

Ordinance # 2022-71

An ordinance of the Board of County Commissioners of Osceola County Florida, relating to the regulation of establishments that offer Hookah and prohibiting them from being open after 2:00 a.m.; Providing for intent; Providing for authority; Providing a title; Providing for definitions; Providing for operating requirements; Providing for administrative, non-criminal, and criminal enforcement authority and penalties; Providing for severability; Providing for applicability; Providing for miscellaneous provisions including resolution of conflict of laws, inclusion in the Osceola County Code, filing and effective date, and enacting Osceola County Code of Ordinances.

WHEREAS, pursuant to Article 8 of the Florida Constitution and Florida Statute §125.66, Osceola County possesses the police powers to enact ordinances in order to protect the health, safety, and welfare of the County's citizens; and

WHEREAS, establishments that offer Hookah and operate after 2:00 a.m. within Osceola County are attracting large crowds of people which may exceed posted occupancy capacity and/or violate current fire code requirements; and

WHEREAS, establishments that offer Hookah and operate after 2:00 a.m. are sometimes located in buildings which may not be in compliance with current fire code requirements including but not limited to posted occupancy, causing a safety hazard for the occupants of said buildings; and

WHEREAS, establishments that offer Hookah and operate after 2:00 a.m. within Osceola County contribute to littering, public intoxication, traffic congestion, noise, violence, and criminal behavior including but not limited to, disorderly conduct, assaults, shootings, stabbings and other similar problems; and

WHEREAS, establishments that offer Hookah and operate after 2:00 a.m. within Osceola County have been found to foster illegal drug usage, illegal drug sales, alcohol violations, and other criminal activity; and

WHEREAS, the Osceola County Sheriff's Office responded to 29 calls for service at a hookah establishment between the hours of 2:00 a.m. and 7:00 a.m. in the year 2020, 174 calls for service in the year 2021, 4 calls for service as of February 2022, and the majority of the calls for service were due to physical altercations and shootings; and

WHEREAS, requiring establishments that offer Hookah to operate during certain hours will not only protect the patrons of those businesses, but the overall citizenry of Osceola County; and

WHEREAS, the Osceola County Board of County Commissioners has determined that in order to protect the safety and welfare of its citizens, regulation of establishments that offer Hookah and operate after 2:00 a.m. is desirable; and

WHEREAS, it is not the intent of this Ordinance to interfere with or restrict legitimate actions and conduct of individuals which are protected under the constitutions and laws of the United States and the State of Florida; and

WHEREAS, it is not the intent of this Ordinance to interfere with or restrict legitimate religious practice or cultural expressions involving the use of Hookah and establishments that offer Hookah; and

WHEREAS, it is not the intent of this Ordinance to regulate the legal sale and use of tobacco products; and

WHEREAS, the Osceola County Board of County Commissioners has determined that this Ordinance promotes and protects the general health, safety, and welfare of the citizens of Osceola County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA:

Chapter 14 of the Osceola County Code of Ordinances is hereby amended, by adding a new Article XI, as follows:

SECTION 1. INTENT. It is the intent of the Osceola County Board of County Commissioners to protect the health, safety, and welfare of its citizens by regulating establishments that offer Hookah and are currently open after 2:00 a.m.

SECTION 2. AUTHORITY. This Ordinance is enacted pursuant to the statutory police powers of Osceola County to establish and enforce laws that are necessary for the protection of the public.

SECTION 3. SHORT TITLE. This Ordinance shall be known as the “Osceola County Ordinance Prohibiting Establishments that Offer Hookah from Operating After 2:00 a.m.”

SECTION 4. DEFINITIONS.

- (1) “Hookah Lounge” means any establishment, place, area, or property operated as open to the public or subject to an entrance fee, donation, or any form of consideration, which:
 - (a) Is licensed as a Retail Tobacco Products Dealer by the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco; and
 - (b) Offers tobacco or flavored tobacco to patron to use or share with any type of pipe or water pipe, including a Hookah, on the premises; and
 - (c) Is not authorized or permitted for the sale or consumption of alcoholic beverages pursuant to Osceola County’s Land Development Code.
 - (d) May have music either live or electronically produced or transmitted and may have space available for dancing or dancing is permitted whether such dancing takes place or not.
 - (e) For the purposes of this Ordinance, a “Hookah Lounge” does not include:
 1. A private residence from which the general public is excluded;
 2. A place owned and operated by the federal, state, or local government;
 3. A place owned or operated by a bona fide religious organization, created, organized, existing and recognized as such pursuant to all applicable laws;
 4. A retail establishment such as a commercial store, gas station, convenience store, etc.
- (2) “Operator” means any person responsible in any way for conducting the business of the Hookah Lounge, including but not limited to sales, facilities maintenance, and customer relations. An Operator will typically be the manager or person in charge of the Hookah Lounge business during hours of operation.
- (3) “Owner” means the person(s) or entity whose name(s) are listed by the Osceola County Property Appraiser as owner of the property upon which the Hookah Lounge is located.

- (4) “Nude” means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

SECTION 5. OPERATING REQUIREMENTS

- (1) Hookah Lounge operating hours shall be from 8:00 a.m. until 2:00 a.m., Monday through Sunday. During all other hours, the business must be closed to patrons and any lighted signs must not be illuminated.
- (2) No person shall operate a Hookah Lounge in violation of any applicable provisions of the Florida Fire Prevention Code or the Osceola County Fire Prevention Code.
- (3) No person shall operate a Hookah Lounge in violation of any applicable tobacco laws, rules, or regulations.
- (4) No person shall operate a Hookah Lounge in violation of any applicable Federal, State, or Local alcoholic beverage laws, rules, or regulations or otherwise sell or allow the consumption of any alcoholic beverages on the Hookah Lounge premises.
- (5) No person shall be nude while in a Hookah Lounge. This requirement does not apply to persons using the designated restroom areas of the establishment.
- (6) No person shall refuse to allow an inspection of the Hookah Lounge for the purposes described in this Ordinance.
- (7) No person shall operate a Hookah Lounge in violation of any applicable provision of the Osceola County Land Development Code or any applicable Osceola County Ordinance.
- (8) No person under the age of eighteen (18) years may enter, or be present in, a Hookah Lounge unless accompanied by a parent or legal guardian.
 - (a) No person shall falsely represent himself/herself to be either a parent or legal guardian of another person for the purpose of gaining the other person’s admission into a Hookah Lounge.
 - (b) No operator or employee of a Hookah Lounge shall knowingly allow a person under the age of eighteen (18) years to enter or remain on the premises of a Hookah Lounge unless that person is accompanied by a parent or legal guardian.

- (c) No operator or employee of a Hookah Lounge shall allow a person under twenty-one (21) years to use tobacco or flavored tobacco products on the premises of a Hookah Lounge.

SECTION 6. ENFORCEMENT AND PENALTIES.

- (1) The County's code enforcement officers, law enforcement, or any other person authorized to enforce county ordinances may enforce the provisions of this Ordinance.
- (2) Law Enforcement Officers may enforce this Ordinance pursuant to any enforcement action or legal remedy available under controlling local or state law including, but not limited to:
 - (a) Prosecution in the name of the state in the same manner as misdemeanors are prosecuted and, upon conviction, such person shall be punished by a fine not to exceed \$500.00 or by imprisonment in the County Jail not to exceed 60 days, or by both such fine and imprisonment: or
 - (b) Issuance of a non-criminal citation, punishable pursuant to Florida Statutes §775.083(1)(e), with a fine of up to \$500.00.
 - (c) Each occurrence of a violation, or in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.
- (3) County Code Enforcement Officers may enforce this Ordinance pursuant to the enforcement provisions of Chapter 162, Florida Statutes, and Osceola County Code of Ordinances, Chapter 7 Articles I, II, and III.
 - (a) A violation of this Ordinance shall be considered irreparable or irreversible.
 - (b) A violation of this Ordinance resulting in the issuance of a citation or notice-to-appear pursuant to Chapter 7, Articles I and II, shall, upon a determination of guilt, be assessed a fine of \$500.00 for each violation.
 - (c) Each occurrence of a violation, or in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

- (4) Nothing contained herein shall prevent the County from taking such other action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including but not limited to:
 - (a) Code Enforcement action pursuant Chapter 162, Florida Statutes, and/or Osceola County Code of Ordinances, Chapter 7 Articles I, II, and III ;
 - (b) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;
 - (c) Initiating an action to recover any and all damages that may result from a violation of, or a refusal to comply with, any part of this Ordinance; or
 - (d) Utilizing any other action or enforcement method allowable by law.
- (5) Nothing herein is intended to limit or prohibit any person or entity from bringing a nuisance abatement lawsuit pursuant to Florida law or a nuisance abatement action before the Osceola County Nuisance Abatement Board.

SECTION 7. SEVERABILITY. If any term, provision, section, or subsection of this Ordinance is found to be unconstitutional by a court of law, said term, provision, section, or subsection may be stricken and remaining terms, provision, parts, sections and subsections shall remain in full force and effect.

SECTION 8. APPLICABILITY. It is hereby intended that this Ordinance shall constitute a uniform law applicable in all of the unincorporated areas of Osceola County, Florida.

SECTION 9. MISCELLANEOUS PROVISIONS.

- (1) In all instances where Florida law, as evidenced by the Florida Administrative Code, Florida Statutes, applicable case law or otherwise, mandates standards or requirements that are stricter than the provisions of this Ordinance, or where a matter is addressed by Florida law that is not addressed by this Ordinance, then said law shall govern. In situations where this Ordinance addresses a matter in a manner that is stricter than that of Florida law, the provisions of this Ordinance shall control.
- (2) The provisions of this Ordinance shall be included and incorporated in the Osceola County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Osceola County Code, once established.

- (3) In accordance with the provisions of Florida Statutes §125.66, a certified copy of this Ordinance shall be filed with the Florida Department of State.
- (4) This Ordinance shall become effective immediately upon adoption by the Osceola County Board of County Commissioners and filing with the Department of State.

DULY ENACTED this _____ day of _____, 2022.

**BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA**

By: Chair/Vice Chair

**ATTEST:
OSCEOLA COUNTY CLERK OF THE BOARD**

By: _____
Clerk/Deputy Clerk of the Board

As authorized for execution at the Board of
County Commissioners meeting of:
