

**Ordinance 26-02**

To Amend Chapter 26 of The 2001 Revised Code Of The City Of Dalton, Georgia Captioned “Businesses” To Reserve Sections 26-333 through 26-344 and By The Addition Of A New Article X Captioned “Vape Shops”; To Provide For An Effective Date; To Provide For The Repeal of Conflicting Ordinances; To Provide For Severability; And For Other Purposes.

**BE IT ORDAINED** by the Mayor and Council of the City of Dalton, and by the authority of the same, **IT IS HEREBY ORDAINED** as follows:

**Section 1.**

Chapter 26 of The 2001 Revised Code of the City of Dalton, Georgia captioned “Businesses”, Article IX Mobile Food Vendors is hereby amended by the addition of certain reserved sections which shall read as follows: “Secs. 26-333 – 26-344. – Reserved.”

**Section 2.**

Chapter 26 of The 2001 Revised Code of the City of Dalton, Georgia captioned “Businesses”, is hereby amended by the addition of a new Article X captioned “Vape Shops” which shall read as follows:

***ARTICLE X. VAPE SHOPS***

**Sec. 26-345. Definitions.**

For purposes of this article, the following terms, phrases, words, and their derivatives shall have the meaning set forth in this section.

*Alternative nicotine product* means any material that contains nicotine, but does not contain tobacco leaf, and is intended for human consumption, whether such material is chewed, absorbed, dissolved, or ingested by any other means. Such term shall include, but shall not be limited to, nicotine gel, pouches, or gum or dissolvable nicotine strips, sticks, lozenges, or pellets. Such term shall not include little cigars, cigars, cigarettes, loose or smokeless tobacco, consumable vapor products, or any product regulated as a drug or

therapeutic device by the United States Food and Drug Administration under chapter V of the Federal Food, Drug, and Cosmetic Act.

*Applicant* means any person required to sign an application for a Vape/CBD Shop License as set forth herein.

*Authorized City Official* means an individual appointed by the Mayor and Council or City Administrator to perform certain duties or services.

*Cannabinoid*. Any of various naturally-occurring, biologically active, chemical constituents (such as cannabidiol or cannabinol) of hemp or cannabis including some (such as THC) that possess psychoactive properties.

*Consumable vapor product* means any liquid solution, whether it contains nicotine or not, that is intended to be heated into an aerosol state and inhaled by an individual. Such term shall include, but shall not be limited to, e-liquid, e-juice, vape juice, and cartridges that are prefilled with such a solution. Such term shall not include any alternative nicotine product, cigar, cigarette, loose or smokeless tobacco, perfume, potpourri, essential oil, or product regulated as a drug or therapeutic device by the United States Food and Drug Administration under chapter V of the Federal Food, Drug, and Cosmetic Act.

*Floor space* means the floor area inside an establishment that is visible or accessible to patrons for any reason, including aisles, walkways, and cashier stations

*Kratom*. means the tropical evergreen known as *Mitragyna speciosa*, which contains the alkaloid mitragynine or metabolite 7-hydroxymitragynine.

*Licensee* means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, plural as well as singular number, who holds any class of permit issued under this article.

*Non-traditional tobacco paraphernalia* means any device designed to facilitate the use, smoking, consumption or ingestion of tobacco, nicotine, chemicals, substances, illicit drugs, or other harmful additives in any form (such as grinders, bongs, hookah pipes, or faux jewelry, bracelets, or necklaces commonly associated with tobacco, vaping, or drug use, with one purpose of such items being the inhalation or ingestion of tobacco or drugs); provided, however, that the term "non-traditional tobacco paraphernalia" shall exclude products that contain nicotine, tobacco products, cigarette papers or wrappers, blunt wraps, tobacco pipes, holders, cigarette rolling machines, or other products, devices, or substances used for the purpose of making tobacco cigarettes; provided further that, said term shall also not include any item for which the sale or use of the same is regulated under state or federal law.

*Person* means any individual, natural person, partnership, firm, corporation, joint venture, proprietorship, business entity, association, agency, group, organization or group of persons or any other legal entity.

*Vapor device* means any system or device developed or intended to deliver a consumable vapor product to an individual who inhales from the device.

*Vape Shop* shall mean any business whose principal business activity is the sale of any alternative nicotine product, consumable vapor product, vapor device, cannabinoid, kratom, non-traditional tobacco paraphernalia, or any combination thereof (all such items may be hereinafter referenced as “regulated products”). A “principal business activity” means any one or more of the following exist:

- (1) The establishment at any time displays or offers for sale at least five hundred (500) regulated products.
- (2) Twenty-five percent (25%) or more of the establishment’s annual gross revenue is derived from the sale of regulated products. In the case of an audit, the relevant time period shall be the 12 months immediately preceding the commencement of the audit. If the establishment being audited has been in operation as a restaurant for less than 12 months, the audit period shall be the period of time the entity has operated.
- (3) The establishment maintains at least twenty-five percent (25%) of its floor space for the display or sale of regulated products.
- (4) The establishment maintains at least five (500) square feet of its floor space for the display or sale of regulated products.
- (5) The establishment regularly makes regulated products available for sale and holds itself out, in any medium, as an establishment that caters to customer interest in the regulated products.

#### **Sec. 26-346. Purposes of article.**

This article has been enacted in accordance with a plan designed for the following purposes, among others:

- (1) Promoting the health and general welfare of the community;
- (2) Establishing reasonable and ascertainable standards for the regulation and control of the licensing of vape shops to protect and preserve schools and churches;
- (3) Giving effect to existing land use and preserving certain residential areas, with reasonable considerations, among others, to the character of the area and the peculiar suitability for particular uses, the congestion in the roads and streets, and with a general view of promoting desirable living conditions and sustaining the stability of neighborhoods and property values; and
- (4) Protecting against the negative effects of concentration of retail outlets for regulated products or preventing underage persons from engaging in or having any interest in regulated products.

**Sec. 26-347. License required.**

- (1) It shall be unlawful for any person to operate a vape shop without having first complied with this chapter including, but not limited to, obtaining the appropriate license from the city.
- (2) Any person who desires to operate a vape shop shall apply in the office of the city clerk for a vape shop license and shall remit with said application the application fee in such an amount as may be set by the mayor and council from time to time.
- (3) If a license is granted, said licensee shall also pay the annual license fee on or before January 1<sup>st</sup> of each year so licensed. The annual license fee shall be no less than five thousand dollars (\$5,000.00) and may be modified from time to time by the mayor and council. The current application and license fee schedule shall be kept in the city clerk's office and made available to any licensee or prospective licensee upon request.
- (4) All applications shall be fully completed by the applicant, signed, and sworn to by the applicant in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of an entity, including, but not limited to, a partnership, corporation, nonprofit tax exempt civic, patriotic, or social club or corporation, a private club, a limited liability company, then the applicant must be an agent or officer of the entity with actual authority to execute the application.
- (5) An approved annual license shall be valid for the date issued and shall expire on December 31 of each year. Each licensee shall complete a renewal application consisting of the same information required for an application and pay the annual fee for renewal of said license prior to December 31 of each year.

**Sec. 26-348. Application requirements.**

All applications shall include the following:

- (1) A survey (dated no more than 180 days prior to submission of the application to the city), certified by a registered surveyor of this state, showing a scaled drawing of the premises, the location on the premises where the applicant desires to sell any regulated product and the distance in linear feet measured from the front door of the premise where any regulated product is to be sold, to the property line of the tract upon which is located the nearest church building, school building, educational building, school grounds or college grounds, or college campus building.
- (2) The application fee.
- (3) A statement identifying the full legal name and all trade names of the business for which the license is to be used and a statement identifying the name, address, and telephone number of all persons with an ownership interest of five percent (5%) or more in said business.

- (3) As a prerequisite to the issuance of any license, the applicant shall furnish a complete set of fingerprints for all persons required to sign the application to be forwarded to the Georgia Bureau of Investigation and to the Federal Bureau of Investigation, as specified under state law. Each person required to sign the application for an original license and/or renewal license, must authorize the city or its designated representatives to secure from any state, county, municipal or federal court, any police department and/or law enforcement agency his, her or its criminal history and civil history and further authorize the city, its officers and employees to use such information in determining whether or not a license will be issued to the applicant. Further, the applicant must authorize the city, its officers and employees to use such information in a public hearing if necessary, to determine whether or not the applicant's license should be denied, voided, cancelled, or revoked. Each applicant waives any right or rights he, she or it may have under state or federal law, statute or court ruling to preclude the city from securing such criminal or civil history from any source and waives any right he, she or it may have to preclude the city from using such information publicly in determining whether the license will be issued to such applicant.
- (4) Each applicant shall certify that he or she has read, understands, and will comply with this article and if the license is granted, each licensee shall maintain a copy of this article on the premises and shall require each of the licensee's employees to be familiar with this article. Furthermore, applicant agrees, by signing and filing the application, that applicant will maintain sales receipts and records and allow any authorized public official to inspect said records to ensure compliance with this article.

Any application which is not complete or does not comply with the requirements of this section shall be rejected by the clerk's office and stand automatically denied.

**Sec. 26-349. Public safety commission powers and duties under this article.**

For the purposes of this article, the public safety commission is vested with the following duties and powers:

- (1) *Initial applications.* To screen, verify, investigate and review all initial applications for licenses for vape shops, to consider whether the applicant meets the applicable qualifications and requirements, and to make a recommendation to mayor and council to grant or to deny licenses for vape shops.
- (2) *Renewals.* To investigate and hear reports and charges constituting probable cause not to renew licenses for vape shops, to consider whether the applicant meets the applicable qualifications and requirements, and to make a recommendation to mayor and council to grant or to deny renewals of licenses for vape shops.
- (3) *Determinations of conduct or offenses requiring penalty, suspension, revocation or combination thereof.* To conduct hearings upon charges of the city to licensee as to the occurrence of conduct or an offense for which penalty, suspension, revocation, adjustment of operating hours, or a combination thereof is provided under this article; to cause a record and transcript of such hearing to be made and kept; and to recommend fines, suspension, or revocation, or any combination thereof, pursuant to the requirements of this article.

- (4) *Modifications.* To recommend to the mayor and council modifications to any city ordinances and policies pertaining to the regulation of vape shops.

#### **Sec. 26-350. Applications and Renewals.**

For the purposes of this chapter, the mayor and council are vested with the following duties and powers:

- (1) To grant or deny initial applications for licenses for vape shops, and to consider all recommendations of the public safety commission regarding the same.
- (2) To grant or deny all renewal applications for vape shops, and to consider all recommendations of the public safety commission regarding the same.
- (3) The initial review of all such licenses shall occur in the public safety commission; however, to the extent the public safety commission does not consider and issue a recommendation on an initial application or renewal application within 60 days of filing said application with the clerk, the mayor and council shall be authorized to grant or deny such license without a recommendation from the public safety commission.

No vape shop license shall be issued or renewed until all applicable requirements of this article have been met and said license has been approved by the mayor and council.

#### **Sec. 26-351. Inspection of licensed establishments.**

Sworn officers of the police department, code enforcement officers, and any other Authorized City Official shall have the authority to inspect establishments licensed under this article during the hours in which the premises are open for business. The City Attorney or any Authorized City Official may also require a licensee to produce books and records and may conduct or oversee an audit of the books and records of a licensed establishment at any time. Such investigations may occur from time to time to determine compliance with the requirements of this article and state law.

#### **Sec. 26-352. Location requirements.**

- (a) It shall be unlawful to establish or add a vape shop to an existing business that is:
  - (1) Within 1,000 feet of any parcel upon which a religious facility, public or private elementary or secondary school, college campus, day care facility, library, public building, fitness facility, public park, or any residence is located; or
  - (2) Within 3,000 feet of any parcel upon which another vape shop is located; or
  - (3) Within the overlay district; or
  - (4) Within the central business district (Zoning classification C-3).
- (b) For the purpose of this section, measurements shall be made in a straight line from the closest part of any structure occupied by the vape shop to the closest property line of a parcel containing a use listed in subsection (a), above.

(c) Vape shops which are currently operating and do not comply with the distance requirements at the time of the adoption of this article shall be grandfathered in, provided that upon the sale of such business, the revocation of its license, or the failure to renew any such license, said grandfathered status shall be forfeited.

**Sec. 26-353. Disqualification generally.**

No vape shop license may be issued to an applicant under the following circumstances:

- (1) An applicant who is not at least 21 years old.
- (2) An applicant who has been convicted under any federal or state law of a felony or any misdemeanor involving the usage, distribution, or possession of controlled substances, alcohol, or offenses involving moral turpitude within a five-year period immediately preceding application. For purposes of this subsection, a "conviction" shall include any plea of guilty or admission of guilt and subsequent sentence under the First Offender Act of O.C.G.A. §§ 42-8-60, 16-13-2 or 3-3-23.1(c), or any similar sentencing provision for first time offenders of any other state or of the United States. A plea of nolo contendere for any felony or misdemeanor of any state or of the United States, or any municipal ordinance, except traffic violations, or the forfeiture of a bond (except traffic offenses) when charged with a crime is also considered a conviction under this article.
- (3) An applicant who has been held in civil or criminal contempt by any federal, state or local court if such citation indicates to the mayor and city council that the applicant will not maintain the outlet for which the applicant is seeking a license in conformity with federal, state or local laws, rules, and regulations.
- (4) An applicant who is not an officer, director, owner, or manager of the business for which the license is held.
- (5) An applicant whom the PSC or the mayor and city council determines, based upon an investigation into the applicant, the applicant's prior businesses or entities, (whether operating under the same establishment name or not) in the city or in other jurisdictions, has him or herself, or has engaged employees or agents, who have sold cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products in violation of state law or local ordinances, including but not limited to sales to minors.
- (6) The city has suspended or revoked a business license, vape shop license, or any other license issued under this code at the location where the applicant desires to operate a vape shop, within the previous 12 months for a suspension or within the previous 36 months for a revocation.
- (7) The applicant's business does not meet the requirements of this article.

**Sec. 26-354. False information.**

Any material omission or untrue or misleading information contained in or left out of an original or renewal application for a license shall be cause for the denial thereof. If any license

has previously been granted on the basis of such misleading statements or material omissions, such shall constitute cause for the revocation of the license.

**Sec. 26-355. Licenses non-transferable.**

No vape shop license shall be transferable, except upon the death of a licensee, at which time such license may be transferred to the administrator, executor, or lawful adult heir or heirs of such deceased person provided that such person meets the requirements of this article. If the legal representatives of such deceased licensee cannot meet all the requirements of this article, said license shall be revoked.

**Sec. 26-356. General regulation of business operations.**

- (a) No licensee, employee of any licensee, or other person shall sell or permit to be sold any item of non-traditional tobacco paraphernalia to any person under the age of 18 years, either directly or indirectly.
- (b) No licensee, employee of any licensee, or other person shall sell or permit to be sold any regulated product in violation of state or federal law, either directly or indirectly.
- (c) Each licensee shall maintain their entire inventory of regulated products in an area behind the sales counter where patrons of the licensee may not handle such products without first interacting with an employee of the licensee. Specifically, upon request to see any regulated products, employees of the licensee shall verify that the patron requesting such product is of legal age to purchase said items. Licensee and its employees shall not allow patrons who are not of lawful age to purchase such items to enter into the area behind the sales counter where regulated products are displayed or stored.
- (d) Any license for the sale of regulated products shall be posted conspicuously in the place of business for which such license is issued.

**Sec. 26-357. Suspension, revocation, or forfeiture of license.**

- (a) Any suspension, revocation, or forfeiture of a license by the mayor and city council shall occur only after notice and opportunity for a hearing and upon the following occurrences:
  - (1) Any licensed outlet that is found to be in violation of this article.
  - (2) Every vape shop license issued by the city shall be immediately revoked in case of bankruptcy, receivership, or levy of legal process.
  - (3) Except as provided for transfers under section 26-355 above, any change in the ownership of any entity owning a licensed outlet shall result in immediate revocation of any license issued to such entity.
  - (4) All licensees must, within six months after the approval of said license, open for business the outlet referred to in the application for license, and begin the sale of the product or products authorized by the said license. Failure to open the outlet and begin the sales referred to within the six-month period, shall result in immediate revocation of the license and no refund of any fees paid pursuant to this article shall be made.

- (5) Any licensee who shall for a period of three consecutive months cease to operate the business and sale of the product or products authorized in the said license, shall, after said three months period, result in immediate revocation of the license and no refund of any fees paid pursuant to this article shall be made.
- (6) A license may be immediately suspended or revoked by the mayor and city council upon learning that a licensee furnished fraudulent or untruthful information in the application for a license, or omits information required in the application for a license, or fails to pay all fees, taxes, or other charges imposed under the provisions of this code.
- (7) Whenever the state shall revoke any permit or license to sell alternative nicotine products, vape juice, vapor products, and/or non-traditional tobacco paraphernalia, as is or may become applicable, the city license shall thereupon be immediately revoked.
- (8) Failure to provide books and records requested as a part of any investigation or audit into compliance with this chapter shall result in revocation of the license.
- (9) A license shall be immediately revoked if it is determined that regulated products have been sold or distributed by the licensee during any period of suspension.
- (13) It shall be a violation of this article for any licensee or any employee or agent of the licensee or licensed establishment to permit any person to engage in any activity on the premises for which the license is issued or within the place of business, which is in violation of the laws or regulations of any federal, state, county, or municipal governing authority or regulatory agency. A violation of this subsection shall subject the license to immediate suspension or revocation.
- (14) An act or omission of a licensee which constitutes a violation of federal or state law or regulation, relating to the sale of alcoholic beverages, taxes, gambling, violation of the Georgia Controlled Substances Act, or constitutes a crime of moral turpitude, shall subject the license to immediate suspension or revocation.

(b) The city clerk shall notify the licensee of any charge of conduct or offense subject to penalty, suspension or revocation or any combination thereof. If the potential sanction is suspension or revocation the notice shall also state the place and time the public safety commission will hear the charges against the licensee. The notice may also contain such additional information, as the city clerk may deem appropriate. The notice shall be delivered to the licensee at least five days prior to the hearing date by personal delivery, first class mail addressed to licensee at the address contained in licensee's license application, or by posting the notice on the front door of the licensed premises. In the case of delivery by first class mail the notice shall be deemed delivered two days after being deposited into the US mail properly addressed and with adequate postage.

(c) Unless waived by the licensee, the public safety commission shall conduct a hearing on any charge against a licensee alleging conduct or offense that is subject to a suspension or revocation, at its next regularly scheduled meeting, but not later than 60 days from the date of notice to the licensee unless a continuance is granted at the request of the city or the licensee.

The public safety commission shall have the discretion to call a special meeting to conduct a meeting or to reschedule or continue any hearing upon the request of the city or the licensee. The licensee shall be allowed to appear at said hearing and to present evidence and cross-examine witnesses. Upon hearing evidence from the city and licensee, if the licensee shall present any evidence, the public safety commission shall, no later than 30 days after the hearing, either dismiss all or some the charges against the licensee and/or, make a finding that a violation has occurred as to all or any one of the charges. If a violation is found to have occurred, the public safety commission shall make a recommendation to the mayor and council consistent with the provisions of this article. The City Attorney, or the City Attorney's designee, shall represent the City in all such public safety commission hearings.

(d) The mayor and council shall perform an on-record review of the hearing record before the public safety commission unless the licensee waives said review. The mayor and council shall determine from the hearing record whether there is sufficient evidence to support the finding of the public safety commission. The licensee shall not be permitted to present additional evidence or arguments before the mayor and council. If the on-record review concerns a revocation recommendation, then upon a finding by the mayor and council that sufficient evidence exists to support the recommendation, the mayor and council shall revoke the license of the licensee for 60 months. Any decision of mayor and council pursuant to this subsection shall be in writing and filed with the city clerk.

### **Sec. 26-358. Enforcement.**

- (a) Without limiting the ability to suspend or revoke a license pursuant to Section 26-357(a), any violation of this article shall also subject the licensee to the following actions upon notice and hearing:
  - (1) The first violation shall result in fine of up to \$1,000 and/or a license suspension for a period of up to 60 days.
  - (2) The second violation within a consecutive 24-month period shall result in a fine of up to \$2,500 and a license suspension for a period of not less than 60 days nor more than 90 days.
  - (3) The third violation within a consecutive 24-month period shall result in license revocation.
- (b) For any licensee who is also licensed to sell alcohol in the city, any violation of this article which results in a license suspension or license revocation shall also result in a 60-day suspension of said licensee's alcohol license in addition to any other penalty which may be levied pursuant to Chapter 6 of this Code.

### **Sec. 26-359. Limitation on number of licenses.**

- (a) No license shall be issued for a vape shop unless the number of active vape shop licenses is less than one license per two thousand five hundred (2,500) people residing within the corporate limits of the City of Dalton according to the most recent United States Decennial Census.

- (b) Notwithstanding any other provision of this section, any business which operates as a vape shop at the time of enactment of this article may apply for and be granted a vape shop license.
- (c) When an additional license for a vape shop becomes available as a result of population growth or attrition of current licenses, the city shall announce the availability of an additional license and the time for receipt of applications for said license, which time shall not be less than 30 days. All applications received during the application time shall be evaluated and approved provisionally pursuant to the process for all other vape shop licenses set forth in this code; however, such approval shall be subject to the limitations set forth in this section, and no license shall issue until the process described in this section is complete. An applicant shall then be chosen to receive a vape shop license via lottery from the pool of provisionally approved applicants.
- (d) The limitations set forth in this section shall be in addition to and not in lieu of all other requirements specified in this article for a vape shop license.

**Secs. 26-360 – 26-399. Reserved.**

### **Section 2.**

This Ordinance shall be effective upon the posting of this Ordinance in two (2) public places in the City of Dalton for five (5) consecutive days following its enactment by the Mayor and Council, the public health, safety, and welfare requiring it.

### **Section 3.**

All ordinances and parts of ordinances in conflict with this ordinance are repealed.

### **Section 4.**

It is hereby declared to be the intention of the Mayor and Council of the City of Dalton that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

**SO ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

The foregoing Ordinance received its first reading on \_\_\_\_\_ and a second reading on \_\_\_\_\_. Upon second reading a motion for passage of the ordinance was made by Councilmember \_\_\_\_\_, second by Councilmember \_\_\_\_\_ and upon the question the vote is \_\_\_\_ ayes, \_\_\_\_ nays and the Ordinance is adopted.

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MAYOR/MAYOR PRO TEM

ATTEST:

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CITY CLERK