

**FAYETTE COUNTY**

**AN ORDINANCE PROVIDING FUTURE VAPE / SMOKE SHOPS COMPLY WITH A DISTANCE AND OPERATING REQUIREMENTS.**

**WHEREAS**, much of the electronic cigarette marketing today uses bright colors, candy- and fruit-flavored liquids, cartoons and characters, and mirrors the marketing used by tobacco companies which was determined to target youth and is now prohibited; and

**WHEREAS**, a 2017 study published in the Journal of the American Medical Association Pediatrics found an association between initial electronic cigarette use and subsequent tobacco cigarette smoking initiation and determined that state and local agencies needed to engage in regulatory actions to discourage youths' use of electronic cigarettes; and

**WHEREAS**, both the U.S. Food and Drug Administration (FDA) and the U.S. Centers for Disease Control and Prevention (CDC) are investigating the cause of the severe respiratory illness and lung injuries associated with the use of vaping products, including e-cigarettes. The FDA and CDC have indicated they will take appropriate actions as the facts emerge but the cause has not yet been identified; and

**WHEREAS**, the Fayette County Commission deems it to be in the best interests of the health, safety and welfare of its youth to limit the access and exposure of under-age children to electronic cigarette items and marketing by imposing a distance restriction for such retail stores.

**NOW THEREFORE, BE IT ORDAINED BY THE FAYETTE COUNTY COMMISSION:**

**SECTION 1.** A new zoning ordinance concerning Vape / Smoke Shop, to read as follows:

**Definition of Terms**

- A. "Electronic Cigarette" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term "electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- B. "Vape/Smoke Shop" means a retail or service establishment that devotes at least 33% of its floor to the sale and display of electronic cigarettes, tobacco products and/or allows vaping on site or a retail establishment that holds itself out or advertises itself primarily as an electronic cigarette retail establishment.

**Regulations Pertaining to Conditional Use Permit for Vape / Smoke Shops**

- A. It shall be unlawful for any person or entity to operate an Vape / Smoke Shop within the corporate limits of the County without having first procured a conditional use permit from the County.
- B. No permit shall be issued for any Vape / Smoke Shop that is located within 5,280 feet of any other Vape / Smoke Shop or of any property used or zoned for school, college, daycare, community center or youth serving area / park. The separation distances shall be measured from or to the outer wall of the Vape / Smoke Shop to the property line of the property containing the school, college, daycare, community center or youth serving area / park.

1. Exception: If such school, college, daycare, community center or youth serving area / park is established within 5.280 feet of any Vape / Smoke Shop after the premises has been permitted, the premises shall remain an eligible location for said permit as long as the premises remains in compliance with subsection C below.
- C. In the event any Vape / Smoke Shop abandons or discontinues a retail establishment in operation prior to the effective date of this Ordinance, any future Vape / Smoke Shop operated at the same location shall be required to comply with the distance requirements set forth in this Section. This provision shall not apply to a change in ownership which may occur by operation of law, including a court order, divorce, death, mortgage foreclosure, bankruptcy or transfer by contract, provided there is a continuous occupancy or operation of the Electronic Cigarette Retail Establishment at the permitted location.

**SECTION 2.** Severability. If any one or more sections, subsections or other part of this Ordinance shall be declared invalid by a court of competent jurisdiction, it is the intent of the County that the remaining portions of the Ordinance shall remain effective. The County states that it would have enacted such remaining portions irrespective of the fact that one or more sections, subsections, or other part of the Ordinance have been held invalid.

**SECTION 3.** This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

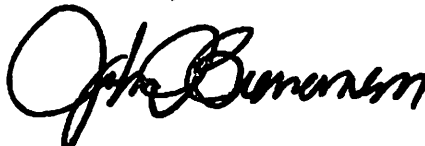
**PASSED** by the Fayette County Commission June 28, 2023.

**APPROVED AND SIGNED** by the County Commission this 28<sup>th</sup> day of June, 2023.

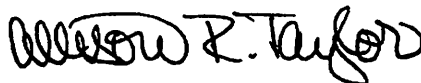
**FAYETTE COUNY COMMISSION**



Tom Louisos, President



John G. Brenemen, Commissioner



Allison R. Taylor, Commissioner