

**AN ORDINANCE**

**AN ORDINANCE TO AMEND THE CITY OF DACULA CODE OF ORDINANCES TO PROVIDE REGULATIONS AND DEFINE OFFENSES FOR TOBACCO, VAPE, AND HOOKAH RELATED ESTABLISHMENTS AND FOR OTHER PURPOSES.**

WHEREAS, the City Code currently does not provide any regulation or oversight over business selling tobacco, vape, hookah and related products; and

WHEREAS, State law permits regulations; and

WHEREAS, scientific data has indicated that smoking and the exposure to secondhand smoke has serious health consequences; and

WHEREAS, smoking and the use of tobacco, hookah and vape related products can pose substantial risks to the health and welfare of children; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens and businesses within the City of Dacula to amend the City Code to make provision for such licenses and to adopt reasonable regulations to protect public health and safety;

NOW THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DACULA HEREBY ORDAINS that the City Code be amended as follows:

**SECTION 1.**

A new Article VIII Tobacco, Vape and Hookah, Section 16-130 Tobacco and Vape Related Offenses is created and adopted as follows:

**Article VIII Tobacco, Vape and Hookah Offenses**

**Section 16-130 Tobacco, Vape and Hookah Offenses.**

- (a) Definitions. The following words as used in this section shall have the following prescribed meaning:

*Hookah* means a single or multi-stemmed water pipe and any associated products and devices which are used to produce fumes, smoke and/or vapor from the burning of material including, but not limited to, tobacco products, shisha or other plant materials.

*Hookah/vapor bar or lounge.* Hookah/vapor bars or lounges shall be subject to the following restrictions:

(1) Smoking of hookah in any establishment that serves alcohol or food shall be prohibited.

(2) Hours of operation shall not extend past 11:00 p.m.

(3) Hookah bars and lounges shall not serve patrons under the age of 21 or as restricted by Georgia statute.

*Principal* means that tobacco, hookah, vape, vape-related products, or both constitute at least 50 percent of the business's aggregate retail sales.

*Vape* or *vape juice* refers to any liquid that contains compounds containing pharmaceutical grade vegetable glycerin, propylene glycol, nicotine, food-grade flavoring, and water, and can be used for vaping by means of an alternative nicotine product.

*Vape shop* means any business whose principal product line for retail sale is vape, tobacco, hookah, vape-related products, or both. *Principal* means that vape, vape-related products, or both constitute at least 50 percent of the business's aggregate retail sales.

*Vape-related products* refers to any products or devices that employ an electronic heating element, power source, electronic circuit, battery, or other electronic, chemical, or mechanical means to produce a vapor that delivers nicotine, synthetics, or illegal substances to the person inhaling from the device, including electronic cigarettes, electronic cigars, electronic hookahs, electronic bongs and electronic pipes, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, or electronic pipe.

(b) Furnishing to, purchasing by or possession by a person under 21 years of age.

(1) Except as otherwise provided in this section:

a. No person, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any vape or vape-related products to any person under 21 years of age.

b. No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining unlawfully any vape or vape-related products.

- c. No person shall act as an agent to purchase or acquire any vape or vape-related products for or on behalf of a person under 21 years of age.
  - d. No person under 21 years of age shall misrepresent his identity or use any false identification for the purpose of purchasing or obtaining any vape or vape-related products.
- (2) The prohibitions contained in subsections (b)(1)a., b., and d. shall not apply with respect to the sale, purchase, or possession of vape or vape-related product for use:
  - a. For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or
  - b. At a religious ceremony.
- (3) The prohibitions contained in subsections (b)(1)a., b., and d. shall not apply when the parent or guardian of the underage person gives the vape or vape-related products to the underage person and when possession is in the home of the parent or guardian and such parent or guardian is present.
- (4) The prohibition contained in subsection (b)(1)(a) shall not be violated when a person has been furnished with proper identification showing that the person to whom the vape or vape-related product is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, the person's photograph, and the person's date of birth. Proper identification includes, without being limited to, a passport, military identification, driver's license, or an identification card authorized under O.C.G.A., §§ 40-5-100—40-5-104. "Proper identification" shall not include a birth certificate.
- (5) This section shall not prohibit employment of a person under 21 years of age in a licensed premises if such employment is lawful.

- (6) In any case where a reasonable or prudent person could doubt whether or not the person to whom a vape or vape-related product is to be sold or otherwise furnished is 21 years of age or older, the person selling or otherwise furnishing such vape or vape-related product shall request to see and be furnished with proper identification as provided in subsection (b)(4). The failure to make such request and verification in any case where the person to whom the vape or vape-related product is sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so in violation of subsection (b)(1)a.
- (7) In any case where a person selling or otherwise furnishing vape or vape-related products checks for a proper identification, such person shall carefully inspect such identification. If a reasonably prudent person could determine that such identification has been altered and if such person sells or otherwise furnishes vape or vape-related products to the holder of such altered identification, then such may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such vape or vape-related products did so in violation of subsection (b)(1)a.
- (8) For purposes of the prohibitions set forth in this section, a plea of nolo contendere or the forfeiture of bond shall constitute a conviction.
- (9) With reference to the prohibitions set forth in this section, if there is a change in a majority of a licensee's owners, partners, or shareholders, the offenses under the old ownership shall not count against the new owners; provided, however, a different corporation, partnership, or other association shall be charged with the offenses of the predecessor if a majority of the owners, partners, or shareholders are the same.
- (10) Number of vape, hookah and tobacco shops, bars and lounges permitted
  - (a) At no time shall the number of licenses issued by the City permitting the retail sale of vape, tobacco or hookah products within the City limits exceed the number found as a result of dividing the total population of the City, as found in the most recent population estimates published by the United States Bureau of the Census, by the whole number 5,000.

- (b) If the number resulting from the division required by subsection (a) of this section is a number other than a whole number (for example 1.75) then said number will be adjusted downward to the next whole number where it will remain until the population increases to such an extent which would cause said number to equal or exceed the next higher whole number. Notwithstanding the foregoing, the number of licenses permitted by this section shall never be less than two.
  - (c) The language contained in subsections (a) and (b) of this section can be expressed in the mathematical formula, as follows:  $Y \div 5,000 = X$ . "Y" is the total population (as defined in subsection (a) of this section) of the City. "X" is the total number of licenses that can be issued (this number, if not whole, is adjusted downward in accordance with subsection (b) of this section).
- (11) No license shall be issued under this section for the sale of tobacco, hookah and/or vapor products if the intended premises is within 300 feet of any church building, or on any property owned or leased to a church, or in or within 600 feet of any school building, educational building, school grounds, or college campus, or on any property owned or leased to a public or private school or school board for elementary or secondary education. Provided, however, that any premises that sells tobacco, hookah, and/or vapor products as of September 1, 2022 and that is located within such restricted proximity may continue to sell such products in such premises, provided that said license holder remains in compliance with all other provisions of this section and the use of the premises to sell tobacco, hookah and/or vapor products remains ongoing and continuous, and provided further that no license renewal application is denied for violating this section if at the time of the original license application the location was in compliance with this section. If the sale of products is discontinued, the grandfathering entitlement under this subsection shall be forfeited.

## SECTION 2.

In the event any Court of competent jurisdiction determines that any portion of the foregoing amendment is invalid, unconstitutional or otherwise illegal, such rulings shall not impair the validity of the rest and remainder of this amendment.

SECTION 3.

All laws and parts of laws in conflict with this Ordinance are hereby repealed.

SECTION 4

The City Administrator, Assistant City Administrator, and Director of Planning and Economic Development are further authorized to correct typographical errors in the text of the existing Code of Ordinances and to produce and publish a final codified version of the City Code with the amendments and revisions outlined herein.

SECTION 5

This Ordinance and the amendments outlined herein shall be effective immediately upon their adoption by the Mayor and City Council.

SO ORDAINED by the governing authority of the City of Dacula, this \_\_\_\_\_ day of September, 2022.

AYES: \_\_\_\_

NAYES: \_\_\_\_

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HUGH D. KING, III  
MAYOR, CITY OF DACULA

ATTEST:

\_\_\_\_\_  
HEATHER COGGINS,  
ASSISTANT CITY ADMINISTRATOR