

ORDINANCE NO. 2023-001

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
OF THE TOWN OF INDIAN SPRINGS VILLAGE.**

WHEREAS, the youth are our future; issues affecting their health, safety, and well-being are paramount, and therefore, must be addressed;

WHEREAS, the Center for Disease Control and Prevention (“CDC”) reported that tobacco product use by youth populations was on the rise despite historical efforts to mitigate the activity;

WHEREAS, according to the CDC, use of any tobacco product has grown significantly in recent years, and as a result, more than 1 in 4 high school students admitted to using a tobacco product in the past 30 days and CDC data revealed that use of a tobacco product by middle school aged children increased as well during the same period in question;

WHEREAS, nearly all tobacco products contain nicotine; youth nicotine intake is especially injurious because the chemical compound inflicts damage upon the developing brain, impacting learning, memory, and attention;

WHEREAS, additionally, *Prevention Science*, the official journal of the Society for Prevention Research, examined the relationship between youth smoking and nearness of tobacco outlets to youth homes and determined that greater density of tobacco outlets within a 0.75 and 1-mile buffer of youth homes were associated with higher smoking frequency among youth populations; nonetheless, our current local zoning guidelines permit the operation of tobacco shops adjacent to residential neighborhoods;

WHEREAS, a recent study of youth tobacco use by the Food and Drug Administration (“FDA”) and the Centers for Disease Control and Prevention shows that 11.3 percent of high school students and 2.8 percent of middle school students said they has used an e-cigarette at least once in the past 30 days with more than 2 million middle and high school students reporting they vaped in the past 30 days;

WHEREAS, vaping devices are very efficient at delivering drugs rapidly into your brain and, in doing so, deliver the drugs in ways that make them more addictive;

WHEREAS, Section 28-11-19 of the *Code of Alabama* (1975) prohibits any retailer whose sale of electronic nicotine delivery systems accounts for more than 35 percent of the total quarterly gross receipts for the establishment from locating a retail business within 1,000 feet of any public or private K-12 school; a licensed child-care facility or preschool; a church; a public library; a public playground; a public park; and a youth center or other space used primarily for youth-oriented activities;

WHEREAS, Section 28-11-13 of the *Code of Alabama* (1975) makes it unlawful for any individual under the age of 21 years to purchase, use, possess, or transport tobacco, a tobacco product, an electronic nicotine delivery system, or an alternative nicotine product within the state;

WHEREAS, e-cigarettes not only pose substantial health risks to youth and young adults, but pose a significant environment threat since e-cigarette waste is potentially a more serious environment threat than cigarette butts since e-cigarettes contain plastic, nicotine salts, heavy metals, lead, mercury, and flammable lithium-ion batteries into waterways, soil, and to wildlife;

WHEREAS, according to the Partnership to End Addiction, teens and young adults are using Cannabidiol (“CBD”) as a homeopathic remedy for pain, depression and anxiety symptoms, acne and insomnia, and for boosting productivity, but there are significant differences between CBD that is studied in labs for medical conditions like epilepsy and CBD products that are sold to consumers for well-being;

WHEREAS, with CBD there is a lack of well-controlled trials and little understanding of the long-term effects, the trials are focused on the action and benefits of the purified CBD compound, not an extract of CBD, which is typically found in commercial products, and CBD products are for the most part unregulated, so users are forced to rely on the quality assurances of the companies that manufacture and sell them;

WHEREAS, most CBD products that not approved by the FDA and are sold as medicines, food, or as cosmetics are considered “black-market” and are illegally trafficked and sold;

WHEREAS, these CBD products have not been evaluated by the FDA in order to determine if they are safe as foods or effective or safe for any medical use, and if safe, what the proper dosage would be;

WHEREAS, many CBD products contain other dangerous chemicals or synthetic CBD oil;

WHEREAS, the World Health Organization declared CBD non-addictive, writing, “In humans, CBD exhibits no effects indicative of any abuse or dependence potential,” but they do not recommend consumption because, CBD producers are largely unregulated, making it difficult to know what is in products and the level of CBD concentration;

WHEREAS, as we resolve to envision an improved Town, let us do so in a manner conducive to healthier outcomes for all;

WHEREAS, in Resolution No. 05-02-2023-003, the Town Council of the Town of Indian Springs Village, Alabama (the “Town Council”), contemplated the amendment of the regulations of the Zoning Ordinance for the Town of Indian Springs Village, Alabama, which

was originally adopted by the Town Council on July 21, 2015, and amended over time (as amended, the “Zoning Ordinance”);

WHEREAS, following the adoption of Resolution No. 05-02-2023-003 and following the satisfaction of any publication or posting requirements provided by the Zoning Ordinance and State law, the Indian Springs Village Planning and Zoning Commission (the “Planning Commission”) considered said Resolution at a regularly scheduled meeting, held a public hearing on the proposed amendment, and made advisory recommendations to the Town Council concerning the proposed amendment;

WHEREAS, upon receipt of the report of the Planning Commission of the proposed zoning amendment, on behalf of the Town Council, the Town Council gave a “first reading” of the proposed amendment at its next regularly scheduled Town Council meeting and held a public hearing following the satisfaction of any publication or posting requirements provided by the Zoning Ordinance and Alabama law;

WHEREAS, in accordance with the notice given, the Town Council held a public hearing on the proposed amendment at a regularly scheduled Town Council meeting;

BE IT ORDAINED by the Town Council of the Town of Indian Springs Village, Alabama, as follows:

Section 1. The Town Council hereby finds that the public necessity, convenience, safety, and general welfare warrant amendment of the zoning regulations as provided herein.

Section 2. Article 7 of the Zoning Ordinance for the Town of Indian Springs Village, Alabama is hereby amended to protect the public health, safety, welfare, and the existing community standards in the Town of Indian Springs Village by adding the following Section:

SECTION 14.0- MEDICAL OVERLAY DISTRICT

The uses identified as being permitted by right and allowed by a special exception in the underlying zoning district shall be allowed in the Medical Overlay District by right. In addition, tobacco shops, vape shops, and CBD shops shall only be permitted in the Medical Overlay District. No business license shall be issued, nor shall any building, structure, or land shall hereafter be erected structurally altered, or enlarged for one or more of the permitted uses herein cited except as subject to the conditions stated herein.

Tobacco shops, vape shops, and CBD shops shall be allowed only as conditional uses in the Medical Overlay District, and in addition to all other rules and regulations established by this Ordinance. The following regulations in this section shall apply:

14.1 Intent and Purposes. The general purpose and intent of these regulations are to provide separation, development, and operational standards for tobacco shops, vape shops, and CBD shops in order to mitigate the negative impacts

associated with smoking, vaping, and CBD uses and to serve the public health, safety, and welfare of residents and businesses within the Town.

14.2 Applicability. For the purposes of this section, the standards of this section apply to new establishments of tobacco shops, vape shops, and CBD shops. An establishment is considered new when no previous tobacco shop, vape shop, or CBD shop existed at that location for a period of 90 consecutive days or greater immediately preceding the filing date of an application for permit under this section.

14.3 Vesting.

- A. Any properly licensed tobacco shop, vape shop, or CBD shop legally operating at the effective date of this Ordinance that is not in compliance with this section shall be considered a legal nonconforming use and shall be subject to the provisions of Article III, Section 2.0 (Nonconforming Uses) of this Ordinance.
- B. Any tobacco shop, vape shop, or CBD shop, legally operating at the effective date of this Ordinance, that voluntarily discontinues active operation for more than 90 consecutive days; does not maintain a valid town business license for more than 90 consecutive days; ceases to be licensed by the State of Alabama or any other applicable licensing authority, or transfers ownership, shall be considered a termination of the use and all privileges and rights held therein.

14.4 Definitions. As used in this section, the following words and phrases will have the following meanings:

- A. “Advertise” or “advertisement.” Any written, electronic, or oral publication, dissemination, solicitation, or circulation which is intended to directly or indirectly induce any person to purchase nicotine, tobacco, vape, and CBD products. This definition includes but is not limited to billboards, mailings, print advertisements, Internet listings, and retail signage.
- B. “Cannabidiol (CBD).” Cannabidiol, a chemical compound from the species *Cannabis Sativa L.*, of the family Cannabaceae.
- C. “Cannabidiol (CBD) product.” A product to be consumed or applied originating from the species *Cannabis Sativa L.*, excluding marijuana, derived from industrial hemp, with a tetrahydrocannabinol (THC) concentration of no more than 0.3 percent on a dry weight basis.
- D. “CBD shop.” A free-standing business establishment for which more than 10 percent of the gross floor area is devoted to the display, sale, use and storage of CBD products.
- E. “Electronic cigarette (E-cigarette).” An electronic or battery-operated device, whether or not such device is shaped like a cigarette, that uses an atomizer, aerosol or similar device that allows users to inhale nicotine vapor or flavored vapor, without

fire, smoke or ash. An electronic cigarette includes but is not limited to any electronic nicotine delivery system, electronic vaping device, personal vaporizer, electronic pipe, electronic hookah, or vapor pen.

- F. “Marijuana.” Any CBD product that contains more than 0.3 percent of THC.
- G. “Playground.” A playground, play park, or play area which is a piece of land used for and equipped with facilities for recreation by children. A playground is designed to provide an environment for children that facilitates play,
- H. “Tobacco product.” Includes any substance containing tobacco or derived from tobacco and any substance used in electronic cigarette and vaping devices including but not limited to cigarettes, cigars, e-juice, e-liquid, e-nicotine, smoke juice, pipe tobacco, rolling tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, nicotine gel, nicotine lollipops, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body.
- H. “Tobacco shop,” “vape shop,” or “E-cigarette shop.” A free-standing business establishment for which the sale of electronic nicotine delivery systems accounts for more than 35 percent of the total quarterly gross receipts for the establishment or 20 percent of the gross floor area is devoted to the display, sale, use and storage of vape or tobacco products, including, but not limited to, electronic cigarettes and related accessories. Related accessories include any apparatus, equipment or instrument used for smoking tobacco and/or inhaling vapor from nicotine enriched solutions and/or the burning or vaporizing of controlled substances.
- I. “Vaping.” To inhale vapor from any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine, CBD, or any other substances, and the use or inhalation of which simulates smoking.

14.5 Locational Requirements.

- A. The Medical Overlay District is established to serve as an overlay to the established B-2 General Business District.
- B. No tobacco shop, vape shop, or CBD shop (as described and detailed within this section) established after the date of this section shall be located within 2,500 linear feet of any other tobacco shop, vape shop, or CBD shop. The method of measurement that shall be used is a straight line measured from

the property line of the site of the proposed business to the closest property line that is already occupied by these businesses.

- C. No tobacco shop, vape shop, or CBD shop shall be located within 500 feet of a residentially zoned district, as measured by a straight line from the property line of the site of the proposed business to the property line of the closest residentially zoned property.
- D. No tobacco shop, vape shop, or CBD shop shall be located within 1000 feet of a public building, public or private school, child-care facility or preschool, nursery, park or playground, church or place of worship, and a youth center or space used primarily for youth-oriented activities as measured by a straight line from the property line of the site of the proposed business to the property line of the property that is occupied by one of the uses.

14.6 Development and Operational Standards.

- A. Hours of operation. The hours of operation shall be limited to the hours between 9:00 a.m. and 6:00 p.m.
- B. A tobacco shop, vape shop, or CBD shop shall not knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within the premises.
- C. A tobacco shop, vape shop, or CBD shop located in a building sharing one or more common walls or sharing common attic space with another retail or commercial establishment shall not allow tobacco product use or vaping on the premises in a manner that interferes with any other establishment's use or enjoyment of the premises.
- D. Tobacco products, tobacco paraphernalia, electronic cigarettes and vaping devices shall be kept and displayed in a secure and locked enclosure, which can only be accessed with the assistance of a clerk. Self-service displays of tobacco products and tobacco paraphernalia are prohibited.
- E. Tobacco products, tobacco paraphernalia, electronic cigarettes and vaping devices, electronic cigarette and vaping accessories, and CBD products shall not be visible through storefront windows.
- F. New store operators shall submit a floor plan, drawn to scale and professionally prepared by a licensed civil engineer or architect, designating all interior dimensions of the premises, the proposed use of all spaces, identification of limited access areas, and areas of ingress and egress. The purpose of the floor plan is to serve as fire protection/life safety/accessibility drawing for review and comment by the town engineer and fire chief or fire marshal.

14.7 Advertising.

- A. Tobacco shops, vape shops, and CBD shops shall post clear signage stating that minors may not enter the premises unless

accompanied by a parent or legal guardian. At least one such sign shall be placed in a conspicuous location near each public entrance to the shop. It shall be unlawful for a tobacco shop, vape shop, or CBD shop to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

- B. In addition to all other sign limitations applicable to the business and/or the property where the business is located, no more than 10 percent of the square footage of the windows and clear doors of an establishment used for retailing shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This provision is a limitation in addition to all others provided by law, and it is not an authorization to place a sign in a place or manner where it would not otherwise be allowed.
- C. Tobacco shops, vape shops, and CBD shops are prohibited from advertising on any sign or structure located within 1,000 feet of any public or private K-12 school or public playground.

14.8 Conditional Permitting.

- A. All tobacco shops, vape shops, and CBD shops are required to obtain a Conditional Use Permit issued by the Indian Springs Village Town Council. The permit shall be required prior to the issuance of a business license for said use and prior to occupancy of the premises regarding said use. No permit shall be issued for a conditional use except with the written approval of the Indian Springs Village Town Council and subject to such conditions the Town Council may require in preserving the character of the underlying district. A conditional use permit shall not be issued unless and until:
 - (1) A completed Conditional Use Permit Application has been submitted to the Town Council and includes any supplemental information which will assist the staff and Town Council in making a determination to issue a Conditional Use Permit.
 - (2) An application fee is submitted.
 - (3) A public hearing has been held, notice of which has been posted in four (4) conspicuous places within the Town, including the Town Hall, at least fifteen (15) days prior to the public hearing.
- B. The Indian Springs Village Town Council shall hold a public hearing, notice of which will be given, for the consideration of the additional rules and regulations described above, any requested exceptions, and comments from the applicant(s) and

other interested parties will be heard. After completing an applicable public hearing, the Indian Springs Village Town Council will make the final decision regarding the granting of a permit and issuance of an applicable business license.

- C. No permit may be issued to authorize retailing at other than a fixed location. For example, retailing by persons on foot or from vehicles is prohibited.
- D. No permit may be issued to authorize retailing at a temporary or recurring temporary event. For example, retailing at flea markets and farmers' markets is prohibited.

Section 3. All ordinances or parts of ordinances heretofore adopted by the Town Council of the Town of Indian Springs Village, Alabama, that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

Section 4. The provisions, sections, paragraphs, sentences, clauses, phrases and parts thereof of this Ordinance are severable, and if any provision, section, paragraph, sentence, clause, phrase, or part thereof of this Ordinance shall be declared unconstitutional or invalid by a court of competent jurisdiction, then such ruling shall not affect any other provision, section, paragraph, sentence, clause, phrase, or part thereof, since the same would have been enacted by the Council without the incorporation of any such unconstitutional or invalid provision, section, paragraph, sentence, clause, phrase, or part thereof.

Section 5. This Ordinance shall become effective on July 1, 2023.

ADOPTED: This the 20th day of June, 2023.

Herb Robins
Council Chairman Pro Tem

ADOPTED: This the 20th day of June, 2023.

Brenda Bell-Guercio
Mayor

ATTESTED: This the 20th day of June, 2023.

Vickie Lewis
Town Clerk

CERTIFICATION OF TOWN CLERK

STATE OF ALABAMA)
SHELBY COUNTY)

I, Vickie Lewis, Town Clerk of the Town of Indian Springs Village, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an Ordinance duly adopted by the Town Council of the Town of Indian Springs Village, Alabama, on the 20th day of June, 2023.

The above and foregoing Ordinance was published on the 20th day of June, 2023, by posting copies thereof in four public places within the Town:

1. Indian Springs Village Town Hall,
2. Shelby County Fire Station No. 1,
3. Shelby County Fire Station No. 2, and
4. Oak Mountain Elementary School.

Witness my hand and seal of office this _____ day of June, 2023.

Vickie Lewis, Town Clerk



The Town of Indian Springs Village, Alabama

Conditional Use Permit Application

Tobacco, Vape, and CBD Shops

APPLICANT: _____

PHONE NUMBER: _____

CURRENT ADDRESS: _____

PROPOSED ADDRESS: _____

BUSINESS TYPE: _____

BUSINESS NAME: _____

All tobacco, vape, and CBD shops are required to obtain a conditional use permit issued by the Indian Springs Village Town Council. The permit shall be required prior to the issuance of the business license for said use and prior to occupancy of the premises regarding said use.

All tobacco, vape, and CBD shops are required to comply with all the requirements from Article VII, Section 14 of the Zoning Ordinance for the Town of Indian Springs Village, Alabama, which allows tobacco shops, vape shops, and CBD shops in the Medical Overlay District and any other regulations and requirements detailed in the Zoning Ordinance for the Town of Indian Springs Village, Alabama.

The Indian Springs Village Town Council shall hold a public hearing, notice of which will be given, for the consideration of the additional rules and regulations described above, any requested exceptions, and comments from the applicant(s) and other interested parties will be heard. After completing an applicable public hearing, the Indian Springs Town Council will make the final decision regarding the granting of a permit and issuance of an applicable business license.

DESCRIPTION OF ALL SERVICES OFFERED:

SIGNATURE OF APPLICANT

DATE

OFFICE USE ONLY

DATE RECEIVED: _____

PUBLIC HEARING DATE: _____

TOWN COUNCIL: APPROVAL DENIAL

APPROVAL/DENIAL DATE: _____

PERMIT NUMBER: _____