

ORDINANCE NO. 5369

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, BEING THE COMPREHENSIVE ZONING ORDINANCE, AMENDING ARTICLE VI “DEFINITIONS,” SECTION 28.63 “DEFINITIONS,”; AMENDING ARTICLE IV “USE REGULATIONS,” SECTION 28.49 “USE REGULATIONS (CHARTS)”; AMENDING ARTICLE III “ZONING DISTRICTS,” SECTION 28.45.2 “AUTHORIZED USES,”; AMENDING ARTICLE III “ZONING DISTRICTS,” SECTION 28.46.2 “AUTHORIZED USES,”; AMENDING ARTICLE III “ZONING DISTRICTS,” SECTION 28.47.2 “PERMITTED USES; AUTHORIZED USES,”; AMENDING ARTICLE III “ZONING DISTRICTS,” SECTION 28.48.2 “AUTHORIZED USES,”; AND AMENDING ARTICLE V “DEVELOPMENT STANDARDS” TO ADD SECTION 28.55.10 “REQUIREMENTS FOR E-CIGARETTE, CIGARETTE, CIGAR AND/OR TOBACCO RETAIL SHOP AND TOBACCO BAR” TO PROVIDE AMENDED REGULATIONS FOR E-CIGARETTE, CIGARETTE, CIGAR AND/OR TOBACCO RETAIL SHOP AND TOBACCO BAR; 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 Denison (hereinafter referred to as “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Denison, Texas (the “City Council”) adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance (“Zoning Ordinance”) of the City, which sets forth various regulations for promoting the public health, safety, morals and general welfare, and protecting and preserving places and areas within the City and are made with reasonable consideration, among other things, for the character of each zoning district and its peculiar suitability for the particular uses specified; and

WHEREAS, having considered the proposed amendments to the Comprehensive Zoning Ordinance and the appropriateness of the amendments; 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 amendments to the Comprehensive 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 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 City Council does hereby find that the amendments to the Comprehensive Zoning Ordinance approved hereby accomplishes such objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DENISON, 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 of Denison, Texas, and of the public health, safety and welfare.

SECTION 3. Amendment to Article VI “Definitions,” Section 28.63 “Definitions”. Section 28.63 of the Zoning Ordinance is hereby amended by adding the following definitions:

“CBD/cannabidiol – CBD, short for cannabidiol, is a nonintoxicating cannabinoid found in hemp and is considered a consumable hemp product.”

“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.”

“Consumable Hemp Product means a food, a drug, a device, or a cosmetic, as those terms are defined by Texas Health and Safety Code Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol.”

“E-cigarette” means 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 a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device. The term “e-cigarette” includes every variation and type of such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vaping device, or any other product name or descriptor, and any aerosol, liquid, or vapor used in such a device regardless of whether the device is manufactured, distributed, or sold as such; and a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device. The term “e-cigarette” does not include a prescription medical device unrelated to the cessation of smoking.

“E-cigarette, Cigarette, Cigar, and/or Tobacco Retailer shall include an owner, operator, manager, and/or someone otherwise responsible for an E-cigarette, Cigarette, Cigar, and/or Tobacco Retail Shop, Tobacco Bar, or any other commercial business location, vending machine and/or a motorized vehicle where e-cigarettes, CBD, cigarettes, cigars, hemp and/or any form of tobacco are primarily sold, kept for sale, or consumption or otherwise stored.”

“E-cigarette, Cigarette, Cigar, and/or Tobacco Retail Shop” shall mean a commercial business

location, vending machine and/or a motorized vehicle where e-cigarettes, CBD, cigarettes, cigars, hemp, and/or any form of tobacco are primarily sold, kept for sale or consumption or otherwise stored.”

“Tobacco Bar means a bar which engages in on-site sales or rentals of tobacco products and smoking accessories, including but not limited to e-cigarettes, CBD, cigarettes, cigars, hemp and/or any form of tobacco, for consumption or use on the premises and into which entry is restricted to individuals 18 years of age and above.”

“Vape -” Vape or Vapor products are electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine or other harmful products to the individual inhaling from the device, or any substance used to fill or refill the device.”

SECTION 4. Amendment to Article IV “Use Regulations,” Section 28.49 “Use Regulations (charts)”. Section 28.49 “Use regulations (charts)” of the Zoning Ordinance is hereby amended to add the following:

	A	RD	SF-20	SF-10	SF-7.5	SF-5	SF-PH	SF-TH	LD	UD	MH	2F	MF-1	MF-2	O	NS	LR	CR	RR	C	CA	BP	LI	HI	
Non-Residential and Institutional Uses																									
E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop*																					C			C	
Tobacco Bar*																					C			C	

SECTION 5. Amendment to Article III “Zoning Districts,” Section 28.45.2 “Authorized Uses”. Section 28.45.2 “Authorized uses” of the Zoning Ordinance, is hereby amended to add B.5 and B.6 as an additional prohibited use to the Morton Street Overlay District as follows:

“B. The following uses shall be prohibited in the Morton Street Overlay Boundary:

- ...
- 5. E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop.
- 6. Tobacco Bar.”

SECTION 6. Amendment to Article III “Zoning Districts,” Section 28.46.2 “Authorized Uses”. Section 28.46.2 “Authorized uses” of the Zoning Ordinance, is hereby amended to add B.26 and B.27 as an additional prohibited use to the Highway Oriented and Corridor District as follows:

“B. The following uses shall be prohibited in the HO Overlay District:

- ...
- 26. E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop.
- 27. Tobacco Bar.”

SECTION 7. Amendment to Article III “Zoning Districts,” Section 28.47.2 “Permitted Uses; Authorized Uses”. Section 28.47.2 “Permitted uses; Authorized uses” of the Zoning Ordinance, is hereby amended to add C.1 and C.2 as a prohibited use to the Commercial Historic Overlay District as follows:

“C. The following use shall be prohibited in the Commercial Historic Overlay District:

1. E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop.
2. Tobacco Bar.”

SECTION 8. Amendment to Article III “Zoning Districts,” Section 28.48.2 “Authorized Uses”. Section 28.48.2 “Authorized uses” of the Zoning Ordinance, is hereby amended to add B.4 and B.5 as an additional prohibited use to the Austin Avenue Overlay District as follows:

“B. The following uses shall be prohibited in the Austin Avenue Overlay District:

- ...
4. E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop.
 5. Tobacco Bar.”

SECTION 9. Amendment to Article V “Development Standards”. Article V “Development Standards” of the Zoning Ordinance, is hereby amended by adding a new Section 28.55.10. “Requirements for E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop and Tobacco Bar” to read as follows:

“28.55.10. Requirements for E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop and Tobacco Bar:

An E-cigarette, Cigarette, Cigar and/or Tobacco Retail Shop or a Tobacco Bar may be a permitted use in the Commercial and Light Industrial Districts with a conditional use permit (“CUP”) if the use satisfies the following conditions:

- A. It shall be unlawful for any person to operate an e-cigarette, cigarette, cigar and/or tobacco shop or to operate a tobacco bar within the City, or engage in any other activity for which the State of Texas (the “State”) requires an e-cigarette retailer permit or a cigarette, cigar and/or tobacco retailer permit be obtained from the Texas Comptroller, without first obtaining a CUP for the location from the City.
- B. No applicant shall be granted a CUP for the location under this section who has not first been issued an e-cigarette retailer permit or a cigarette, cigar and/or tobacco retailer permit from the Texas Comptroller and who fails to present satisfactory evidence of the same.
- C. It shall be unlawful for any applicant issued an e-cigarette retailer permit or a cigarette, cigar and/or tobacco retailer permit from the Texas Comptroller to use or display a permit or to exercise any privilege granted by a permit except at the place, address, premises and location for which the permit and the CUP is granted.
- D. Any CUP granted shall expire on the last day of May of each even-numbered year unless the e-cigarette, cigarette, cigar and/or tobacco retailer provides satisfactory evidence of an approved renewal submission from the Texas Comptroller. If an existing CUP expires without satisfactory evidence of an approved renewal, the CUP shall be declared null and void and of no force and effect and the e-cigarette, cigarette, cigar and/or tobacco retailer shall immediately cease operations. The applicant may reapply for a CUP but may not continue operations without a new

CUP being granted.

- E. The establishment for an e-cigarette, cigarette, cigar and/or tobacco retailer is prohibited within one thousand (1,000) feet of any church, school, daycare, or hospital. This section shall not apply where the church, school or hospital is built within one thousand (1,000) feet of where an e-cigarette, cigarette, cigar and/or tobacco retailer holds a valid certificate of occupancy prior the church, school, daycare, or hospital being built.
- F. The measurement of the distance between an e-cigarette, cigarette, cigar and/or tobacco retailer and the church, school or public hospital shall be from the nearest property line of the church, school, daycare, or hospital to the nearest doorway by which the public may enter the e-cigarette, cigarette, cigar and/or tobacco retailer, along street lines and in direct line across intersections.
- G. All conditions in this section, or as otherwise applicable, shall be complied with prior to the granting of a CUP or the issuance of a certificate of occupancy. This CUP shall be declared null and void and of no force and effect and shall discontinue if or for any one or more of the following:
 - a. Any failure to comply with any term or condition of this section or all applicable regulations, as they exist or may be amended; or
 - b. A certificate of occupancy for which a use authorized by this section is not applied for and issued within one hundred and eighty (180) days from the effective date of a CUP being granted; or
 - c. The use for which the CUP is granted ceases to operate for a continuous period of one hundred eighty (180) calendar days; or
 - d. A structure for which the CUP is granted remains vacant for a continuous period of one hundred eighty (180) calendar days; or
 - e. The CUP was obtained by fraud or deception; or
 - f. Failure to comply with any and all applicable local, state or federal laws or regulations, as they exist or may be amended.”

SECTION 10. 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 11. 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 12. PENALTY. Any person, firm, corporation or entity violating this Ordinance or any provision of Denison's Comprehensive Zoning Ordinance, Chapter 28 of the Denison Code of Ordinances, 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 (\$2,000.00). Each continuing days' violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Denison from filing suit to enjoin the violation. Denison retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 13. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

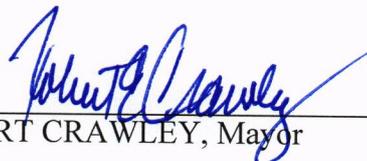
SECTION 14. OPEN MEETING. That it is hereby found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

AND IT IS SO ORDERED.

On motion by Council Member Massey, seconded by Council Member Courtright, the above and foregoing ordinance was passed and approved on this the 21st day of October 2024, by the following vote:

Ayes: Adams, Courtright, Thorne, Crawley, Massey, Redwine and Thomas
Abstentions:
Nays:
Absent:

At regular meeting, October 21, 2024.



ROBERT CRAWLEY, Mayor

ATTEST:



Christine Wallentine, City Clerk

