

**FORSYTH COUNTY, GEORGIA
ORDINANCE NUMBER 127**

AN ORDINANCE AMENDING CHAPTER 50 OF THE CODE OF FORSYTH COUNTY, GEORGIA (“OFFENSES AND MISCELLANEOUS PROVISIONS”) TO REGULATE THE SALE OF NON-TRADITIONAL TOBACCO PARAPHERNALIA, E-CIGARETTES, AND ALTERNATIVE NICOTINE PRODUCTS; TO PROVIDE FOR FURTHER LICENSING AND SCREENING REQUIREMENTS FOR THE SALE OF NON-TRADITIONAL TOBACCO PARAPHERNALIA; TO PROVIDE FOR ADDITIONAL LICENSING REQUIREMENTS FOR THE SALE OF NON-TRADITIONAL TOBACCO PARAPHERNALIA AND TO PROVIDE FOR LICENSING REQUIREMENTS FOR THE SALE OF ALTERNATIVE NICOTINE PRODUCTS; TO PROVIDE FOR SIGNAGE REQUIREMENTS RELATING TO THE SALE OF ALTERNATIVE NICOTINE PRODUCTS; TO PROVIDE FOR LIMITATIONS ON THE SALE OF NON-TRADITIONAL TOBACCO PARAPHERNALIA AND ALTERNATIVE NICOTINE PRODUCTS IN PREMISES THAT ARE IN OR WITHIN 100 YARDS OF ANY CHURCH BUILDING OR IN OR WITHIN 200 YARDS OF ANY SCHOOL BUILDING, EDUCATIONAL BUILDING, SCHOOL GROUNDS, OR COLLEGE CAMPUS; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November 1982, and effective July 1, 1983, provides in Article IX, Section 2, Paragraph 1 thereof, that the governing authority of the County may adopt clearly reasonable ordinances, resolutions, and regulations;

WHEREAS, O.C.G.A. § 36-1-20 authorizes counties to enact ordinances for protecting and preserving the public health, safety and welfare of the population of the unincorporated areas of the county;

WHEREAS, in the interests of the health, safety, and general welfare of the citizens of Forsyth County, Georgia, the Board of Commissioners of Forsyth County desires to exercise its authority to amend Chapter 50 of the Code of Forsyth County, Georgia (“Offenses and Miscellaneous Provisions”) to regulate the sale of non-traditional tobacco paraphernalia, e-cigarettes, and alternative nicotine products, to provide for further licensing and screening requirements for the sale of non-traditional tobacco paraphernalia, to provide for licensing requirements for the sale of alternative nicotine products, to provide for signage requirements relating to the sale of alternative nicotine products, to provide for severability, and to repeal conflicting ordinances;

WHEREAS, Federal Public Law 92-544 provides for national fingerprint-based criminal history record checks for governmental entities to make a “fitness determination” for licensing purposes; and

WHEREAS, O.C.G.A. § 35-3-35(a)(1) provides that local governing authorities may require, by ordinance, the fingerprinting of applicants or licensees for state and national criminal history record information of said applicants or licensees; and

WHEREAS, the adoption of an amendment to Ordinance Number 127, Article 6, Chapter 50 of the Forsyth Code of Ordinances, would authorize Forsyth County, Georgia, the Forsyth County Sheriff, and their authorized designees to receive criminal history record information from both the Georgia Crime Information Center and Federal Bureau of Investigation for applicants desiring to obtain a non-traditional tobacco paraphernalia license; and

WHEREAS, on February 7, 2019 the Board of Commissioners adopted Amendment “A” to Ordinance 127; and

WHEREAS, appropriate notice and hearing on the amendments contained herein have been carried out according to general and local law.

NOW, THEREFORE, the Board of Commissioners of Forsyth County, Georgia hereby ordains as follows:

Sec. 50-6. - Regulation of the sale of non-traditional tobacco paraphernalia.

- (a) Definitions. For the purposes of this section, the following terms shall have the following meanings:
 - (1) “Additional line of devices” shall refer to the following four separate lines of devices:
 - a. grinders;
 - b. any storage devices with false or hidden doors or compartments commonly associated with tobacco, vaping, or drug use;
 - c. weighing devices commonly associated with tobacco, vaping, or drug use; and
 - d. torch lighters;
 - (2) “*Alternative nicotine product*” shall have the same definition as provided for said term in section 50-7(a)(2) of these ordinances;
 - (3) “*Applicant*” shall mean all persons who are required to sign an application for a license to sell non-traditional tobacco paraphernalia as set forth in section 50-6(b);
 - (4) “*Board of commissioners*” shall mean the Board of Commissioners of Forsyth County;
 - (5) “*County*” or “*Forsyth County*” shall mean County of Forsyth, Georgia, and, when used in a geographical sense, shall mean the political subdivision of Forsyth County outside the municipal limits of the City of Cumming;
 - (6) “*Director*” shall mean the Director of the Forsyth County Department of Planning and Community Development;
 - (7) “*Non-traditional tobacco paraphernalia*” shall mean non-traditional instruments

designed so to facilitate the smoking, consumption or ingestion of tobacco or nicotine in any form (such as bong, hookah pipes, or faux jewelry, bracelets, or necklaces commonly associated with tobacco, vaping, or drug use, with one purpose of such items being the inhalation or ingestion of tobacco or drugs); provided, however, that the term "non-traditional tobacco paraphernalia" shall exclude alternative nicotine products, cigarette papers or wrappers, blunt wraps, traditional tobacco pipes (such as brand names Briar and Meerschaum), holders, cigarette rolling machines, or other products, devices, or substances used for the purpose of making tobacco cigarettes;

- (8) "*Person*" shall have the same meaning as set forth in section 50-5(a)(5) above;
 - (9) "*Screened room*" shall mean a room separate from the public sales floor that is completely screened from view by the public such that persons entering into a regulated establishment shall not be able to observe any non-traditional tobacco paraphernalia except after entering the screened room; and
 - (10) "*Vaping*" shall have the same definition as provided for said term in section 50- 7(a)(6) of these ordinances.
- (b) Any person who offers for retail sale any item of non-traditional tobacco paraphernalia shall, by December 1 of each year, apply to the Forsyth County Planning and Community Development Department for a non-traditional tobacco paraphernalia license and shall pay an annual license fee. For the 2017 calendar year, and for every year thereafter until modified by the board of commissioners, the annual license fee shall be \$2,000.00. Any person required to obtain a license to sell non-traditional tobacco paraphernalia and also offers for sale any additional line of devices shall pay an additional annual license fee of \$250.00 per additional line of devices. For the purposes of this section, every person who obtains such a license shall be referred to as a "licensee." All applications shall be fully completed by the applicant and sworn to and signed by the applicant in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a partnership, then each partner shall sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a corporation selling any item of non-traditional tobacco paraphernalia, the majority stockholder and each principal officer of the corporation must sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a nonprofit tax exempt civic, patriotic, or social club or corporation which is organized and operated in the county as a mutual benefit membership group, the individual being primarily responsible for the club or corporation's compliance with this chapter must sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a private club, then each member of its governing body must sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a limited liability company, then each member of the limited liability company must sign the application in the presence of a notary public or other officer authorized to administer oaths.
- (1) All applications shall be accompanied by the following:
 - a. Unless waived by the director in recognition of the absence of any school or church buildings in proximity to the premises where non-traditional tobacco paraphernalia is to be sold, the application shall have attached a survey (dated no more than 180 days

prior to submission of the application to the county), certified by a registered surveyor of this state, showing a scaled drawing of the premises, the location on the premises where the applicant desires to sell any item of non-traditional tobacco paraphernalia, and the distance in linear feet measured from the front door of the premise where any non-traditional paraphernalia is to be sold, to the property line of the tract upon which is located the nearest church building, school building, educational building, school grounds or college grounds or college campus building.

For purposes of measuring the distance referred to in this subsection the following shall be employed; (1) from the front door of the premise which is regulated under this ordinance; (2) to the property line on the tract on which is located the church, school ground, or college campus; and (3) along a straight line which describes the shortest distance between the two points.

- b. If the applicant is a partnership, a copy of the partnership agreement, including amendments, shall accompany the application.
- c. If the applicant is a corporation, a copy of the articles of incorporation and by-laws, including amendments, shall accompany the application.
- d. If the applicant is a nonprofit tax exempt civic, patriotic or social club or corporation which is organized and operated in the county as a mutual benefit membership group, a copy of the charter or articles of incorporation, as well as sufficient proof of the organization's tax exempt status shall accompany the application.
- e. If the applicant is a private club, a copy of the articles of incorporation and by-laws, including amendments, shall accompany the application.
- f. If the applicant is a limited liability company, a copy of the operating agreement.
- g. Forsyth County Sheriff, the Director of Planning & Community Development, and each of their authorized designees, are hereby authorized to receive criminal history record information from both the Georgia Crime Information Center and Federal Bureau of Investigation for applicants desiring to obtain a non-traditional tobacco paraphernalia license pursuant to O.C.G.A. § 35-3-35(a)(1.2) and Federal Public Law 92-544.
 - (i) As a prerequisite to the issuance of any license, the applicant shall furnish a complete set of fingerprints for all persons required to sign the application to be forwarded to the Georgia Bureau of Investigation and to the Federal Bureau of Investigation, as specified under O.C.G.A. § 35-3-35(a)(1) and Federal Public Law 92-544.
 - (ii) By filing such application, the applicant consents to the Forsyth County Sheriff's Office obtaining their criminal history record information (CHRI) from the Georgia Crime Information Center (GCIC) and the Federal Bureau of Investigation (FBI).
 - (iii) The information provided by an applicant in connection with an application for a license under this article shall be maintained on a confidential basis and redacted as necessary to comply with the Open Records Act, and the handling of such information shall comply with all Georgia laws and the Federal Privacy Act, except that no information given as part of the request for a criminal history and no record obtained pursuant to this section may be entered on any database or produced under the Open Records Act.

- (iv) Once an application, accompanying documents, fingerprints, and the required investigative and license fees are filed with the Forsyth County Sheriff's Office or the office of the Directory of Planning & Community Development, such office shall transmit said fingerprints and appropriate fees to the GCIC. As provided by law, the GCIC will compare the subject's fingerprints against its criminal file and submit the fingerprints to the FBI for a comparison with nation-wide records, unless submission to the FBI is automatic pursuant to the use of live-scan. The results of the FBI check will be returned based on its current procedure, presently being directly to the Sheriff's Office if submissions are made manually to the GCIC, or electronically from both the GBI and FBI where submissions are made electronically to the GCIC.
 - (v) In compliance with Federal law 95-544, which provides for the rendering of a "fitness determination," the Sheriff's Office shall decide whether the applicant has been convicted of, or is under pending indictment for enumerated disqualifiers, as set forth within this Chapter.
 - (vi) A person who has consented to the Forsyth County Sheriff's office for a criminal history based on fingerprinting record may request and receive a copy of the criminal history record report from the Sheriff's Office at no additional charge. Should the person seek to amend or correct the record, he or she shall be responsible for contacting the GCIC as to Georgia records and/or the FBI concerning records from other jurisdictions maintained in its file.
- h. The application shall be accompanied by a certified or cashier's check for the full amount of the license fee combined with \$350.00 for an investigative fee that may be paid with a credit or debit card. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee (without interest) shall be refunded to the applicant. All other fees paid to the county which were submitted as part of the application, including, but not limited to the investigative fee and any employee application permit fee(s) shall be retained by the county.
 - i. The director may require any additional information and records he reasonably deems necessary. Failure to furnish such data shall automatically serve to dismiss the application. Any misstatement or concealment of fact in the application shall be grounds for denying a license or revoking an issued license, and shall make the applicant liable to prosecution for perjury under the laws of the State of Georgia.
 - j. A valid email address and a valid mailing address that can be used for serving documents upon the applicant.
 - k. Each applicant shall certify that applicant has read and understands this chapter and if the license is granted, each licensee shall maintain a copy of this chapter on the premises and shall require each of the licensee's employees to be familiar with this chapter.
- (2) No license for the sale of any item of non-traditional tobacco paraphernalia may be issued to an applicant under the following circumstances:
- a. An applicant who is not at least twenty-one years old.
 - b. An applicant who has been convicted under any federal or state law of (1) a felony; or (2) any misdemeanor involving the usage, distribution, or possession of controlled substances, alcohol, or offenses involving moral turpitude within a five- year period immediately preceding application.

For purposes of this subsection, a "conviction" shall include any plea of guilty or admission of guilt and subsequent sentence under the First Offender Act of O.C.G.A. §§ 42-8-60, 16-13-2 or 3-3-23.1(c), or any similar sentencing provision for first time offenders of any other state or of the United States. A plea of nolo contendere for any felony or misdemeanor of any state or of the United States, or any municipal ordinance, except traffic violations, or the forfeiture of a bond (except traffic offenses) when charged with a crime is also considered a conviction under this chapter.

- c. An applicant who has been held in civil or criminal contempt by any federal, state or local court if such citation indicates to the board of commissioners that the applicant will not maintain the outlet for which he is seeking a license in conformity with federal, state or local laws, rules, and regulations.
 - d. An applicant whom the director or the board determines, by reason of such applicant's business experience, financial standing, trade associations, personal associations, records of arrests, or reputation in any community in which he has resided, is not likely to maintain the outlet for which he is seeking a license in conformity with federal, state, or local laws.
 - e. An applicant who is not the owner of the premises for which the license is held or the holder of the lease thereon for the period covered by the license. The applicant for a license for the sale any item of non-traditional tobacco paraphernalia, whether it be an individual, a partnership, a corporation, a nonprofit tax exempt civic, patriotic, or social club, limited liability company, or a private club, shall be the owner of the premises for which the license is held or the holder of the lease thereon for the period covered by the license. If the premises are leased, then the applicant shall provide information regarding the owner or landlord of the premise.
 - f. An applicant who has had an application for a license denied under the provisions of this chapter within one year from the final date of such denial. For purposes of this provision, the final date of a denial of license shall be the date of written notice of such denial if the denial is not appealed; or, if the denial is appealed, the date of written notice of denial of the appeal.
 - g. An applicant who seeks to sell non-traditional tobacco paraphernalia in premises that are in or within 100 yards of any church building or in or within 200 yards of any school building, educational building, school grounds, or college campus.
- (3) At the time the applicant makes application for a license, a sign shall be posted and furnished by Forsyth County and will be painted or printed in black letters one and one-half inches in height, against an orange background, on a two-face, back-to-back surface of not less than 24 × 30 inches in space, and shall be placed by Forsyth County with the base of the sign not more than three feet from the ground on the most conspicuous part of the premises. The sign shall state clearly the nature and purpose of the application, and the name of the person, partnership, organization, corporation or private club making the application.
- (4) Once an application, the accompanying documents described above, and the required investigative and license fees are filed with Forsyth County, the Forsyth County Sheriff's Office shall conduct a criminal investigation of the application and produce a written criminal investigation report concerning all information relating to fingerprinting, criminal history, arrest data, and other matters pertaining to law enforcement. In the event the failure to obtain

fingerprinting information from state and federal authorities delays completion of the written report, the sheriff's office may later supplement any fingerprinting information. If the fingerprinting information later reveals that the applicant fails to meet the requirements set by this chapter, this may be grounds for denying the application or revoking a license, despite an otherwise satisfactory written report. Upon production of the criminal investigation report, Forsyth County shall assemble the application forms and all accompanying documents relating to investigation and processing of the application and deliver such documents to the director for review.

- (5) If the criminal investigation report shows that the applicant fails to meet the requirements set by this chapter, or if the director finds that the applicant fails to meet all other qualifications outlined by this chapter, then the director shall inform the applicant, in writing, that the application has been denied, and shall set forth in reasonable detail the reasons for the denial and shall notify the applicant of his/her right to appeal to the board of commissioners in accordance with section 50-6(c) of this chapter. If an applicant desires to appeal a denial by the director, the applicant must file a written request for an appeal hearing with the director within ten (10) business days of the date of the written notice informing the applicant of the denial by the director.
 - (6) Any application which the director determines to satisfy all the qualifications outlined in this chapter, including character requirements as contained in the criminal investigation report of the Forsyth County Sheriff's Office, shall be scheduled for review and a public hearing at the next regularly scheduled meeting of the board of commissioners. The public hearing shall be advertised in the county legal organ at least once - no less than 15 days prior to the date of said hearing. At that meeting, the applicant and any person opposed to said application has the right to present to the board of commissioners any information that the board of commissioners determines is relevant to the licensing decision. In making its determination on whether to approve or deny the application, the board of commissioners shall look to the qualifications set forth in this chapter and consider the public interest and welfare. The board shall have the sole discretion to grant or deny the application based on the information presented. A decision by the board of commissioners shall be made within 30 days from the date of the board of commissioners' meeting, unless the decision is postponed for purposes of the board obtaining additional information deemed necessary for consideration of the application. Notice of the decision by the board of commissioners shall be mailed or emailed to the applicant. In the event the application is denied, written notification of such denial shall set forth in reasonable detail the reasons for the denial and shall notify the applicant of his right to appeal as set forth in section 50-6(c).
 - (7) Upon approval by the board of commissioners of the application for a license, the director shall issue a license in accordance with the approved application.
- (c) In the event the board of commissioners denies the application for a license, suspends a license, or revokes a license, the applicant for a license or the licensee whose license was suspended or revoked may appeal to the board of commissioners for reconsideration of the license denial, suspension or revocation by filing a written request for an appeal hearing with the director within ten (10) business days of the date of the written notice informing the applicant of the denial, suspension or revocation. Any such appeal hearing shall be conducted according to the procedures set forth in the subsection below.

- (1) Upon receipt of a timely appeal (accompanied by a fee of \$250.00 made payable to Forsyth County, Georgia), the director shall schedule a hearing before the board of commissioners or their appointee and provide written notice to the adverse party of the time, place and date of the scheduled hearing. The director shall also state in the written notice in reasonable detail the factual basis for the denial of the application or the suspension or revocation of the license. After notice of hearing, matters scheduled for hearing may only be continued by agreement of the director and the adverse party and/or counsel for the adverse party.
 - (2) The board of commissioners or their appointee shall have the duty of conducting hearings concerning the timely filed appeal of the denial, suspension, or revocation of a license. The standard of proof on all issues in the hearing shall be a preponderance of the evidence and a determination will be made on the basis of the competent evidence presented at the hearing. At its discretion, the board of commissioners may appoint a special master to conduct said hearing and make findings of fact and conclusions of law and report such findings and conclusions to the board of commissioners and to the director.
 - (3) At the hearing, the director or his or her designee shall present the facts upon which the denial, suspension, or revocation of the license were based. After presentation of the case against the adverse party, the adverse party will have an opportunity to present his/her case, to rebut the allegations made against him/her, and present whatever defenses he/she has. The adverse party shall have the right to be represented by an attorney, at the expense of the adverse party, and to present evidence and cross-examine opposing witnesses.
 - (4) At the conclusion of the hearing, the board of commissioners shall determine whether the denial, revocation, or suspension of the license was warranted. The findings and conclusions of the board of commissioners shall be forwarded to the director and it shall be the duty of the director to provide written notification to the adverse party of the actions of the board of commissioners.
 - (5) The decision of the board of commissioner shall be final unless appealed to the Superior Court of Forsyth County, Georgia, within 30 days of the director providing written notification to the adverse party of the board's decision.
 - (6) For purposes of this chapter, notice shall be deemed delivered when personally served, when served by certified mail postage prepaid, or when served by email within three days after the date of deposit in the United States Mail.
- (d) All licenses granted under this chapter shall expire on December 31 of each year. An investigative fee of \$350.00 shall be required for renewal applications pertaining to licenses that are to be issued for odd years in order to complete a criminal history report. In instances where a new, named licensee has been designated, a criminal history report and investigative fee shall be required regardless of the year. Persons holding a license for more than any one establishment and desiring to renew the license for such establishments shall pay only one investigative fee charge. Late applications will begin being processed at the time of receipt, but are not guaranteed renewal prior to January 1. If an application is submitted after January 31, a new application shall be required because renewal eligibility will not be considered past this date.
- (1) For applications in which there are no changes of information and data contained in the

original application, licensees shall file a renewal application accompanied by the requisite license fee with Forsyth County upon forms prescribed by the county on or before the second Monday in December of each year without penalty. Applications for renewal filed after the second Monday in December shall be subject to a late charge of ten percent of the license fee. These applications shall be processed by county staff and do not require a public hearing.

- (2) Applications containing permissible changes as noted below must go before the board of commissioners for review and approval. Such applications must be submitted by October 1 of each year without penalty. Applications will be subject to a late charge of ten percent of the license fee if received after October 1. Permissible changes to applications are as follows:
 - a. New named licensee.
 - b. New license type.
- (3) Applicants shall be required to file a new application if changes have occurred in the information and data furnished with the original application other than the permissible changes outlined above. Any changes to an applicant's criminal history will be subject to subsection (b) of section 50-6.
- (4) Each application for renewal will show the date of the original application and that the applicant or applicants for the renewal are familiar with applicable Georgia laws and regulations and with the rules and ordinances of the county. The renewal application must be signed and sworn to by all applicants in the presence of a notary public or other officer authorized to administer oaths. The applicant will furnish all information required by the renewal application and failure to furnish the information will be grounds for denying the application. A false statement made on the renewal application will void the application and shall make the applicant liable to prosecution for false swearing under the laws of the State of Georgia.
- (5) Each application for renewal of a license shall be approved or denied in accordance with the procedures prescribed in section 50-6 of this chapter, except that the public hearing for applications of renewal conducted before the board of commissioners will be held at the last regularly scheduled December meeting of the calendar year.
- (e) No license for the sale of a non-traditional tobacco paraphernalia shall be transferable, except upon the death of a licensee, at which time such license may be transferred to the administrator, executor, or lawful adult heir or heirs of such deceased person. If the legal representatives of such deceased licensee cannot meet all the requirements of this chapter when the time arrives to renew the license, it shall not be renewed. Whenever a licensee doing business as a sole proprietorship loses its license as a result of the provision of this chapter, the licensee's successor in interest, upon filing an application for a new license, may continue to operate under the terms of the prior license until such time as the new application is approved or denied by the board of commissioners; provided, however, no such continued operation shall be authorized until such time as a new application for license is made and the required fees paid to Forsyth County to be forwarded to the director. Payment of fees shall not be required of a corporation whose predecessor in interest remains the named licensee under the new license.
- (f) Any suspension, revocation, or forfeiture of a license by the board of commissioners shall

occur only after notice and opportunity for a hearing before the board of commissioners consistent with the procedures set for in section 50-6(c), above, and upon the following occurrences:

- (1) Any licensed outlet that is found to be in violation of this chapter shall be subject to license revocation or suspension and shall also be subject to citation and prosecution as outlined in section 50-6.
- (2) Every license issued by the county for the sale of non-traditional tobacco paraphernalia shall be immediately revoked in case of bankruptcy, receivership, levy of legal process, or failure to promptly account for and pay the excise tax levied on the sale of non-traditional tobacco paraphernalia.
- (3) Except as provided for transfers under section 50-6(f) above, any change in the ownership of any entity owning a licensed outlet shall cause the board of commissioners to immediately revoke any license issued under this chapter.
- (4) All licensees must, within six months after the approval of said license, open for business the outlet referred to in the application for license, and begin the sale of the product or products authorized by the said license. Failure to open the outlet and begin the sales referred to within the six-month period, shall cause the board of commissioners to immediately revoke the license and no refund of any fees paid pursuant to this chapter shall be made.
- (5) Any licensee who shall for a period of three consecutive months cease to operate the business and sale of the product or products authorized in the said license, shall, after said three months period, cause the board of commissioners to immediately revoke the license, and no refund of any fees paid pursuant to this chapter shall be made.
- (6) A license may be immediately suspended or revoked by the board of commissioners upon learning that a licensee furnished fraudulent or untruthful information in the application for a license, or omits information required in the application for a license, or fails to pay all fees, taxes, or other charges imposed under the provisions of this chapter.
- (7) Whenever the state shall revoke any permit or license to sell non-traditional tobacco paraphernalia, as is or may become applicable, the county license shall thereupon be immediately revoked.
- (8) The board of commissioners shall immediately suspend or revoke the license of any outlet which does not meet the licensing qualifications set forth in this chapter at any time such knowledge becomes known to the board.
- (9) The board of commissioners shall immediately revoke the license for any premises where non-traditional tobacco paraphernalia have been sold or distributed during a period of suspension.
- (10) It shall be a violation of this chapter for any licensee or any employee or agent of the licensee or licensed establishment to permit any person to engage in any activity on the premises for which the license is issued or within the place of business, which is in violation of the laws or regulations of any federal, state, county, or municipal governing authority or regulatory agency. A violation of this subsection shall subject the license to immediate suspension or revocation.
- (11) An act or omission of a licensee which constitutes a violation of federal or state law or

regulation, relating to the sale of alcoholic beverages, taxes, gambling, violation of the Georgia Controlled Substances Act, or constitutes a crime of moral turpitude, shall subject the license to immediate suspension or revocation.

- (12) Any license shall automatically expire on December 31 of each year unless renewed in accordance with this chapter.
- (g) No licensee, employee of any licensee, or other person shall sell or permit to be sold any item of non-traditional tobacco paraphernalia to any person who has not reached the age of eighteen.
 - (h) Each licensee shall maintain their entire inventory of non-traditional tobacco paraphernalia and any additional line of devices in a screened room and shall not allow minors to enter into the screened room nor sell any non-traditional tobacco paraphernalia to any minor. It shall be unlawful for a licensee to allow any item of non-traditional tobacco paraphernalia or any additional line of devices to be in view of the public, except during actual sales transactions of such items.
 - (i) Sworn officers of the Forsyth County Sheriff's Office, the director, or his/her designee shall have the authority to inspect the outlet and premises licensed under this chapter during the hours when the outlet is open for business. These inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law. This section is not intended to limit the authority of any other county, state or federal officer to conduct inspections authorized by other provisions of law.
 - (j) Any license for the sale of non-traditional tobacco paraphernalia and any license for the sale of any additional line of devices shall be posted conspicuously in the place of business for which such license is issued.
 - (j.1) It shall be unlawful to operate a non-traditional tobacco paraphernalia establishment with storefront windows that have material or glazing applied or affixed that reduce visibility from the exterior. Non-traditional tobacco paraphernalia establishments, and their employees shall ensure that storefront windows are not blocked by curtains, blinds, or any other screening material during those times when the establishment is occupied by patrons or is open to the public.
 - (k) Enforcement.
 - (1) Any violation of this chapter, excluding sales to underage persons, shall subject the licensee to the following progressive actions by the board of commissioners, except for those violations and occurrences set forth in section 50-6(f) above that provide for immediate suspension or revocation upon notice and hearing:
 - a. The first violation shall result in a warning or a license suspension for a period of up to 60 days.
 - b. The second violation within a consecutive 24-month period shall be punished as provided in section 1-12 and shall result in a license suspension for a period of not less than 60 days nor more than 90 days.
 - c. The third violation within a consecutive 24-month period shall result in license suspension.
 - (2) Sales to underage persons shall subject the licensee to the following progressive actions by the board of commissioners:

- a. The first violation shall result in a mandatory hearing before the board of commissioners, a license suspension for a period of up to 60 days, and a minimum fine in magistrate court of \$500.00.
 - b. The second violation within a consecutive 24-month period shall result in a mandatory hearing before the board of commissioners, a license revocation, and a minimum fine in magistrate court of \$750.00.
- (3) For any vendor that is licensed to sell alcohol in Forsyth County, Georgia, any violation of section 50-6 that results in a conviction, license suspension, or license revocation, excluding the sale of non-traditional tobacco paraphernalia to a minor, shall also count as a violation with respect to those progressive actions or sanctions provided for in section 6-11(a) of the Forsyth County ordinances governing alcoholic beverages. For purposes of this subsection, “conviction” shall have the same meaning as provided in section 50-6(b)(2)b.
- (4) For any vendor that is licensed to sell alcohol in Forsyth County, Georgia, any conviction, license suspension, or license revocation resulting from the sale of non-traditional tobacco paraphernalia to a minor shall also count as a violation with respect to those progressive actions or sanctions provided for in section 6-11(b) of the Forsyth County ordinances governing alcoholic beverages. For purposes of this subsection, “conviction” shall have the same meaning as provided in section 50-6(b)(2)b.
- (5) For any license suspension of less than 30 days, the licensee will not be required to remove non-traditional tobacco paraphernalia from the premises, but shall be required to secure with lock and chain all non-traditional tobacco paraphernalia in an on premise locked storage area out of view of the public. Nothing contained in this subsection shall be construed to preclude the board of commissioners from suspending or revoking a license or non-traditional tobacco paraphernalia permit for a period exceeding those periods identified in section 50-6 above, or from revoking the license or non-traditional tobacco paraphernalia sale permit if the board determines in its discretion that such action is necessary and in the best interest of the public health, safety and welfare of the county. The suspension periods set forth above may be mitigated by the board of commissioners upon presentation of evidence that the licensee established practices and procedures to prevent the violation from occurring and established procedures to properly train and supervise employees to prevent the violation from occurring.
- (6) In addition to the available actions to be taken by the board of commissioners, any licensee, employee of a licensee, individual, or other person who violate this chapter shall be subject to citation and prosecution by the Forsyth County Sheriff's Office. Each violation of this chapter shall constitute a separate violation subject to a separate citation and penalties. The penalties may result in a fine not to exceed \$1,000.00, imprisonment not to exceed 60 days, or both.

2. **NOW, THEREFORE, BE IT FURTHER ORDAINED**, that Section 50-7 of the Code of Forsyth County, Georgia, is amended to read in its entirety as follows:

Sec. 50-7. - Prohibition on the use of alternative nicotine products.

(a) *Definitions.* The following terms shall have the following definitions:

- (1) “*Additional line of devices*” shall have the same definition as provided for said term in section 50-6(a)(1) of these ordinances;
- (2) “*Alternative nicotine product*” shall mean an electronic product or device that employs an electronic heating element, power source, electronic circuit, battery, or other electronic, chemical, or mechanical means to produce a vapor that delivers nicotine to the person inhaling from the device, including e-cigarettes, e-cigars, and e-pipes, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, but not including e-hookahs or e-bongs;
- (3) “*Applicant*” shall mean all persons who are required to sign an application for a license to sell alternative nicotine products and/or vape juice as set forth in section 50-7(e);
- (4) “*Board of Commissioners*” shall mean the Board of Commissioners of Forsyth County;
- (5) “*County*” or “*Forsyth County*” shall have the same definition as provided for said term in section 50-6(a)(5) of these ordinances;
- (6) “*Director*” shall mean the Director of the Forsyth County Department of Planning and Community Development;
- (7) “*Non-traditional tobacco paraphernalia*” shall have the same definition as provided for said term in section 50-6(a)(7) of these ordinances;
- (8) “*Person*” shall have the same meaning as set forth in Section 50-5(a)(5) of these ordinances;
- (9) “*Vape juice*” shall refer to any liquid that contains the compounds identified in section 50-7(c)(1) of these ordinances and can be used for vaping by means of an alternative nicotine product; and
- (10) “*Vaping*” shall mean the ingestion or inhalation of vape juice from an alternative nicotine product.

(b) *Prohibitions.*

- (1) Vaping is prohibited in all county government buildings but shall be allowed in the parking lot associated with or directly adjacent to any county government building.
- (2) Vaping and smoking shall be prohibited on the premises of any building or premises that offers for sale any alternative nicotine product, non-traditional tobacco

paraphernalia, or additional line of devices unless such building or premises has an operational dehumidifier to dispel any vapor produced by on-premises vaping.

- (3) It shall be prohibited to mix or prepare vape juice on the premises of any building or establishment that offers alternative nicotine products for retail sales to consumers.
 - (4) No minors, a person considered less than 18 years of age, shall be allowed to enter onto the premises of any business whose primary product line for retail sale is alternative nicotine products, vape juice, or both, unless such minor is accompanied by a parent or guardian.
 - (5) No alternative nicotine products shall be sold in premises that are in or within 100 yards of any church building or in or within 200 yards of any school building, educational building, school grounds, or college campus; provided, however, that any premises permitted to sell alternative nicotine products as of February 2, 2017 that is located within such proximity of any church building, school building, educational building, school grounds, or college campus on February 2, 2017 shall be allowed to continue to sell alternative nicotine products in such premises provided that said permit holder remains in compliance with all other provisions of this section and the use of the premises to sell alternative nicotine products remains ongoing and continuous. If the sale of alternative nicotine products is discontinued, the grandfather entitlement under this paragraph shall be forfeit.
 - (6) It shall be unlawful to operate an alternative nicotine, vape/e-cigarette establishment with storefront windows that have material or glazing applied or affixed that reduce visibility from the exterior. Alternative nicotine, vape/e-cigarette establishments, and their employees shall ensure that storefront windows are not blocked by curtains, blinds, or any other screening material during those times when the establishment is occupied by patrons or is open to the public.
- (c) *Signage.*
- (1) All persons or entities selling vape juice in Forsyth County shall prominently post a sign on any premises where vape juice is sold stating that the only chemicals authorized to be used in such vape juice are (a) pharmaceutical grade vegetable glycerin, (b) propylene glycol, (c) nicotine, (d) food-grade flavoring, and (e) water.
 - (2) All persons or entities selling vape juice in Forsyth County shall prominently post a sign on any premises where vape juice is sold explaining how to safely use e-batteries for alternative nicotine products.
- (d) *Compliance with federal regulations.* All persons or entities selling non-traditional tobacco paraphernalia, vape juice, or any additional line of devices in Forsyth County shall comply with all applicable state and federal laws and regulations, as amended, governing the sale and manufacture of non-traditional tobacco paraphernalia, vape juice, and additional lines of devices, and all such state and federal laws and regulations, as amended, are hereby incorporated by reference into section 50-7 of this code of ordinances. Persons or entities who are registered to mix vape juice with the United States Food and Drug Administration shall be allowed to mix vape juice in Forsyth County and shall maintain documentation reflecting such registration at all times on the premises where vape juice is mixed.

(e) *License Required.*

- (1) No business whose primary product line for retail sale is alternative nicotine products, vape juice, or both, may offer such products for sale in Forsyth County without a permit. For purposes of this code section, “primary” shall mean that alternative nicotine products, vape juice, or both constitute at least fifty percent of the business’s aggregate retail sales. Documentation reflecting a duly issued permit must be maintained at all times on the premises where such business offers for retail sale such alternative nicotine products, vape juice, or both. An application for such license, including any required fees, shall be tendered to the Forsyth County Planning and Community Development Department by December 1 of each year. For the purposes of this section, every person who obtains such a license shall be referred to as a “licensee”. All applications shall be fully completed by the Applicant and sworn to and signed by the Applicant in the presence of a notary public or other officer authorized to administer oaths.

All applications shall be accompanied by the following:

- a. Unless waived by the Director in recognition of the absence of any school or church buildings in proximity to the premises where alternative nicotine products and/or vape juice is to be sold, the application shall have attached a survey (dated no more that 180 days prior to submission of the application to the County), certified by a registered surveyor of this State, showing a scaled drawing of the premises, the location on the premises where the Applicant desires to sell any item of alternative nicotine products and/or vape juice, and the distance in yards measured from the front door of the premise where alternative nicotine product is to be sold, to the property line of the tract upon which is located the nearest church building, school building, educational building, school grounds or college grounds or college campus building.
 - b. A valid email address and a valid mailing address that can be used for serving documents upon the Applicant.
 - c. Each Applicant shall certify that Applicant has read and understands this section and if the license is granted, each licensee shall maintain a copy of this section on the premises and shall require each of the licensee’s employees to be familiar with this section.
 - d. The Director may require any additional information and records he reasonably deems necessary. Failure to furnish such data shall automatically serve to dismiss the application. Any misstatement or concealment of fact in the application shall be grounds for denying a license or revoking and issued license, and shall make the Applicant liable to prosecution for perjury under the laws of the State of Georgia.
- (2) No license for the sale of alternative nicotine products and/or vape juice may be issued to an Applicant under the following circumstances:

- a. An Applicant who is not at least 21 years old.
 - b. An Applicant who is not the owner of the premises for which the license is held or the holder of the lease thereon for the period covered by the license. The Applicant for a license for the sale of any alternative nicotine products or vape juice, whether it be an individual, a partnership, a corporation, a nonprofit tax exempt civic, patriotic, or social club, limited liability company, or private club, shall be the owner of the premises for which the license is held or the holder of the lease thereon for the period covered by the license.
 - c. An Applicant who has had an application for a license denied under the provisions of this section within one year from the final date of such denial. For purposes of this provision, the final date of denial is not appealed; or, if the denial is appealed, the date of written notice of denial of the appeal.
 - d. An applicant who seeks to sell alternative nicotine products and/or vape juice in premises that are in or within 100 yards of any church building or in or within 200 yards of any school building, educational building, school grounds, or college campus.
- (3) If the Director finds that the Applicant fails to meet all of the qualifications outlined by this section, then the Director shall inform the Applicant, in writing, that the application has been denied, and shall set forth in reasonable detail the reasons for the denial and shall notify the Applicant of his/her right to appeal to the Board of Commissioners in accordance with section 50-6(c) of the Forsyth County Code of Ordinances. If an Applicant desires to appeal a denial by the Director, the Applicant must file a written request for an appeal hearing with the Director within ten (10) business days of the date of the written notice informing the Applicant of the denial by the Director.
 - (4) In the event that a licensee other than a sole proprietorship seeks to change the named individual licensee, the application may be administratively amended by submitting a written request to the Director along with payment of an administrative fee of \$100.
 - (5) No license for the sale of alternative nicotine products and/or vape juice shall be transferable except upon death of a licensee, at which time such license may be transferred to the administrator, executor, or lawful adult heir or heirs of such deceased person, If the legal representatives of such deceased licensee cannot meet all the requirements of this section when the time arrives to renew the license, it shall not be renewed. Whenever a licensee doing business as a sole proprietorship loses its license as a result of the provision of this section, the licensee's successor in interest, upon filing an application for a new license, may continue to operate under the terms of the prior license until such time as the new application is approved or denied; provided, however, no such continued operation shall be authorized until such time as a new application for license is made and the required fees paid to Forsyth County to be forwarded to the Director. Payment of fees shall not be required of a corporation whose predecessor in interest remains the named licensee under the new license.

- (6) *Fee.* The Applicant for a license under this article shall pay an annual license fee of \$1,000.00 to the Forsyth County Department of Planning and Community Development.
- (7) *Term and Renewals.* All licenses granted under this section shall expire on December 31st of each year. Licensees shall file a renewal application accompanied by the requisite license fee with Forsyth county upon forms prescribe by the County on or before the second Monday in December of each year without penalty. Applications for renewal filed after the second Monday in December shall be subject to a late charge of ten percent of the license fee. Late applications will begin being processed at the time of receipt, but are not guaranteed renewal prior to January 1st. If an application is submitted after January 31st, a new application shall be required because renewal eligibility will not be considered past this date. Notwithstanding the expiration and renewal requirements stated herein, any license issued under this article prior to April 1, 2019 shall be valid during the period for which license holder operates the business. If the business is relocated, closes, or otherwise discontinues operation, the license shall stand automatically revoked.
- (f) *Enforcement.* Each person violating this section shall be punished as provided in section 1-12 of these ordinances. Upon a violation of this section, any license issued under section may be subject to revocation following a duly noticed hearing before the Board of Commissioners. For any vendor that is licensed to sell alcohol in Forsyth County, Georgia, any conviction, license suspension, or license revocation resulting from the sale of alternative nicotine products and/or vape juice without a license shall or in violation of any state or federal laws or regulations, irrespective of any other civil, quasi-criminal, or administrative penalty hereunder, also count as a violation with respect to those progressive actions or sanctions provided in Section 6-11(b) of the Forsyth County Code of Ordinances governing alcoholic beverages. For purposes of this subsection, conviction shall have the same meaning as provided in Section 50-6(b)(2)b.