

## **What our code says regarding creating a new use type in the city:**

### **Sec. 38-303. - Classification of new and unlisted uses.**

It is recognized that new or unlisted types of land use will develop and forms of land use not anticipated may seek to locate in the city. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

(1)

The administrative official shall refer the question concerning any new or unlisted use to the planning and zoning commission and city council for review and approval of a specific use permit.

(2)

The specific use permit application shall be accompanied by a statement of facts, provided by the applicant, listing the nature of the use and whether it involves dwelling activity, sales, processing, type of product, storage and amount and nature thereof, enclosed or open storage, anticipated employment, transportation requirements, the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated and the general requirements for public utilities such as water and sanitary sewer.

(3)

The planning and zoning commission and city council shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various districts, in determining the zoning district or districts within which such use should be permitted.

(4)

It is recognized that the permitted use chart may require amendment, from time to time, to allow for uses that were otherwise not permitted. In the event an amendment to the permitted use chart is required, the procedure for the amendment shall be the same as required for an amendment to the text of the ordinance from which this chapter is derived.

(Ord. No. 120910-01, § 1(ch. 4, § 3), 12-9-2010)

## What the state of Texas says we can and cannot do in this instance:

Sec. 443.003. LOCAL REGULATION PROHIBITED. A municipality, county, or other political subdivision of this state may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the processing of hemp or the manufacturing or sale of a consumable hemp product as authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. [1325](#)), Sec. 7, eff. June 10, 2019.

HB 1325 2019 <https://legiscan.com/TX/bill/HB1325/2019>

## What our attorney says we can and cannot do moving forward:

After reviewing [HB 1325](#) from the 86<sup>th</sup> legislative session (2019) and the associated chapters of the Texas Agriculture Code (Ch.122) and Texas Health and Safety Code (Ch.443), the city cannot prohibit the sale of hemp or consumable hemp products. However, the City can regulate the location of this land use within the city limits through the City's zoning authority just like any other commercial enterprise/ land use.

Below, for your information, I have identified the applicable regulations from the Texas Agriculture Code (Ch.122) and Texas Health and Safety Code (Ch.443) for municipalities related to the sale of hemp products (including CBD):

### [Texas Agriculture Code Chapter 122](#) Cultivation of Hemp:

- Sec. 122.002 LOCAL REGULATION PROHIBITED. A municipality, county, or other political subdivision of this state may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, handling, transportation, or sale of **hemp** as authorized by this chapter.
- Sec. 122.001 Definitions - "Hemp" has the meaning assigned by Section 121.001.
- Sec. 121.001 Definition. In this chapter, "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

[Texas Health and Safety Code Chapter 443](#) Manufacture, Distribution, and Sale of Consumable Hemp Products:

- Sec. 443.003. LOCAL REGULATION PROHIBITED. A municipality, county, or other political subdivision of this state may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the processing of hemp or the manufacturing or sale of a consumable hemp product as authorized by this chapter.
- Sec. 443.001. DEFINITIONS. (1) "Consumable hemp product" means food, a drug, a device, or a cosmetic, as those terms are defined by Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol.
- Sec. 443.001. DEFINITIONS. (5) "Hemp" has the meaning assigned by Section 121.001, Agriculture Code.

I also will note that per Texas Health and Safety Code [Sec.443.2025](#) a retailer of consumable hemp products must be registered with the Department of State Health Services.

## **What other communities have in their code about Botanicals and Smoke Shops:**

### **New Boston, Texas**

**Population: 4,579 (2021)**

- **ARTICLE VI. - SMOKE SHOPS AND TOBACCO STORES**
- **Sec. 19-541. - Purpose.**

The regulation of smoke shops and tobacco 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 shops and tobacco stores in the City of New Boston. The expansion of smoke shops and tobacco stores in the city would 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 chapter contains 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 New Boston.

(Ord. No. 16-O-11, § 1, 9-20-16)

- **Sec. 19-542. - Definitions.**

*Ancillary sale* means where a grocery store, supermarket, convenience store or similar market uses no more than two (2) percent of its gross floor area, or two hundred (200) square feet, whichever is less, for the display, sale, distribution, delivery, offering, furnishing, or marketing of conventional cigars, cigarettes or tobacco. For any grocery store, convenience market, retail kiosk or similar use consisting of two hundred fifty (250) square feet or less, "ancillary sale" shall mean where no more than five (5) square feet are used for the display, sale, distribution, delivery, offering, and furnishing, or marketing of conventional cigars, cigarettes or tobacco.

*E-cigarette* means any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution. Popularly referred to as "juice," and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco products and tobacco paraphernalia.

*Smoke shop and tobacco store* mean any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a "smoke shop and tobacco store" and shall not be subject to the restrictions in this chapter.

*Tobacco* means 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, sorting, sniffing, or ingesting by any other means into the body.

*Tobacco paraphernalia* means 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 Texas Health and Safety Code. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bong, water bong, 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* means 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.

(Ord. No. 16-O-11, § 2, 9-20-16)

- **Sec. 19-543. - Zoning and land use standards.**

(a)

Zoning and land use standards for smoke shops and tobacco stores shall be as follows:

(1)

Smoke shops and tobacco stores shall not be located within three hundred (300) feet, measured property line to property line, from a school (public or private), family day care home, child care facility, and youth center, community center, recreational facility, park, church or religious institution, hospital, or other similar uses where children regularly gather.

(2)

Smoke shops and tobacco stores shall not be located within one thousand (1,000) feet, measured property line to property line, from another smoke shop and tobacco store.

(3)

It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within any smoke shop and tobacco store.

(4)

Smoke shops and tobacco stores shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one (1) such sign shall be placed in a conspicuous location near each public entrance to the smoke shop and tobacco store. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

(b)

Standard conditions of smoke shop and tobacco stores at minimum shall include the following:

(1)

No smoking shall be permitted on the premises at any time.

(2)

No sales may be solicited or conducted on the premises by minors.

(3)

No self-service tobacco, tobacco product, or tobacco paraphernalia displays shall be permitted. Each item displayed shall be deemed as a separate violation.

(4)

No distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as coupons for said items, shall be permitted.

(c)

Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this chapter may continue to operate as legal nonconforming uses in accordance with this chapter. However, any change or expansion of the legal nonconforming use may require compliance with this chapter.

(Ord. No. 16-O-11, § 3, 9-20-16)

- **Sec. 19-544. - Penalty.**

Any violation of this article shall be considered a class C misdemeanor, and is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(Ord. No. 16-O-11, § 4, 9-20-16)

## **Rowlett, Tx**

**Population: 63,671 (2021)**

- **ARTICLE XII. - VAPOR STORES**

- **Sec. 10-435. - Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates otherwise:

*CBD products* means oil, oil-based capsules, vaporized liquid, ingestible solid, or any other product that contains cannabidiol in a form designed for human consumption.

*City* means the City of Rowlett, Texas.

*E-cigarette* means:

(a)

An electronic cigarette 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; or

(b)

A consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this section.

(c)

The term "e-cigarette" includes:

(1)

a device described by this section regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(2)

a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(d)

The term "e-cigarette" does not include a prescription medical device related to the cessation of smoking.

*Vapor store* shall mean a retail establishment that sells or offers for sale e-cigarettes, as defined in this section, which receives at least 90 percent of its gross revenues from the sale of e-cigarettes or e-cigarettes and CBD products.

(Ord. No. 027-22, § 1, 8-16-2022)

- **Sec. 10-436. - Permits.**

(a)

No person may engage in the business of an e-cigarette retailer unless the person has a valid permit from the Texas Comptroller, which shall be kept on public display at the place of business for which the permit was issued.

(b)

No person may sell, offer for sale, or distribute e-cigarettes to any person under the age of 21 years.

(c)

In addition to any other remedy, the city may suspend or revoke a certificate of occupancy for the premises in which the e-cigarette retailer conducts business for a violation of this section. The suspension or revocation of a certificate of occupancy may be appealed to the city manager of the city within ten days of transmittal of a written notice of suspension or revocation. The notice of appeal must contain a short statement of the basis of the appeal and must state that the suspension or revocation is unduly harsh or must deny the facts on which the suspension or revocation was made, or both. An appeal must be made in writing and will be heard by the city manager promptly after receipt of a notice of appeal. The city manager's decision shall be final and binding.

(Ord. No. 027-22, § 1, 8-16-2022)

- **Sec. 10-437. - Special use permit.**

(a)

No person may engage in the business of a vapor store without a special use permit issued in accordance with the Rowlett Development Code. In granting a special use permit, the city may impose reasonable conditions.

(b)

Special use permits for vapor stores shall expire on the fifth anniversary after issuance. No vested right in a special use permit for a vapor store shall last for a period of more than five years.

(c)

A special use permit issued under this section shall be applicable to the site at which the business is conducted and not to the person to whom it was granted.

(Ord. No. 027-22, § 1, 8-16-2022)

- **Sec. 10-438. - Verification of compliance.**

(a)

The city may conduct reasonable inspections at any time the business is open or occupied in order to determine compliance with the provisions of this article.

(b)

It shall be an offense for any person to refuse to allow a city inspection or to deny entry to the premises on which the e-cigarette retailer or vapor store conducts business.

(Ord. No. 027-22, § 1, 8-16-2022)

- **Sec. 10-439. - Revocation of permit.**

(a)

Notwithstanding any other provision of the Rowlett Development Code or the Code of Ordinances, a special use permit issued for a vapor store may be revoked by the city council, on recommendation of the planning commission and after required public hearings, for repeated violations of this article.

(b)

The administrative official responsible for administering the provisions of this article shall transmit written notice to the owner, operator or occupant of the vapor store at least 30 days prior to the effective date of revocation, delivered to the address of the vapor store. The owner may appeal the revocation by filing a written notice of appeal with the city manager, who shall conduct a hearing on whether the special use permit

should be revoked. A failure to timely submit the notice of appeal shall be deemed a consent to revocation for all purposes.

(c)

If the city manager upholds the revocation of the special use permit, he shall do so in writing and a copy of the determination shall be delivered to the owner, who may appeal the city manager's determination to the city council by written notice of appeal which shall be delivered to the city manager within 30 days of the city manager's determination. A failure to timely submit the notice of appeal shall be deemed a consent to revocation for all purposes.

(d)

The revocation of a special use permit shall be suspended until the council finally determines the appeal. The city council's decision shall be final and binding.

(e)

Any vested rights in a special use permit are subject to and limited by the provisions of this section.

(Ord. No. 027-22, § 1, 8-16-2022)