

Ordinance No. 23-003

An ordinance amending the "Unified Development Code" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article 3, Use Standards, Section 3.1.5, Table of Allowed Uses, to add a new commercial use type labeled "Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Store" under the Retail (Sales) use category; through the amendment of Section 3.2.3, Commercial Uses, to establish supplemental use standards for said use type; and through the amendment of Article 12, Definitions, Section 12.3.3, Commercial Uses, to define said use type; through the amendment of Section 12.7.1, Other Terms Defined, to define associated terms; providing for a fine of up to \$2,000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; governmental immunity; injunctions; publication and an effective date

WHEREAS, after notice and public hearing on the 21st day of December, 2022, the Planning and Zoning Commission heard and recommended amendment to the "Unified Development Code" Chapter of the Code of the City of Arlington, Texas, 1987, as amended; and

WHEREAS, the proliferation of Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Stores has failed to promote the public health and safety of City of Arlington residents; and

WHEREAS, there are already 91 Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Stores located within the city limits; and

WHEREAS, the Arlington City Council intends to promote the general health and welfare of its residents by working to decrease the concentration of Tobacco, E-cigarettes, CHP, or Non-Traditional Smoking-Related Retail Stores in low income areas and reduce the proximity of said stores from schools, daycares, healthcare facilities, places of worship, parks and playgrounds; and

WHEREAS, after notice and public hearing, and upon consideration of the recommendation of the Commission and of all testimony and information submitted during the public hearing, the City Council has determined that it is in the best interest of the public and in support of the health, safety, morals and general welfare of the citizens that the amendments relative to the "Unified Development Code" Chapter be approved; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

THAT the “**Unified Development Code**” Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article 3, Use Standards, Section 3.1.5, Table of Allowed Uses, Subsection B., Non-Residential and Mixed-Use Districts, Table 3.1-2: Allowed Uses – Non-residential and Mixed-Use Districts** by adding a new use type known as “Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Store” under use category “Retail (Sales)”. Said use type shall be subject to supplemental use standards. Use districts where said use type may be permitted are as follows:

TABLE 3.1-2: Allowed Uses – Non-residential and Mixed-Use Districts														
P = Permitted Use S = Specific Use Permit * = Supplemental Use Standards Apply														
Non-residential and Mixed-Use														
Use Category	Use Type	L O	O C	N C	C C	G C	H C	D B	B P	L I	I M	N M U	R M U	Supplemental Use Standards
COMMERCIAL USES														
Retail (Sales)	Tobacco, e-cigarettes, CHP, or non-traditional smoking-related retail store					p*				p*	p*			3.2.3.I

Further, that **Section 3.2.3, Commercial Uses, Subsection I., Retail (Sales)**, is hereby amended by the addition of **Subsection 8., Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Store**, which shall read as follows:

8. Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Store

- a. Any new tobacco, e-cigarettes, CHP, or non-traditional smoking-related retail store shall be located at least 1.5 miles from any existing tobacco, e-cigarettes, CHP, or non-traditional smoking-related retail store, measured from lot line to lot line.
- b. Any new tobacco, e-cigarettes, CHP, or non-traditional smoking-related retail store must be located at least 1,500 ft from protected uses (elementary schools, secondary schools, churches, daycares, healthcare facilities, places of worship, parks and/or playgrounds), measured from lot line to lot line.

Further, that **Article 12, Definitions, Section 12.3.3, Commercial Uses, Subsection K., Retail (Sales)**, is hereby amended by the addition of **Subsection 14., Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Store**, which shall read as follows:

14. Tobacco, E-cigarettes, CHP, or Non-traditional Smoking-related Retail Store

An establishment engaged in the selling of tobacco, e-cigarettes, cannabidiol (CBD), consumable hemp products (CHP), kratom, and/or non-traditional smoking-related products to the general public for personal or household consumption.

Tobacco, e-cigarettes, CHP, or non-traditional smoking-related retail stores **do not** include retail stores where less than 10 percent (10%) of sales are from the sales of CHP, tobacco, e-cigarettes, and/or non-traditional smoking-related products and are clearly ancillary to the primary use of the store.

Any establishment advertising or displaying tobacco, e-cigarettes, cannabidiol (CBD), consumable hemp products (CHP), kratom, and/or non-traditional smoking-related products **is presumed** to be making more than 10 percent (10%) of its sales from the sale of CHP, tobacco, e-cigarettes, and/or non-traditional smoking-related products. This includes the use or incorporation of said products into the advertised or displayed business name of the establishment.

Any establishment where more than 10 percent (10%) of the open floor space is dedicated to the sale, display, and storage of CHP, tobacco, e-cigarettes, and/or non-traditional smoking-related products **is presumed** to be making more than 10 percent (10%) of its sales from the sale of CHP, tobacco, e-cigarettes, and/or non-traditional smoking-related products.

Any establishment advertising tobacco, e-cigarettes, cannabidiol (CBD), consumable hemp products (CHP), kratom, and/or non-traditional smoking-related products on the Internet **is presumed** to be making more than 10 percent (10%) of its sales from the sale of CHP, tobacco, e-cigarettes, and/or non-traditional smoking-related products.

For the purposes of this section, advertising or displaying shall mean signage or the display of products visible from outside the building, and shall include advertising products or words on signs, temporary signs, handheld signs, fliers, or information listed on business websites or other webpages.

Further, that **Article 12, Definitions, Section 12.7.1, Other Terms Defined**, is hereby amended by incorporating the following terms alphabetically into the current list of definitions:

Consumable Hemp Products (CHP)

Any product processed or manufactured for consumption that contains hemp, including food, a drug, a device, and a cosmetic. CHPs cannot contain more than 0.3 percent

concentration of tetrahydrocannabinol (THC). Examples of CHPs include: Cannabidiol (CBD) oil, CBD and THC edibles, food and drinks infused with CBD, over-the-counter drugs containing CBD, and topical lotions and cosmetics that contain CBD.

E-cigarettes

An electronic cigarette, vape, vapor, dab, or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The definition also includes a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or similar device, regardless of whether the liquid or other material contains nicotine.

Kratom

An herbal extract that comes from the leaves of an evergreen tree (*mitragyna speciosa*).

Tobacco Products

Smoking tobacco, including granulated, plug-cut, crimp-cut, ready rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; chewing tobacco, including cavendish, twist, plug, scrap, and any kind of tobacco suitable for chewing; snuff or other preparations of pulverized tobacco; or any article or product that is made of tobacco or a tobacco substitute.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

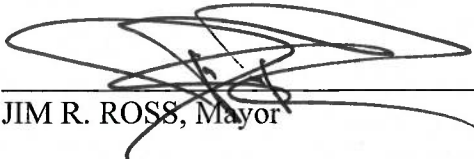
7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective on the 1st day of February, 2023.

PRESENTED AND GIVEN FIRST READING on the 10th day of January, 2023, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 24th day of January, 2023, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


JIM R. ROSS, Mayor

ATTEST:


ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

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