vaping experience, including items sold

separately, including but not limited to: vape devices, batteries, chargers, heating elements (coils), batteries, atomizers, mouthpieces, airflow control valves, carrying cases, skins, lanyards, tweezers/tank openers, knives, custom drip tips, airflow rings, glass tubes, vape wire, specialized tools and kits, refillable cartridges, pods, e-juice bottles, and tanks used to deliver vaporized nicotine or other substances.

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ARTICLE 1341
GENERAL REGULATIONS

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1341.55 SMOKE SHOP/TOBACCO STORE/VAPE STORE.

A. It shall be unlawful to operate a smoke shop/tobacco store/vape store within 1,500 feet of an existing smoke shop/tobacco store/vape store, day care center, or school. The provisions of this article do not apply to a cigar store as defined in the West Virginia Code of State Regulations §175-12-2 that does not sell vapor products.

B. Measurement distance. Distance shall be measured in a straight line, without regard to intervening structures, from the closest property line of the smoke shop/tobacco store/vape store to the closest property line of the other smoke shop/tobacco store/vape store, day care center, or school.

C. Nonconforming and conditional use status; time limitation.

1. ~~Upon the adoption of this section, a~~ Any smoke shop/tobacco store/vape store, as defined in section 1315.02 of the city ordinances in existence prior to June 12, 2023, that is within 1,500 feet of an existing smoke shop/tobacco store, day care center, or school shall become a lawful nonconforming use and be subject to all nonconforming use restrictions, except that, if any nonconforming smoke shop/tobacco store/vape store ceases operation for a period of 180 days or more regardless of any intent to resume operation, it may not recommence operation in that location.
2. A lawfully operating smoke shop/tobacco store/vape store shall not be rendered a nonconforming use by the subsequent location of another smoke shop/tobacco store/vape store, day care center, or school with 1,500 feet; however, if the smoke shop/tobacco store/vape store ceases operation for a period of 180 days or more

regardless of any intent to resume operation, it may not recommence operation in that location.

3. ~~Upon the adoption of this section, a~~Any smoke shop/tobacco store/vape store, as defined in section 1315.02 of the city ordinances in existence prior to June 12, 2023, that is located within a C-1 Neighborhood Commercial, C-3 Downtown Commercial, or I-1 Light Industrial zoning district shall become a lawful conditional use and subject to all conditional use restrictions, whether general or for the district.
4. Any smoke shop/tobacco store/vape store that is a conditional use, regardless of whether the conditional use was obtained by public hearing or operation of law, that ceases operation for a period of 180 days or more regardless of any intent to resume operation, may not recommence operation in that location.

D. Shall conform with all federal, state, and local laws related to the sale of electronic cigarettes, tobacco products, and other vape products.

SPONSORED BY _____

APPROVED AS TO FORM: __EBH__

FIRST READING

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SECOND READING

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DATE _____

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LISA ADKINS, CITY CLERK

_____

DATE

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PATRICK J. FARRELL, MAYOR APPROVE

_____ _____

DATE VETO