



**CITY COUNCIL
SCHENECTADY, NEW YORK**

ORDINANCE NO. 2024-10

Councilmember Mr. Mootoveren

offered the following:

An Ordinance to add Section 264-113 of the Code of Ordinances entitled “The Regulation of Vape Shops, Smoke Shops, Vape Lounges, Hookah Lounges and Vape Consumption Businesses.

The Council of the City of Schenectady in regular meeting convened, ordains as follows:

Section 1. Section 264-113 shall hereinafter read as follows:

Purpose and Intent: The unregulated establishment and operation of vape shops, smoke shops, vape lounges, hookah lounges and vape consumption businesses would lead to the widespread imposition of adverse secondary impacts upon the residents, businesses, property values and quality of life of the City and would, therefore, be detrimental to the general health safety and economic viability of the community. The negative community impacts of cannabis, tobacco and similar uses are well-documented, including the accessibility and advertising of these products to youth. It is the intent of the City of Schenectady by enacting this section to ameliorate, mitigate, reduce, or prevent the adverse secondary impacts associated with vape shops, smoke shops, vape lounges, hookah lounges and vape consumption businesses. This ordinance is enacted to regulate land use and to protect the health, safety, and welfare of the community pursuant to the City Comprehensive Plan adopted by the Council on March 25, 2008.

Section 2.

A. Definitions and word usage. Whenever used in this section and in Chapter 264 of the Schenectady City Code, the following terms shall have the meanings indicated:

CANNABIS

All parts of the plant of genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture salt, derivative, mixture or preparation of the plant, its seed or resin.

CANNABIS PRODUCT

Otherwise known adult-use cannabis product means cannabis, concentrated cannabis, and cannabis infused products for use by a cannabis consumer.

HOOKAH PIPE

A single or multi stemmed instrument used by one or more persons to smoke tobacco or another substance, which hookah pipe is also commonly referred to as a "hookah," "water pipe," "shisha" or "narghile."

HOOKAH LOUNGE AND VAPE LOUNGE

Any facility or location whose business operation, and its principal use, include the on-site indoor smoking of electronic cigarettes, vape pens, vapors, e-liquids, or other like substances. Smoking is the inhalation of the smoke/liquid nicotine/vapors/water pipe tobacco and other substances encased in electronic cigarettes, vape pens, and pipes commonly known as "hookah," "water pipe," "shisha," and "narghile" or any similar device. A facility where smoking and tobacco products are sold for consumption on premises.

INSTITUTIONAL DISPENSER

A facility approved and certified by the State of New York Department of Health as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

MEDICAL MARIHUANA

Shall have the same definition as ascribed to medical marihuana in Section 3360 of the New York Public Health Law and which is intended for a certified medical use, as determined by the Commissioner of Health of the State of New York ("Commissioner") in his or her sole discretion. Any form of medical marihuana not approved by the Commissioner is expressly prohibited.

SMOKE SHOP AND VAPE SHOP

Any establishment which offers for sale or consideration cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances, or cannabis paraphernalia, or components reasonably assumed to be use for smoking and/or inhalation or injection of any or products or other substances as a substantial or significant portion of its business, merchandise and/or stock-in-trade. Such establishments include tobacco shops, head shops, nicotine shops, vapor shops and the like.

SUBSTANTIAL OR SIGNIFICANT PORTION

- (1) Substantial or significant portion shall be determined using the following considerations:
 - (a) Amount of floor area and basement space accessible to customers and allotted to the sale or consideration of cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances of any type, generally, or as compared to the total floor area and basement space accessible to customers; and/or
 - (b) Number of cigarettes electronic cigarettes pipes, vape pens, vapors, e-liquids, derivatives, or other like substances stock-in-trade or of any type accessible to customers generally, or as compared to total stock accessible to customers; and/or
 - (c) Revenues derived from cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances of any type, generally, or as compared to total revenues; and/or
 - (d) Advertising devoted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances of any type, generally, or as compared to total advertising; and/or
 - (e) Use of the establishment for cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances of any type, generally, or as compared to total use thereof.
- (2) However, notwithstanding the above considerations, the following shall be conclusive in determining substantial or significant portion:

- (a) Forty percent or more of floor area and basement space accessible to customers allotted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances of any type; and/or
- (b) Forty percent or more of its stock-in-trade in cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances of any type; and/or
- (c) Forty percent or more of its gross income derived from cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances; and/or
- (d) Forty percent or more of its advertising is devoted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, or other like substances.

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, bong, water bong, 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 or cannabis paraphernalia.

B. Location:

In the R-1, R-2, R RH-1, RH-2, R-3, C-1, C-2, C-3 and I Districts, no building or premises shall be used and no building shall be hereafter erected or altered unless otherwise provided in this chapter for use as a vape shop, smoke shop, hookah lounge and/or vape lounge or a vape consumption business whether as its primary use or as an accessory or ancillary use. All such facilities or establishments lawfully established and operating, and open to the public or a segment thereof as of the date of adoption of this **Section 264-113**, shall be terminated within one year from the effective date of this amendment, except that such establishment may be continued for a limited period of time by the Board of Zoning Appeals pursuant to **264-113D**. All others are hereby declared unlawful and prohibited, effective immediately in accordance with law.

C. Restriction on location of hookah lounges, vape lounges, smoke, and/or vape shops.

Vape shops, smoke shops, hookah lounges, vape lounges or a vape consumption business as defined above are to be restricted to the M-1 and M-2 zoned districts and the C-4, and C-5 zoned districts and allowed only by Special Use Permit per ARTICLE XIV and Site Plan Approval per ARTICLE XIII of Chapter 264 and further subject to the regulations set forth in this section.

1. The lot line of any property whereupon exists any of the above uses shall not be located within a 1,000-foot of the lot line of another such legal hookah lounge, vape shop, smoke shop, vape lounge or vape consumption use.
2. The lot line of any property whereupon exists any of the above uses shall not be located within a 750-foot of the lot line of any day care, school, library, church or other place of religious worship, park, playground or playing field.

3. Signage:

- a. There shall be no public display of advertisements for electronic cigarettes, vapor products, smoking

paraphernalia, or tobacco products, within 1,500 feet of a school, or place of worship, in accordance with Public Health Law Article 13-F Section 1399-DD-1.

b. Windows shall be unobstructed by advertisements and/or other materials or smoking paraphernalia.

c. The total area of window signs shall not exceed 20% of the total area of the window and blinking, flashing, fluttering, and strobe-light effects are prohibited.

D. Amortization of Smoke Shops, Vapes Shops and Vape Consumption Businesses.

The Board of Zoning Appeals per Article 5 A of the General City Law and Chapter 264 of the City Code may permit non-conforming principal or accessory vape shop, smoke shop, hookah lounge and/or vape lounge or vape consumption business to continue for a period beyond is that provided for in 264-113B, provided that:

1. An application for an extension is made by the owner of such establishment to the Board of Zoning Appeals at least 120 days prior to the date on which such establishment must terminate.
2. The Board of Zoning Appeals shall find, in connection with such establishment, that:
 - (a) The applicant had made, prior to the nonconformity, a substantial financial expenditure related to the nonconformity; and
 - (b) The applicant has not recovered substantially all the financial expenditures related to the nonconformity; and
 - (c) The period for which such establishment may be permitted to continue is the minimum period sufficient for the applicant to recover substantially all the financial expenditures incurred related to the nonconformity.
 - (d). For the purposes of this section, "financial expenditures" shall mean the capital outlay made by the applicant to establish the business exclusive of the fair market value of the building in which such use is located and exclusive of any improvements unrelated to the nonconforming business establishment.

Section 3. This Ordinance shall take effect immediately.

New language underlined.

Approved as to form this
24th day of June, 2024.



Maxine L. Barasch Esq
Corporation Counsel

<u>ADOPTED</u> LOST by the following vote (a majority of all members voting in the affirmative negative)		AYE	NAY
Council Member			
Doreen Ditro	<u>Absent</u>		
Damonn Farley		✓	
Joseph Mancini		✓	
John Mootooveren		✓	
Carmel Patrick		✓	
Marion Porterfield		✓	
Carl Williams		✓	
	TOTAL	6	0
ORDINANCE	RESOLUTION	LOCAL LAW	
ADOPTED unanimously	LOST	<u>June 24, 2024</u>	
Approved by Mayor		<u>June 28, 2024</u>	
Vetoed by Mayor			