



DEVELOPMENT SERVICES

RULE INTERPRETATION DETERMINATION

Determination #: 2025-004

Title: *Zoning Classification of Consumable Hemp Products Retailers*

Drafted by: *Land Development Division, Policy Administration Section*

Rule in Question: *Section 35-311-2: Non-Residential Use Matrix*

Department Action: *This RID is for clarification purposes and includes suggested UDC amendments.*

Amin Tohmaz, PE, CBO
Development Services Director

Date

11/3/2025

Effective Date of Determination: *Immediately.*

Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.

Staff Analysis: Since the passage of federal and state level legislation related to consumable hemp products, a wave of businesses has opened in San Antonio, and throughout Texas, for the retail sale of consumable hemp products. Such retailers often sell products such as CBD, Delta-8 and Delta-9, and other THC-A products.

In 2025, the San Antonio City Council approved the B.R.E.A.T.H. (Building Regulations Enhancing Anti-Vaping Trends and Habits) ordinance, which created additional regulations for vape shops, defined as:

“a retail outlet whose main purpose is selling vaping products. Vaping means a vaporizer or inhalant-type device, also known as an electronic cigarette, that contains a power source and

heating element designed to heat a substance and inhaling the vapor of the device directly through the mouth, whether or not the vapor contains nicotine, and the refillable or disposable cartridges for them.”

More recently, the Building Official has been asked to determine how to classify a retail establishment that specializes in the sale of hemp-derived products that does not include vaping or vaping-related products.

Staff Position and Interpretation: Section 35-311(b)(3) empowers the Director of Development Services to make a determination when a use is not listed in the use matrix. The section states:

(b)(3) The director of planning and development services shall make a determination if a use not mentioned can reasonably be interpreted to fit into a use category where similar uses are described. Interpretations may be ratified by the city council upon recommendation by the zoning commission at a regularly scheduled meeting. It is the intent of this article to group similar or compatible land uses into specific zoning districts, either as permitted uses or as uses authorized by a specific use permit. Uses not listed as a permitted or specific use permit shall be presumed to be prohibited from the applicable zoning district. In the event that a particular use is not listed in the Use Matrix, and such use is not listed as a prohibited use and is not otherwise prohibited by law, the director of planning and development services shall determine whether a materially similar use exists in this section. Should the director of planning and development services determine that a materially similar use does exist, the regulations governing that use shall apply to the particular use not listed and the director's decision shall be recorded in writing. Should the director of planning and development services determine that a materially similar use does not exist, the matter may be referred to the zoning commission for consideration for amendment to this chapter to establish a specific listing for the use in question. Unless an appeal is timely filed pursuant to section 35-481 of this chapter, a decision of the director of planning and development services pursuant to this section is deemed to be valid. If, when seeking periodic ratification of interpretations, the director's interpretation is reversed, then decisions made in reliance on the director's interpretation shall be deemed to be nonconforming uses.

In accordance with this charge, the Director of Development Services acknowledges that:

- 1 – The use of “Retail – Consumable Hemp Products Retailer” does not exist in the Unified Development Code; and
- 2 – The use of “Retail – Consumable Hemp Products Retailer” is not listed as a prohibited use in the Unified Development Code.

Therefore, the Director has determined that the use of “Retail – Consumable Hemp Products Retailer” is most materially similar to a “Vape Shop” and that all retailers specializing in the sale of consumable hemp products must comply with the recently adopted B.R.E.A.T.H. ordinance, including the mandatory 1,000 foot spacing requirement from either a public or private school, daycare, or institution of higher learning unless granted an "S" specific use authorization by city council, in accordance with section 35-423.

Future UDC Amendments: This Rule Interpretation Determination includes the following suggested UDC amendment, to be considered during the 2027 UDC amendment cycle.

Sec. 35-398.02. - Prohibition of Tobacco and/or Vape Shops and Consumable Hemp Products Retailers From Certain Uses.

(a) **Applicability.** No tobacco store, ~~or~~ vape shop, or consumable hemp products retailer shall be allowed to operate within one thousand (1,000) feet of a public or private school, daycare, or institution of higher learning unless granted an "S" specific use authorization by city council, in accordance with section 35-423.

(b) **Method of Measurement.** Distance shall be measured in a direct line from the property line of the retail outlet whose primary purpose is the sale of tobacco or vaping products and the property line of a public or private school, daycare, or institution of higher learning.

TABLE 311-2 NONRESIDENTIAL USE MATRIX

	PERMITTED USE	O-1 & O-1.5	O-2*	NC	C-1	C-2	C-3	D	L	I-1	I-2	ERZD
Retail	Tobacco Store - Retail/Hookah Lounge or Smoking Room, <u>Vape Shop, or Consumable Hemp Products Retailer</u> (See Sec. 35-398.02)		P	P	P	P	P	P				P