



**CITY COUNCIL
SCHENECTADY, NEW YORK**

ORDINANCE NO. 2024-02

Councilmember Ms. Patrick

offered the following:

An Ordinance Establishing a Temporary Moratorium until June 10, 2024, on the Submission and Processing of Building Permits, Certificates of Occupancy, Certificates of Use and Land Use Approvals for “Smoke Shops, Vape Shops, and Tobacco or Vape Consumption Businesses” within the City of Schenectady

WHEREAS, the City of Schenectady Code, including the zoning ordinance at Chapter 264 of the Schenectady City Code, currently lacks the ability regulate smoke shops, vape shops, tobacco or vape consumption businesses, and cannabis retail and consumption uses; and

WHEREAS, under the existing the zoning ordinance at Chapter 264 of the Schenectady City Code, smoke shops, vape shops and cannabis dispensaries constitute ‘retail’ which is permitted without restriction through numerous commercial districts in the City of Schenectady (“City”), while tobacco or vape consumption businesses and cannabis consumption are not uses contemplated by the zoning ordinance and, as such, are not permitted uses; and

WHEREAS, the legalization of cannabis at the state level has lead to an influx of ancillary unregulated smoke shops, vape shops, tobacco or vape consumption businesses and other retail businesses primarily engaged in the sale of smoking and tobacco products, and tobacco or cannabis paraphernalia throughout the City; and

WHEREAS, the Schenectady City Council seeks to implement zoning which will provide regulations for smoke shops, vape shops, tobacco or vape consumption businesses and cannabis uses in the City and desires to maintain the *status quo* while these zoning modifications are developed and contemplated by the Council; and

WHEREAS, while considerable licensing requirements exist, and many zoning functions preempted, under New York State Law regarding cannabis uses, no such state-wide authority exists which regulates smoke shops, vape shops and tobacco or vape consumption businesses; and

WHEREAS, in light of the licensing requirements and state level preemption with respect to cannabis uses which substantially limit the rate at which these businesses may be entitled to open, and in the interest of limiting the effect of any moratorium to just the relief necessary to preserve the *status quo* related to such uses, the Council desires to establish a land use moratorium on Building Permits, Certificates of Occupancy, Certificates of Use and Land Use Approvals limited to smoke shops, vape shops, and tobacco or vape consumption businesses as the same have no state-wide regulations.

WHEREAS, a public hearing with regard to this moratorium was held on August 14, 2023:

NOW, THEREFORE BE IT,

ENACTED, by the Council of the City of Schenectady, in a regular meeting convened as follows:

1. DEFINITIONS

BUILDING PERMIT – a building, demolition, plumbing, electrical, or other permit issued by an administrative official for the City of Schenectady for the construction, renovation, rehabilitation or alteration of property pursuant to Chapter 137, 138, 167 or 264 of the Schenectady City Code.

CERTIFICATE OF OCCUPANCY – A certificate of occupancy or certificate of compliance issued pursuant to Chapter 137, 138, 167 or 264 of the Schenectady City Code.

CERTIFICATE OF USE – A certificate issued to a business pursuant to Chapter 183, Article II (Business Certificates of Use) of the Schenectady City Code.

LAND USE APPROVALS – Any approval regarding the use of land pursuant to Chapter 264 of the Schenectady City Code. Such approvals include, but are not limited to, use variances, area variances, site plan approval, and special use permits.

PRIMARILY ENGAGED – The term “primarily engaged” means when twenty percent (20%) or more of products sold at the retail establishment are smoking and tobacco products, tobacco or cannabis paraphernalia, accessories, and other products, devices and components reasonably assumed to be used for smoking and/or inhalation or injection of any substances.

SCHENECTADY ZONING ORDINANCE – The City of Schenectady zoning ordinance provided at Chapter 264 of the Schenectady City Code.

SMOKING AND TOBACCO PRODUCTS – Any product in leaf, flake, plug, liquid (such as e-cigarette liquid), or any other form, containing nicotine derived from tobacco, or otherwise derived, cannabidiol (“CBD”), or other controlled substances as defined in the New York Public Health Law, which is intended to enable human consumption of the tobacco, CBD, or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. This term excludes any product that has been specifically approved by the United States Food and Drug Administration 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. For purposes of this moratorium this term shall exclude cannabis as regulated by the New York State Office of Cannabis Management.

TOBACCO OR CANNABIS PARAPHERNALIA – Any 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 smoking and tobacco products or cannabinoid products. Items or devices classified as tobacco or cannabis 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 are excluded from the definition of tobacco paraphernalia.

TOBACCO OR VAPE CONSUMPTION BUSINESS – A premises where smoking and tobacco products are sold for consumption on the premises. Such premises include hookah lounges, hookah cafes, vapor lounges, cigar lounges, cigar bars, and the like.

VAPE OR SMOKE SHOP – A retail establishment or wholesale establishment primarily engaged in the selling of smoking and tobacco products, tobacco or cannabis paraphernalia, or components reasonably assumed to be used for smoking and/or inhalation or injection of any products or other substances. Such premises include tobacco shops, head shops, nicotine shops, vapor shops and the like.

2. PURPOSE & INTENT

The purpose of this moratorium is to temporarily suspend Building Permits, Land Use Approvals, Certificates of Occupancy and Certificates of Use for vape shops, smoke shops, and tobacco or vape consumption businesses in the City of Schenectady (“City”) pursuant to the statutory powers vested to the City and Schenectady City Council (“Council”) to regulate and control land use and to protect the health, safety and welfare of its citizens; and to address present and future development within the City; and pursuant to the City Comprehensive Plan adopted by the Council on March 25, 2008; and to continue the update of the City’s land use regulations, including but not limited to the Schenectady Zoning Ordinance.

The Schenectady City Code, including the Schenectady Zoning Ordinance, currently lacks the ability to regulate cannabis uses, vape or smoke shops, and tobacco or vape consumption businesses. While these uses which meet the City’s broad zoning definition of ‘retail’ may operate without any use-specific regulations throughout the City’s commercial districts, consumption uses for either cannabis or tobacco are not permitted uses.

Recognizing the need to permit such uses in certain districts throughout the City, the negative community impacts of cannabis, tobacco and similar uses are well-documented, including the accessibility and advertising of these products to youth. Modifications of the zoning ordinance are required, not only address concerns of residents and property owners, but to provide regulations for these uses with regard to parking, visibility, density, certain physical requirements, as well as establish other municipal zoning and administrative regulations. This moratorium shall serve to maintain the *status quo* regarding such uses to permit the development of zoning modifications to ameliorate the impacts of these uses on the public.

The legalization of cannabis by the State of New York has yielded in influx in inquiries regarding cannabis uses, and an influx of smoke and vape shops throughout the City providing ancillary goods and services. While New York State has implemented a substantial regulatory process with respect to cannabis uses, preempting certain zoning functions typically left to local governments, no such regulations exist regarding smoke shops, vape shops, and tobacco or vape consumption businesses. Considering the state-level regulation of cannabis uses which substantially limit the rate at which cannabis businesses may be entitled to open, and in the interest of limiting the effect of any moratorium to just the relief necessary to preserve the *status quo* related to such uses, this moratorium shall be limited to suspending Building Permits, Certificates of Occupancy, Certificates of Use and Land Use Approvals related to smoke shops, vape shops, and tobacco or vape consumption businesses as the same remain largely unregulated in the City of Schenectady.

3. AUTHORITY

This land use moratorium is enacted by the City Council of the City of Schenectady pursuant to its authority under the Article IX of the New York State Constitution, the General City Law, General Municipal Law, and Municipal Home Rule Law.

4. ENACTMENT OF TEMPORARY MORATORIUM

There shall be a Temporary Moratorium until June 10, 2024, following the effective date of this Ordinance, except as provided below and in Section 5 below:

- i. no new applications for Building Permits and Land Use Approvals for vape shops, smoke shops, or tobacco or vape consumption businesses shall be accepted or processed by the City of Schenectady;
- ii. Submitted applications on or before March 11, 2024, for Building Permits and Land Use Approvals for vape shops, smoke shops, or tobacco or vape consumption businesses shall be accepted and processed by the City of Schenectady.

- iii. no Certificates of Occupancy for vape shops, smoke shops, or tobacco or vape consumption businesses shall be issued by the City of Schenectady; and
- iv. Submitted applications for a Certificate of Use on or before March 11, 2024, for vape shops, smoke shops, or tobacco or vape consumption businesses shall be accepted and processed by the City of Schenectady.

At the discretion of the Council, there shall be the possibility of one (1) separate three-month period of extension imposed, after proper notice and a public hearing, to be held within 30 days prior to the expiration of said moratorium period.

5. ALLEVIATION OF EXTRAORDINARY HARDSHIP

- i. The Schenectady City Council may authorize exceptions to the moratorium imposed by this Ordinance when it finds, based upon evidence presented to it, that deferral of action on application for a Building Permit, issuance of a Certificate of Occupancy, Certificate of Use, or Land Use Approval for a vape shop, smoke shop, or tobacco or vape consumption business would impose an extraordinary hardship on a landowner or applicant.
- ii. An application for an exception based upon extraordinary hardship shall be filed with the Schenectady City Clerk, including a fee of five hundred and 00/100 Dollars (\$500.00) for each tax map parcel claimed to be subject to extraordinary hardship, by the landowner or the applicant, upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Schenectady City Council or its designee shall prescribe as necessary for the Schenectady City Council to be fully informed with respect to the application.
- iii. A public hearing on any application for an exception to this Ordinance based upon extraordinary hardship shall be held by the Schenectady City Council at a meeting of the Schenectady City Council no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Schenectady City Clerk. The Schenectady City Council shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.
- iv. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Schenectady City Council may consider the following criteria:
 - a. The extent to which the proposed development activity would cause significant environmental degradation, adversely impact existing development in the area, be detrimental to public health, comfort or safety concerns and/or have a negative impact upon the City of Schenectady.

- b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.
- c. The extent to which actions of the applicant were undertaken in good faith belief that the proposed development would not lead to significant environmental degradation, adversely impact existing development in the area, have an adverse impact on public health or safety, and/or have a negative impact upon the City of Schenectady.
- v. Mere delay or concern that regulations may be adopted prohibiting establishment of vape and smoke shop uses is insufficient to constitute an extraordinary hardship under this section.
- vi. Where an existing vape shop, smoke shop, or tobacco or vape consumption business has not been operating lawfully with the existing zoning and building requirements of the City of Schenectady, its preexisting operation is insufficient to constitute an extraordinary hardship under this section.
- vii. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Schenectady City Council shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Schenectady City Council may approve, deny or approve in part and deny in part the application being acted upon.

6. CONFLICT WITH STATE STATUTES AND AUTHORITY TO SUPERSEDE

It is the intent of this Ordinance to supersede any statutes or regulations which may be inconsistent with the provisions herein. To the extent that any provisions of this Ordinance are in conflict with or are construed as inconsistent with the provisions of the General City Law or General Municipal Law this Ordinance supersedes, amends and takes precedent consistent to the City's municipal home rule powers pursuant to Municipal Home Rule Law and Article IX of the New York State Constitution.

Related to Building Permits, Certificates of Occupancy, Certificates of Use, and Land Use Approvals, for vape shops, smoke shops, or tobacco or vape consumption businesses, this Ordinance supersedes:

- i. Schenectady City Code Chapters 137 (Building Code Administration), 138 (Building, Plumbing and Electrical Standards), 167 (Housing Standards), Chapter 183, Article II (Business Certificates of Use), or 264 (Zoning). This Ordinance suspends and stays the running of time periods for processing, action upon, holding hearings on, making decisions and taking action on such applications provided for in those laws.

- ii. Any inconsistent provisions the General Municipal Law, General City Law, or Schenectady City Code, relating to the authority of the Schenectady Board of Zoning Appeals to grant variances, waivers, or other relief from the Schenectady Zoning Ordinance.
- iii. Any inconsistent provisions of the General City Law and City of Schenectady Code which requires that the Planning Commission process, review, hold hearings on, and act upon applications for site plans within specified time periods. This Ordinance suspends and stays the running of time periods for processing, review, holding hearings on, making decisions, and taking action on such applications provided for in those laws and is intended to supersede said inconsistent authority.

7. ENFORCEMENT

This Ordinance shall be enforced by the Corporation Counsel of the City of Schenectady, or their designee. It shall be the duty of the Corporation Counsel to advise the Council of all matters pertaining to the enforcement of this Ordinance and to keep all records necessary and appropriate to such enforcement.

8. VIOLATIONS

Any person, firm, entity or corporation violating any of the provisions of this Ordinance shall be guilty of an offense and upon conviction thereof in a civil action brought by the Corporation Counsel, shall be subject to civil penalties in the amount of one hundred dollars (\$100.00) for each day such violation exists in addition to injunctive or equitable relief.

9. SEVERABILITY

Should any word, phrase, clause, sentence, paragraph, section, part or provision of this Ordinance be found by the courts to be unconstitutional or invalid, such decision shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

10. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its filing with the Schenectady City Clerk.

Approved as to form this
11th day of March 2024



 Maxine Barasch, Corporation Counsel
 Corporation Counsel

RESOLUTION adopted unanimously
MAR 12 2024 by Council Members
 Approved by Mayor **MAR 13 2024**
 Vetoed by Mayor _____