ORDINANCE No. 2025-02

AN ORDINANCE AMENDING THE CITY'S ZONING ORDINANCE REGARDING TOBACCO RETAIL ESTABLISHMENTS; INVOKING THE PENDING ORDINANCE DOCTRINE; AND PROVIDING FOR OTHER RELATED MATTERS

WHEREAS, the City Council ("Council") of the City of Orangeburg ("City") finds:

(a) the Council is authorized and empowered, according to South Carolina Constitution Article VIII, section 17, the Home Rule Act of 1975, and the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, including, for example, South Carolina Code Annotated section 6-29-710, *et seq.*, to provide for land use regulations, including zoning;

(b) the City Planning Commission considered an amendment to the City's Zoning Ordinance to provide for certain matters related to Tobacco Retail Establishments;

(c) according to a resolution adopted on February 27, 2025, a copy of which is attached as Exhibit A ("Resolution"), the City's Planning Commission has recommended approval to the Council of the amendments contained in the Resolution, which are likewise contained in this Ordinance;

(d) proper notice of the public hearing for the proposed amendments for the Planning Commission, held on February 27, 2025, and the Council, held on March [], 2025, have been duly published in accordance with Section 24-12.5 of the City Code;

(e) the Council has reviewed the Resolution and the related, supporting material presented at each of the readings of this Ordinance and received any comments from the public at the public hearing; and

(f) the Council has determined it is in the public interest to update the City's Zoning Ordinance to reflect the changes contained in this Ordinance with respect to Tobacco Retail Establishments;

NOW, THEREFORE, the Council ordains:

1. **Amendments**.
   a. Table 1 of Section 24-5.1. of the City Code is amended to reflect that a Tobacco Retail Establishment is not a permitted use in any of following districts:

      A-1 Single Unit Residential District
      A-2 Multi-Unit Residential District
      A-3 Residential, General District
      O-1 Office-Institutional-Residential District
      B-1 General Business District

   b. Table 1 of Section 24-5.1. of the City Code is amended to reflect that a Tobacco Retail Establishment is a permitted use, in each of following districts, subject to the noted qualification(s):
      B-2 Central Business District[jkl]
      B-3 Neighborhood Business District[jkl]
      D-1 Industrial District[jkl]

      j. The establishment must have a minimum gross floor area of 1100 square feet, and the percentage of the total area of the combined footprint of all structures on the property shall not exceed 40% of the total developable area of the property.

      k. The establishment shall not be located on property that is nearer than 2000 feet from another establishment of the same character. The establishment shall not be located on property that is nearer than 1000 feet from a place of worship, an

educational facility, and/or an establishment whose principal source of gross revenue involves the Distribution of alcoholic beverages. For purposes of this requirement, the distance is measured in a straight line from the nearest point on the lot line of the property occupied by the existing use to the nearest point on the lot line of the subject property.

l. The establishment shall not operate outside of the hours from 08:00 a.m. until 10:00 p.m.

c. Section 24.6. (Planned Development District), subitem "b. Permitted Uses" of the City Code is amended by adding a concluding sentence, which shall read as follows:

A Tobacco Retail Establishment is not a permitted use in a Planned Development District.

d. Section 24.6-2. (Historical Conservation District), subitem "d. Use Requirements" of the City Code is amended by adding a concluding sentence, which shall read as follows:

A Tobacco Retail Establishment is not a permitted use in an Historical Conservation District.

e. Section 24.6-3. (Airport Compatibility District), subitem "b. Land Use Restrictions" of the City Code is amended at the end by adding a consecutively numbered paragraph "7.", which shall read as follows:

A Tobacco Retail Establishment is not a permitted use in an Airport Compatibility District.

f. Section 24.6-4. (Design Overlay District), subitem "c. Permitted Uses" of the City Code is amended at the end by adding a consecutively numbered paragraph "13.", which shall read as follows:

13. Tobacco Retail Establishment

g. Section 24-13. (Words Defined) of the City Code is amended by adding the following defined terms inserted in the appropriate alphabetical order:

"Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance, including e-liquid, to the person inhaling from the device including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic smoking device" includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device whether or not the substance includes nicotine. This term 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.

"E-liquid" means a substance that:

(a) may or may not contain nicotine;

(b) is intended to be vaporized and inhaled using an electronic smoking device; and

(c) is a legal substance under the laws of this State and the laws of the United States.

"Distribution" means the act of selling, furnishing, giving, providing, or attempting to do so, whether gratuitously or for any type of compensation, any tobacco product, including any tobacco product sample, cigarette paper, or a substitute for any of them, to an ultimate consumer.

"Tobacco Product" means:

(a) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether

inhaled, absorbed, or ingested by any other means including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(b) any Electronic Smoking Device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(c) any component, part, or accessory of subitem (a) or subitem (b), whether or not any of these contains tobacco or nicotine including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes.

This term 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 Retail Establishment" means any establishment whose principal source of gross revenue involves the Distribution of Tobacco Products. This term includes, but is not limited to, for example, grocery stores, tobacco product shops, "vaping" shops, "smoke shops," kiosks, convenience stores, gasoline service stations, bars, and restaurants.

2. Codification. The amendments to the City Code as contained in paragraph 1, above, of this Ordinance shall be codified online as soon as practicable and in print as part of the City's next, regular, re-codification of the City Code as and if next codified.

3. Reservation to City. The City reserves the right to repeal or amend this Ordinance, at any time, from time to time, as often as the City, in its sole discretion, deems appropriate.

4. Severability. If any part of this Ordinances is unenforceable for any reason, then the remainder of this Ordinance remains in full force and effect.

5. Pending Ordinance Doctrine; Effective Date. The "Pending Ordinance Doctrine," as described and applied by the South Carolina Supreme Court in *Sherman vs. Reavis*, 273 S.C. 542, 257 S.E.2d 735 (1979), and as adopted and applied by South Carolina courts in other decisions, is adopted and declared to be in full force and effect in the City with respect to application of any City planning, zoning, and development matters, including the matters contained in this Ordinance. As a result, this Ordinance shall be deemed to be applicable at and after first reading.

6. General Repealer. Each ordinance, resolution, order, or part of the same in conflict with this Ordinance, is, to the extent of that conflict, repealed.

ENACTED BY the City Council on April 1, 2025.

Mayor

Michael C. Butler

Members of Council

Attest: Linda McDaniel
City Clerk

First Reading:	March 4, 2025
Public Hearing:	March 18, 2025
Second Reading:	March 18, 2025
Third Reading:	April 1, 2025

EXHIBIT A

PLANNING COMMISSION RESOLUTION, DATED FEBRUARY 27, 2025

RESOLUTION

WHEREAS, the Planning Commission of the City of Orangeburg, South Carolina, conducted a Public Hearing on February 27, 2025, to consider a City Council zoning change in reference to tobacco retail establishments operating within the Orangeburg City limits. These changes are designed to attempt to balance concerns about public health against existing business operations. These changes will impact new and reconstructed tobacco retail establishments to open within the city but will not otherwise impact existing tobacco retails establishments. The city may, in the future, contemplate further zoning changes regarding tobacco retails establishments.

WHEREAS, § 24-12 of the City Code requires that any amendments to the zoning ordinance, text or map, shall first be reviewed by the Planning Commission; and,

WHEREAS, § 24-12.3 of the City Code requires that the Planning Commission shall make a written recommendation to the Mayor and City Council; and that at minimum the recommendation shall include an evaluation of the proposed zoning amendment relative to the following:

1. How the proposed zoning amendment relates to and affects the City's Comprehensive Plan.
2. The validity of the Comprehensive Plan relative to the area under consideration.
3. The need to correct an error or deficiency in the Zoning Ordinance.
4. Any benefits which would be derived from the proposed amendment.
5. Any cost to the City in terms of expenditures for public improvements, facilities and services.
6. The public interest.

WHEREAS, the Planning Commission has considered a zoning change in reference to tobacco retail establishments operating within the Orangeburg City limits. These changes are designed to attempt to balance concerns about public health against existing business operations. These changes will impact new and reconstructed tobacco retail establishments to open within the city but will not otherwise impact existing tobacco retails establishments. The city may, in the future, contemplate further zoning changes regarding tobacco retails establishment, and we have concluded the following:

1. It is consistent with the Comprehensive Plan.
2. The Comprehensive Plan appears valid relative to the area under consideration.
3. We note no errors or deficiencies to the Zoning Ordinance regarding this matter.
4. There would be a benefit to be derived in the rezoning change.
5. We note no cost to the City in terms of public improvements, facilities and services.
6. The public interest would be served by allowing this change.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission, this 27th day of February 2025, based on its evaluation and findings above, recommend to the Mayor and City Council of the City of Orangeburg, South Carolina, that the aforementioned request be **approved.**

On behalf of the Planning Commission of the City of Orangeburg, South Carolina.

Chairperson, Planning Commission

ATTEST: