

CITY OF LAVON, TEXAS

ORDINANCE NO. 2023-03-03

Zoning - Smoke, Tobacco, Vape, CBD Store Regulations

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS, AMENDING CHAPTER 9 “PLANNING AND DEVELOPMENT REGULATIONS”, ARTICLE 9.03 “ZONING ORDINANCE” OF THE CODE OF ORDINANCES OF THE CITY OF LAVON, TO AMEND THE CITY’S ZONING REGULATIONS REGARDING SMOKE, TOBACCO, VAPE, AND CBD SHOPS WITHIN THE CITY BY AMENDING DIVISION 3 “DEFINITIONS”, SECTION 9.03.061 “GENERAL”; DIVISION 2 “DISTRICTS AND ZONING DISTRICT MAP”, SECTION 9.03.032 “PERMITTED USE TABLE”; AND DIVISION 4 “REGULATIONS APPLICABLE TO ALL DISTRICTS” BY ADDING SECTION 9.03.091 “SMOKE/TOBACCO/CBD STORES”; PROVIDING A PENALTY CLAUSE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; PROVIDING SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Lavon (hereinafter referred to as “City”) is a Home Rule municipality organized under the Constitution and laws of the State of Texas; and

WHEREAS, Chapter 211 “Municipal Zoning Authority” of the Texas Local Government Code authorizes a city to adopt ordinances regulating the zoning of property within the City; and

WHEREAS, the City Council of the City (the “City Council”) adopted Article 9.03 of its Code of Ordinances, the same being the comprehensive Zoning Ordinance of the City (the “Zoning Ordinance”), which sets forth various regulations for land use; and

WHEREAS, the City Council desires to amend the Zoning Ordinance to provide for regulations for smoke, tobacco, and CBD shops; and

WHEREAS, the regulation of smoke/tobacco/CBD stores is necessary and in the interests of the public health, safety, and general welfare because there is the substantial likelihood of the establishment and operation of smoke/tobacco/CBD stores in the City of Lavon; and

WHEREAS, the expansion of these stores in the city could result in undesirable impacts to the community; and

WHEREAS, among these impacts are increased potential for tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses; and

WHEREAS, this Ordinance contains regulations consistent with good zoning and planning practices to address such negative impacts of smoke, tobacco, and CBD stores while providing a reasonable number of locations and zones for such shops/stores to locate within the City of Lavon; and

WHEREAS, after public notices were given in compliance with State law and public hearings were conducted, and after considering the information submitted at those public hearings and all other relevant information and materials, the Planning and Zoning Commission of the City has recommended to the City Council the adoption of the amendment to the Zoning Ordinance as set forth in this Ordinance; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before the City Council at which the City Council considered the recommendation of the Planning and Zoning Commission, and among other things, the necessity for orderly and appropriate regulations of the use of land and the erection of structures thereon, and having considered the proposed amendment to the Zoning Ordinance and the appropriateness of the amendment, the City Council does hereby find that the amendment to the Zoning Ordinance approved hereby accomplishes such objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS:

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. FINDINGS. After due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City, and of the public health, safety and welfare of its citizens.

SECTION 3. AMENDMENTS. The Zoning Ordinance is hereby amended as follows:

1. Division 3 “Definitions”, Section 9.03.061 “General” is hereby amended to add the following terms and definitions to read entirely as follows, and to be listed alphabetically with the other terms:

CBD. Cannabidiol in the form of a consumable hemp product, as that term is defined in Section 443.001 of the Texas Health and Safety Code, that may be lawfully sold in accordance with state and federal laws.

E-cigarette. The term as defined in Tex. Health & Safety Code §161.081(1-a).

Minor. A person under 21 years of age.

Smoke/tobacco/CBD store. Any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, tobacco paraphernalia, or CBD or hemp-derived products, except:

- (1) a pharmacy selling FDA approved cannabis and cannabis-derived products; and
- (2) any grocery store, supermarket, convenience store or similar retail use that sells conventional cigars, cigarettes, tobacco, or CBD or hemp-derived products as an ancillary sale, meaning the store uses for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes, tobacco or CBD or hemp product, (i) no more than two percent (2%) or 200 square feet of its gross floor area (whichever is less), or (ii) for a retail store consisting of 250 square feet or less, no more than five (5) square feet.

Tobacco. Any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.

Tobacco paraphernalia. Any paraphernalia, 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 as defined in the Tex. Health and Safety Code. Items or devices classified as tobacco paraphernalia include but are not limited to the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, 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.

Tobacco product. 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, 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.

Vapor smoking services. A retail use that provides vapor smoking services onsite.

2. Division 2 “Districts and Zoning District Map”, Section 9.03.032 “Permitted use table”, Figure 9.1.2.2 is hereby amended to add “Smoke/tobacco/CBD store” as a listed use under the “Retail, Commercial, Personal Service Uses” heading, with the designation of “C” for conditional use under the “R” and “M” columns of Nonresidential & Special Districts, as illustrated below:

	RESIDENTIAL DISTRICTS				NONRESIDENTIAL & SPECIAL DISTRICTS		
Retail, Commercial, Personal Service Uses	A	SF-1	SF-2	SF-4	R	M	B
Smoke/tobacco/CBD store					C	C	

3. Division 4 “Regulations Applicable to All Districts” is hereby amended to add Section 9.03.091 “Smoke/tobacco/CBD stores” to read entirely as follows:

9.03.091 Smoke/tobacco/CBD stores.

- (a) Purpose. The regulation of smoke/tobacco/CBD stores is necessary and in the interests of the public health, safety, and general welfare because there is the substantial likelihood of the establishment and operation of smoke/tobacco/CBD stores in the City of Lavon. The expansion of these stores in the city could result in undesirable impacts to the community. Among these impacts are increased potential for tobacco sales to minors, greater opportunity for the sale of illegal drug paraphernalia that is marketed as tobacco paraphernalia, and heightened risk of negative aesthetic impacts, blight, and loss of property values of residential neighborhoods and businesses in close proximity to such uses. This section contains regulations consistent with good zoning and planning practices to address such negative impacts of smoke shops and tobacco stores while providing a reasonable number of locations and zones for such shops/stores to locate within the City of Lavon.
- (b) Zoning and land use standards for smoke/tobacco/CBD stores. A smoke/tobacco/CBD store shall require a conditional use permit. Standards to operate a smoke/tobacco/CBD store shall be as follows:
- 1) Smoke/tobacco/CBD stores shall not be located within 500 feet, measured property line to property line, from a school (public or private), family day care home, child care facility, youth center, community center, recreational facility, park, church, religious institution, hospital, or other similar uses where children regularly gather.
 - 2) Smoke/tobacco/CBD stores shall not be located within 1500 feet, measured property line to property line, from another smoke/tobacco/CBD store.
 - 3) Smoke/tobacco/CBD stores that are legally existing on the effective date of the enacting ordinance codified in this section may continue to operate as nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or expansion of the nonconforming use may require compliance with this section and a conditional use permit.

SECTION 4: SAVINGS/REPEALING CLAUSE. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent

a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.


SECTION 5: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6: PENALTY. Any person, firm, corporation, or entity violating this Ordinance or any provision of the City's Zoning Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding Two Thousand Dollars (\$2000.00). Each continuing days' violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 7: PUBLICATION AND EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.


SECTION 8. OPEN MEETING. That it is hereby found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

DULY PASSED AND APPROVED by the City Council of the City of Lavon, Collin County, Texas, on this the 7th day of March 2023.



Vicki Sanson, Mayor

ATTEST:



Rae Norton, City Secretary

