

**OFFENSES ORDINANCE**

AN ORDINANCE TO ADOPT OFFENSES INVOLVING PROPERTY RIGHTS, OFFENSES AGAINST PUBLIC SAFETY, OFFENSES AGAINST PUBLIC PEACE AND ORDER; OFFENSE AGAINST GOVERNMENT OPERATIONS, OFFENSES AGAINST PUBLIC HEALTH, AND GENERAL OFFENSES WITHIN THE CITY; AND FOR OTHER PURPOSES.

WHEREAS, the Mayor and Council seek to minimize the danger to the public health, welfare, and safety of the city's residents by adopting an ordinance to define those offenses which may harm the public;

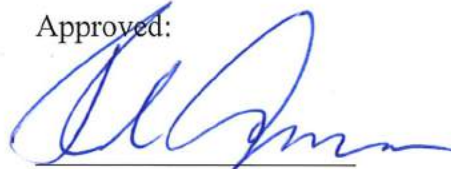
WHEREAS, the Mayor and Council seek to adopt rules and regulations that shall help ensure the public health, welfare, and safety of the city's residents;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF TUCKER HEREBY ENACTS AND ORDAINS** that Chapter 20 OFFENSES as attached hereto, is hereby adopted and approved as part of the Code of Ordinances for the City of Tucker, Georgia effective on 1st day of May, 2018.

**AND FURTHER ORDAIN** that all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SO ORDAINED this 27<sup>th</sup> day of April, 2018.

Approved:



Frank Auman, Mayor

Attest:

  
Bonnie Warne, City Clerk

(Seal)



## Chapter 20 - OFFENSES

### ARTICLE I. - IN GENERAL

#### Sec. 20-1. - Operation of motorized vehicles on school property.

The operation of motorized vehicles of any nature in or on any yard, campus, playing field or open area of any public school, college or institution in the city, except on those areas designated by school authorities for use of motorized vehicles, is prohibited.

#### Sec. 20-2. - Reserved.

#### Sec. 20-3. - Selling, soliciting on public rights-of-way; exceptions.

- (a) It shall be unlawful to sell, offer for sale or solicit for sale any food or beverage for human consumption from any pushcart, bicycle cart, motorized cart or other type of motor vehicle on the public streets, sidewalks or in the public rights-of-way of in the City of Tucker unless specifically allowed as set forth in this section.
- (b) Pushcarts, bicycle carts, motorized carts or other type of motor vehicles are permitted to sell their products on the public streets, sidewalks or in the public rights-of-way of City of Tucker between the hours of noon and 8:00 p.m. only if they limit their inventory to the following categories: ice cream, popsicles, frozen desserts, candies, confections, chips, crackers, cookies, popcorn, pastries, and/or canned/bottled drinks for the purpose of retail sale. All items must be pre-packaged for sale. None of these vehicles may operate on the rights-of-way, streets, or sidewalks adjacent to any properties where "no solicitation" or similar signs are posted.
- (c) A license from the Georgia Department of Agriculture must be prominently displayed for view on each vehicle and available for inspection upon request by a city employee. Each vehicle shall contain a copy of the current valid business occupation tax certificate issued for the business (not for the vehicle itself) by City of Tucker, another jurisdiction in Georgia, or another state, and such business occupation tax certificate must also be prominently displayed for view on the vehicle and available for inspection upon request by a city employee.
- (d) All vehicles operating under this section shall comply with all applicable provisions of the Code and federal and state law, rules and regulations. Each vehicle must exhibit exterior signage showing it as a slow-moving vehicle. The placement, size and wording of such signage shall be determined by the police chief. No vehicle shall be allowed to remain stationary on any public street, sidewalk or right-of-way for longer than fifteen (15) minutes at a time. After the expiration of that time, the vehicle must move to a different location. Vehicles must be operated in a way that allows for unobstructed pedestrian and vehicular access to public streets, sidewalks and rights-of-way. No vehicle shall be operated within ten (10) feet of any fire hydrant, driveway, bus stop, subway entrance or exit, crosswalk, or intersection.

#### 20-4 —20-25. - Reserved.

### ARTICLE II. - OFFENSES INVOLVING PROPERTY RIGHTS

#### Sec. 20-26. - Transporting building materials at night.

It shall be unlawful for any person to haul or transport any building materials by means of any vehicle between the hours of 8:00 p.m. and 7:00 a.m. unless the driver of the vehicle has in possession documents

establishing the ownership of the building materials or the vehicle is owned by a governmental entity or public utility and is operated by an authorized employee of such governmental entity or utility, or the vehicle is subject to regulations of the state public service commission or the interstate commerce commission. In this section, "building materials" includes any new materials customarily used in building or construction work and which have a reasonable fair market value in excess of one hundred dollars (\$100.00).

Sec. 20-27. - Evasion of MARTA fares.

It shall be unlawful for any person to obstruct, hinder, interfere with or otherwise disrupt or disturb the operation of a public transit bus or rapid rail car by evasion of or attempted evasion of payment of the fare. Any person violating the provisions of this section shall be punished as provided in O.C.G.A. § 16-12-120(b). As used in this section, "evasion of payment of the fare" includes the following acts, activities or conduct:

- (1) Entry into or upon a rapid rail car or public transit bus without payment of the fare charged for transportation service.
- (2) Misuse of a transfer, TransCard, pass, ticket or other evidence of payment of or prepayment of a fare issued by the Metropolitan Atlanta Rapid Transit Authority (MARTA) with the intent to avoid or to assist another in avoiding payment of the fare charged for transportation service.
- (3) Use or attempted use of an unsigned MARTA TransCard for the payment of the fare charged for transportation service or refusal to sign such card upon request of an authorized agent or employee of MARTA.
- (4) Use or attempted use of a signed MARTA TransCard by a person who is not the person whose name is signed or whose signature appears on the surface of the TransCard for the payment of the fare charged for transportation service, or refusal or failure to provide proof, upon request, that the person so using the TransCard is the person whose name is signed or whose signature appears upon the TransCard.

Sec. 20-28. - Residential picketing prohibited.

- (a) It shall be unlawful for any person to engage in picketing upon, before, or about the private residence or home of any individual.
- (b) Picketing shall include, but not be limited to, the following types of activity:
  - (1) Staging a public or private protest of any kind.
  - (2) Obstructing passage to or from a residence.
  - (3) Promoting a strike or a boycott at a residence.
  - (4) To intimidate or otherwise harass the resident.
- (c) It is the purpose of this section to protect and preserve the home, inasmuch as the public health and welfare and the good order of the city require that citizens of the City of Tucker enjoy a feeling of peace, well-being, and privacy in their homes at all times.

Secs. 20-29 —20-40. - Reserved.

ARTICLE III. - OFFENSES AGAINST PUBLIC PEACE AND ORDER

Sec. 20-41. - Crowding, pushing other persons.

No person shall jostle or roughly crowd or push any person in any public place.

Sec. 20-42. - Public intoxication.

It shall be unlawful for any person to be and appear on the streets or roads of the City of Tucker or in any public place or place of business patronized by the public in a state of intoxication or incapacitation caused by illicit drugs, alcohol, concentrated vapors, or inhalants. The condition of intoxication or incapacitation shall be manifested by boisterousness, public indecency as defined by section 16-60, indecent acts, vulgar, profane, or loud language, unconsciousness, disorientation or the inability to care for his or her own needs or recognize obvious dangers.

Sec. 20-43. - Loitering—Generally.

- (a) It shall be unlawful for any person after having been directed by an officer or member of the police department to move away therefrom, to remain or loiter in front of any church or other place of public worship during services therein, or in front of any theater, concert hall, ballroom, coffeehouse, tavern or other public place, or to loiter or idle away time around the hotels or on the sidewalks or public streets or roads of the city.
- (b) A person commits the offense of loitering when the person is in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.
- (c) Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

Sec. 20-44. - Juvenile curfew.

- (a) *Definitions.* Words or terms not defined in this section but defined in applicable state law or the Code of the City of Tucker shall be given that meaning. All other words or phrases shall be given their common, ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this section 20-44 and in section 20-45, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

*Adult* means a person who is at least eighteen (18) years of age and authorized by a parent or guardian to have the lawful care and custody of a minor, or an emancipated minor.

*City* means City of Tucker

*Curfew hours* means the hours from 12:00 midnight until 5:00 a.m. each day.

*Emancipated minor* means any person under the age of eighteen (18) who has had the disabilities of minority removed and been declared an emancipated minor by a court of competent jurisdiction.

*Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a serious or life threatening medical problem/condition, a fire, natural disaster, automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

*Establishment* means any privately-owned place of business which is open for business and to which the public is invited during curfew hours including but not limited to any teen club open during curfew hours, places of amusement or entertainment, malls, restaurants, and shops that are open during curfew hours.

*Guardian* means a person who, under court order, is the guardian of the person of a minor or a public or private agency with whom a minor has been placed by the court or other adult.

*Minor* means any person under the age of seventeen (17) years.

*Operator* means any individual, firm, association, partnership or corporation owning, operating, managing, conducting or having control or custody of any establishment or public place. The term "operator" includes, but is not limited to, elected and appointed officials, managers, members or partners of an association or partnership and officers of a corporation.

*Parent* means a person who is a natural parent, an adopted parent or step-parent of a minor.

*Public place* means any place owned or operated by a governmental entity to which the public or a substantial group of the public has access during curfew hours and includes, but is not limited to, streets, sidewalks, highways, alleys, and public schools, and school stadiums or athletic fields.

*Remain* means to linger or stay, or fail to leave premises when requested to do so by a police officer, code enforcement officer, authorized city employee, the operator or other person in control of an establishment or a public place; and

*Serious bodily injury* means bodily injury that causes death or creates a substantial risk of serious permanent disfigurement, or protracted loss or impairment of any part of the human body.

(b) *Curfew for minors.*

- (1) It is unlawful for any minor to remain in or at a public place or an establishment in the city unsupervised by a parent or guardian during curfew hours except as allowed in subsection 20-44(c).
- (2) It is unlawful for the parent or guardian of any minor to knowingly allow such minor to remain in or at any public place or establishment in the city during curfew hours except as allowed in subsection 20-44(c).
- (3) It is unlawful for an operator of an establishment or public place to knowingly allow a minor to remain in or at an establishment or public place in the city during curfew hours except as allowed in subsection 20-44(c).
- (4) It is a full defense to prosecution under this section that the operator of an establishment or public place promptly notified the Police Department that a minor was present on the premises during curfew hours and the minor refused to leave.

(c) *Exceptions.* The requirements of this section shall not apply during curfew hours in the following instances:

- (1) When a minor is accompanied by his or her parent or guardian;
- (2) When the minor is involved in an emergency or if such minor is seeking medical treatment;

- (3) When the minor is returning directly home from a school activity, entertainment, recreational activity or dance;
- (4) When the minor is engaged in lawful employment or is going to or returning directly home from lawful employment;
- (5) When the minor is attending or traveling directly to or from an activity involving the exercise of first amendment rights of free speech, freedom of assembly or free exercise of religion;
- (6) When the minor is in a motor vehicle with the consent of a parent or guardian. All minors engaged in interstate travel through the city are exempt from the requirements of this section 20-44;
- (7) When the minor is traveling with the consent of a parent or guardian and is in an airport, bus station or other waiting or business area of a facility that provides transportation from one (1) place to another;
- (8) When the minor is an emancipated minor; or
- (9) When applicable law or regulation authorizes the minor to be in a public place or establishment.

(d) *Violations and jurisdiction.*

- (1) Any person who does anything prohibited by sections 20-44 and 20-45 or who fails to do anything required by sections 20-44 and 20-45, upon citation or summons by a police or code enforcement officer or other authorized city employee, and judgment or conviction of the violation in a court of competent jurisdiction, which includes the Recorders Court and Juvenile Court of DeKalb County, shall be subject to appropriate penalties as imposed by the court. A minor, parent, guardian or operator of an establishment or public place who violates this section for the first time shall be given a warning citation.
- (2) Adjudication of violations of this section by minors shall be made in accordance with O.C.G.A. § 15-1-1 et seq.
- (3) Before taking any enforcement action, the authorized officer or employee shall ask the apparent offender's age and the reason for being in the public place or establishment. The authorized officer or employee shall not issue a citation or make an arrest unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstance, that no exception listed in subsection 20-44(c) is present.

Sec. 20-45. - Responsibility of operators of establishments.

- (a) It shall be the responsibility of operators of establishments to post curfew hours. A sign containing the following language shall be conspicuously posted at all public entrances and exits of every establishment: "This Establishment complies with the Curfew Hours set by the City of Tucker. With few exceptions, Minors, unless accompanied by a Parent or Guardian, are not allowed in this Establishment from Midnight until 5:00 A.M. each day. Violations of the Curfew Hours will be reported the City of Tucker." All signs shall be no smaller than two (2) square feet and the lettering on the sign shall be no smaller than one (1) inch in size.
- (b) The posting of signs required by this section does not relieve operators of any establishment from compliance with section 20-44.

Sec. 20-45.1. - Loitering—For purpose of procuring others to engage in sexual acts for hire.

It shall be unlawful for any person to loiter in public for the purpose of soliciting or procuring others to engage in any sexual acts for hire.

Sec. 20-45.2. - Same—For purposes of engaging in drug-related activity.

(a) *Legislative findings and intent.*

- (1) The governing authority of the City of Tucker finds that the increase throughout the city of loitering in public places for the purposes of unlawful drug-related activity, or in effect, "open air" drug dealing, has become extremely disturbing and disruptive to residents and businesses. This activity has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear and intimidation and disorder.
- (2) Loitering for purposes of unlawful drug-related activity usually includes a dominate presence of those persons engaging in such activity by approaching pedestrians, encouraging the presence of vehicle and pedestrian traffic for the purpose of unlawful drug-related activity in and out of residential areas, to or from motor vehicles or in parking lots. Such presence carries with it an implicit threat to visitors and residents to avoid the use of these public places. The avoidance of such places by law-abiding citizens leads to an increased opportunity for the unlawful criminal activity and furthers the decay of the neighborhood.
- (3) The city has a strong interest in ensuring that citizens feel safe in their neighborhoods, in safeguarding the economic vitality of its business districts, and in preserving public places for their intended purposes.
- (4) This section is not intended to limit any person from exercising their right to assemble or engage in any other constitutionally protected activity. This section applies to all persons with the requisite intent to induce another to engage in unlawful drug-related activity.

(b) It shall be unlawful for any person to loiter, as defined in section 20-43, in or near any thoroughfare, place open to the public, or any public or private place in order to induce, entice, solicit or procure another to engage in unlawful drug-related activity.

- (1) "Unlawful drug-related activity" means conduct which constitutes an offense defined in O.C.G.A. Tit. 16, Ch. 13, as amended; conduct which constitutes complicity to commit such an offense by, for example, acting as a lookout; or conduct which constitutes conspiracy to commit such an offense.
- (2) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(c) A police officer who observes a person loitering under circumstances that provide the officer with a reasonable basis to believe unlawful drug-related activity is occurring or has occurred may detain the individual for the purpose of investigating whether the person is in violation of this section.

(d) A police officer may not detain an individual under this Code section unless both of the following elements are satisfied:

- (1) The person engages in one (1) or more of the following behaviors:

- a. The person passes or receives from a passer-by, bystander or person in a motor vehicle money, objects having characteristics consistent with controlled substances, and/or an envelope, bag or other container that could reasonably contain such objects or money;
- b. The person conceals or attempts to conceal an object having characteristics consistent with controlled substances and/or an envelope, bag, clear plastic baggie or other container that could reasonably contain such objects;
- c. The person flees or obscures himself upon seeing law enforcement officers;
- d. The person communicates the fact that law enforcement officers are in the vicinity to another person in a manner that suggests that the communication is a warning; or
- e. The officer observes the person in possession of any instrument or object that is designed or marketed as useful primarily for one (1) or more of the following purposes:
  1. To inject, ingest, inhale or otherwise introduce marijuana or a controlled substance into the human body;
  2. To enhance the effect of marijuana or a controlled substance on the human body;
  3. To test the strength, effectiveness, or purity of marijuana or a controlled substance;
  4. To process or prepare marijuana or a controlled substance for introduction into the human body;
  5. To conceal any quantity of marijuana or a controlled substance; or
  6. To contain or hold marijuana or a controlled substance while it is being introduced into the human body.

(2) One (1) of the following factors applies:

- a. The officer is aware that, within the preceding three (3) years, the person has been convicted of an offense defined in O.C.G.A. Tit. 16, Ch. 13, or of complicity to commit such an offense, or of conspiracy to commit such an offense with in the preceding three (3) years;
  - b. The officer has knowledge of a specific reliable tip concerning unlawful drug-related activity at a specific location, and the person who is found loitering is doing so at a time, in a place or in a manner that is otherwise consistent with the details provided in the tip;
  - c. The person is loitering in an area that has been designated a notorious drug-related activity area as defined in subsection (g), below;
  - d. The person is in an area where he is prohibited by court order from being, and the officer is aware of the court order;
  - e. The officer knows that the person has been previously convicted of loitering with the intention of engaging in unlawful drug-related activity under this section; or
  - f. Any vehicle the person has approached or communicated through is registered to an individual who has been convicted of an unlawful drug-related activity in the previous three (3) years, and the officer is aware of that fact.
- (e) No arrest may be made for a violation of this section unless the arresting officer first affords the person an opportunity to explain the person's presence and conduct, unless flight by the person or other circumstances make it impracticable to afford such an opportunity, and no one shall be



convicted of violating this section if it appears at trial that the explanation given at the scene was true and disclosed a lawful purpose.

- (f) If a police officer who detains a person pursuant to this Code section develops probable cause to believe that the person is in violation of this Code section, the officer may order the person to immediately leave the location and to remain at least five hundred (500) feet away from the location for at least five (5) hours. In the event that person refuses to comply with such an order, the police officer may arrest the person and charge him with a violation of this section.
- (g) The governing authority may, by written directive and after consultation with the chief of police, clearly and publicly designate areas of the City of Tucker that are frequently associated with excessive incidents of drug-related offenses, including offenses involving controlled substances, as defined in O.C.G.A. Tit. 16, Ch. 13, or marijuana. The chief of police shall file such designations with the Tucker City Manager and with the clerk of the superior court. Prior to recommending such a determination under this subsection, the chief of police shall consult, as he or she deems appropriate, with persons who are knowledgeable about the effects of drug-related activity in areas in which this section may be enforced. Such persons may include, but need not be limited to, members of the department of police with special training or experience related to drug-related activity; other personnel of that department with particular knowledge of drug-related activities in the proposed designated area; appointed and elected officials of the area; and community-based organizations. The chief of police shall develop and implement procedures for the bi-annual review and update of any designations made under this subsection.

Sec. 20-46. - Reserved.

Sec. 20-47. - Smoking on public transportation.

- (a) It shall be unlawful for occupants on Metropolitan Atlanta Rapid Transit Authority (MARTA) buses and railcars to smoke tobacco while the buses and railcars are transporting passengers within the City of Tucker.
- (b) For the purposes of this section, the word "occupants" shall mean any driver or passenger riding in and upon a bus or railcar operated by the Metropolitan Atlanta Rapid Transit Authority.
- (c) Violators of this section shall be subject to a fine which shall not be less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

Sec. 20-48. - Unauthorized ambulances at scenes of emergency.

- (a) It shall be unlawful for the owner, agent, representative or employee of any ambulance to go to any place where an emergency has occurred unless called there by a victim of the emergency, the victim's authorized representative, the police department or an observer of the emergency capable of being identified.
- (b) It shall be unlawful for the owner, agent, representative or employee of any ambulance to go to the place of an emergency by reason of information received from police department radio.
- (c) Any unauthorized or uncalled person appearing at the scene of an emergency to offer ambulance service shall be deemed a violator of this section.

Sec. 20-49. - Preventing or disrupting lawful meetings, gatherings or processions.

It shall be unlawful for any person to recklessly or knowingly commit any act which may reasonably be expected to prevent or disrupt a lawful meeting, gathering or procession.

Sec. 20-50. - Throwing objects.

No person shall recklessly or knowingly throw or propel any stone, brick, piece of wood or other object at any person, vehicle, house, building or other structure or object, or across or upon any private or public property.

Sec. 20-51. - Defecating or urinating on public property or in certain areas.

It shall be unlawful for any person to defecate or urinate on or adjacent to any street or sidewalk, or in the halls, elevators, stairways, or any other area designated for public passage within any public or commercial buildings, or on any property open to public view.

Sec. 20-52. - False police alarms.

No person shall knowingly and willfully harass or attempt to harass or mislead any police officer by false alarms or unauthorized use of any device of whatever nature to summon police aid without reasonable cause.

Sec. 20-53. - Criminal impersonation.

- (a) As used in this section, "intent to defraud" means the use of deception with the intention to injure another's interest which has economic or monetary value.
- (b) A person commits the offense of criminal impersonation if the individual:
  - (1) Assumes a false identity and commits any act in their assumed character with the intent to defraud another; or
  - (2) Pretends to be a representative of some person or organization and commits any act in their pretended capacity with the intent to defraud another.

Sec. 20-54. - False representation of age.

It shall be unlawful for any person to misrepresent his/her age in any manner whatever for the purpose of gaining entrance to events or establishments that require a minimum age including, but not limited to, bars, nightclubs, movies, video stores, bookstores or bingo parlors.

Sec. 20-55. - Schools—Unauthorized persons entering school buildings.

No person shall enter or remain in any public, private or parochial school building between the hours of 7:30 a.m. and 6:00 p.m. on days that school is in session (or until 10:00 p.m. at those schools which have extended sessions), who is not a regularly enrolled student, teacher or employee at that school, unless the person shall have first and immediately proceeded to the administrative offices and identified themselves to the principal or the principal's agent and receives permission to remain on the premises.

Sec. 20-56. - Same—Unauthorized persons not to remain in school buildings or on school grounds after being requested to leave.

It shall be unlawful for any person to enter and remain in any public, private, or parochial school or on the surrounding school grounds after being directed to leave by the principal of the school or by someone with lawful authority.

Sec. 20-57. - Same—Creating a disturbance.

- (a) It shall be unlawful for any person to create a disturbance in any public, private or parochial school or on the surrounding school grounds lawfully used for school activities while such recreational areas are in use or other activities are in progress thereon.
- (b) A disturbance, for purposes of this section, shall be defined as any act which may be reasonably expected to interfere with the activities within the school or school activities on the school grounds or fields while such activities are in progress thereon.

Sec. 20-58. - Disorderly conduct.

- (a) It shall be unlawful for any person to act in a loud and boisterous, reckless, unruly or violent manner for the purpose of insulting, degrading, or inciting another or a group of individuals in a public place.
- (b) It is not the intent of this section to restrict any individual's right to free speech.

Sec. 20-59. - Unauthorized persons entering vacant buildings.

It shall be unlawful for any person to enter or to remain in a vacant or unoccupied building or on any portion of vacant land upon which such vacant building is located unless with permission of an authorized agent of said property; provided, such building or vacant property is prominently marked by a posted notice which is easily seen from a distance of at least fifty (50) feet that informs the public such property is vacant or unoccupied and unauthorized persons are prohibited from entering.

Sec. 20-60. - Public indecency—Definitions.

The following terms, as used in sections 20-60—20-64, shall have the meanings indicated below:

*Nudity* means the showing of the human male or female genitalia, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates male or female genitalia, pubic hair, natal cleft, perineum, anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the appearance of nipples and/or areola.

*Public place* includes, but is not limited to, buildings and enclosed places owned by or open to the general public, including stores, shopping malls, modes of transportation whether moving or stationary, including cars, buses, trains, where nudity might reasonably be expected to be viewed by members of the public, and places of entertainment, including bars, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls whether limited to specific members, restricted to adults or to patrons invited to attend, or otherwise and whether or not an admission charge is levied and all outdoor places owned by or open to the general public.

Sec. 20-61. - Same—Prohibited conduct.

It shall be unlawful for a person to engage in any of the following acts in a public place:

- (1) An exposure of the sexual organs; or
- (2) An appearance in a state of partial or complete nudity.

Sec. 20-62. - Same—Exemptions.

The prohibition set forth in section 16-61 shall not apply to:

- (1) Any child under ten (10) years of age; or
- (2) Any female person exposing a breast in the process of breastfeeding an infant under two (2) years old.

Sec. 20-63. - Same—Violations and penalties.

Any person who violates any provision of section 16-61 shall be punished as provided in section 1-10 of this Code.

Sec. 20-64. - Same—Repeal of ordinances expressly or implicitly permitting public nudity.

Any ordinances in the Code of the City of Tucker and parts thereof which expressly or implicitly permit public nudity are repealed.

Sec. 20-65. - Reserved.

#### ARTICLE IV. - OFFENSES AGAINST PUBLIC SAFETY<sup>(2)</sup>

Sec. 20-66. - Unlawful possession of knives.

It shall be unlawful for any person, for the purpose of offense or defense, to possess on such person or have at the person's immediate disposal on the streets and roads of the city or in any public place or place of business patronized by the public any of the following instruments:

- (1) Any knife which has a spring-loaded blade that opens automatically by pressure applied to a button, spring or other device in the handle, commonly called a switchblade, swish blade or swiss blade for blades that open on the side and stiletto for blades extending from an end.
- (2) Any knife which has any obstruction or other device of any kind which holds the blade partly open, the blade of which when open projects from the handle more than two (2) inches.
- (3) Any knife of any kind, the blade of which when open projects from the handle more than three (3) inches. This is intended to include all knives such as butcher knives or other knives which do not close.
- (4) Any razor blade alone or inserted in a handle in such manner as to expose either a sharp corner or a sharp edge.

Sec. 20-67. - Reckless operation of motor vehicle upon parking facility or walkway.

No person shall operate a motor vehicle upon any parking facility, public or private, vehicle-access or pedestrian walkway of any parking facility by sudden starting, stopping or turning so as to endanger the person or property of another.

Sec. 20-68. - Creating hazardous or offensive condition.

No person shall create a hazardous or physically offensive condition by an act which serves no legitimate purpose.

Sec. 20-69. - Reserved.

Sec. 20-70. - Aiding, encouraging minor to commit unlawful act.

No person shall aid, abet or encourage a minor to do any act which constitutes disorderly conduct or a breach of the peace.

Sec. 20-71. - Interfering with operation of school bus.

No person shall obstruct, hinder, interfere with or otherwise disrupt or disturb the operation or operator of a public-school bus.

Sec. 20-72. - Discharge of weapons.

It shall be unlawful for any person to fire a gun, rifle, pistol, revolver, cannon, air rifle, firearm of any type, or shoot a slingshot or bow and arrow within the city, within fifteen hundred (1500) feet of any residence, place of worship, business or public meeting place. This section shall not apply to any law enforcement officer while in the discharge of official duties, nor to any person hunting upon such person's premises or the premises of another with the owner's consent in that area of the city zoned for agriculture by a zoning ordinance, order or resolution by the City Council, nor to any person, or group of persons, who has first obtained the written permission for this from the city manager. Permission will be granted upon a showing that the public safety will not be endangered.

Sec. 20-73. - Reserved.

Sec. 20-74. - Halting or impeding flow of traffic.

No person shall congregate with another or others in or on any public right-of-way or place so as to halt or impede the flow of vehicle or pedestrian traffic after having been directed to clear such public right-of-way or place by a police officer or any other authorized law enforcement officer.

Secs. 20-75—20-90. - Reserved.

#### ARTICLE V. - OFFENSES AGAINST GOVERNMENT OPERATIONS<sup>(3)</sup>

Sec. 20-91. - Soliciting, begging on city property.

Without the express written consent of the city manager, it shall be unlawful for any person to beg, solicit, or sell goods, wares or other objects or services within any building, or on any grounds, sidewalks or other ways owned by or under control of the city, its agencies, authorities, commissions, boards, bureaus or other city entities.

Sec. 20-92. - Public meetings.

- (a) Nothing in this article shall be interpreted as prohibiting use of city property for meeting purposes by citizens of the City of Tucker, provided such meetings are to be held at a time which will not interfere with regular and/or official city administrative business, and that no unusual maintenance and security costs will be placed upon the city; provided, further, that written consent shall have been first obtained from the city manager.
- (b) As an exception to subsection (a) of this section, there shall be designated a location within the courthouse campus area which may be used as a public forum under peaceful and lawful conditions, at the will of any citizen, provided such assembly does not interfere with city business or encumber any person having or desiring to conduct business in the city facilities. The subject area shall be identified by the city manager and shall be subject to change as conditions necessitate.

Secs. 20-93—20-95. - Reserved.

## ARTICLE VI. - OFFENSES AGAINST PUBLIC HEALTH

### DIVISION I. - GENERALLY

Secs. 20-96—20-99. - Reserved.

### DIVISION 2. - CLEAN INDOOR AIR<sup>(4)</sup>

Sec. 20-100. - Title.

This division shall be known, cited, and referred to as the City of Tucker Smoke-Free Air Ordinance.

Sec. 20-101. - Findings and purpose.

(a) The City Council does hereby find that:

- (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy non-smokers, including heart disease, stroke, respiratory disease, and lung cancer.
- (2) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

(b) Accordingly, the City Council finds and declares that the purposes of this division are:

- (1) To protect the public health and welfare by prohibiting smoking in public places and public and private places of employment; and
- (2) To guarantee the right of non-smokers to breathe smoke-free air; and
- (3) To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Sec. 20-102. - Definitions.

Words or phrases not defined in this division, but defined in applicable state law or the Code of the City of Tucker shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

*Child care facility* means any institution, society, agency, or facility, which either primarily or incidentally provides full-time care for children under seventeen (17) years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the State Board of Human Resources, as defined by O.C.G.A. § 49-5-3, as amended.

*Common area* means only those outdoor areas of apartments, condominiums, townhomes, residential subdivisions, rooming houses, retirement facilities, nursing homes, personal care homes, and other multi-unit residential property that are either commonly used or owned by its residents and

intended for the common enjoyment of its residents, or accessible to residents of more than one (1) dwelling located on the property. Common areas include, but are not limited to, outdoor recreational areas within a development, and common open space that is the central organizing feature of a development.

*Dining area* means an interior or exterior (such as porch, patio or courtyard) area containing a counter or tables upon which food is served.

*E-cigarette* means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, that creates a vapor of nicotine and simulates smoking. This term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptive name.

*Employee* means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

*Employer* means any person who employs the services of an individual person.

*Enclosed* means closed in by a roof and at least three (3) sides with appropriate openings for ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in an area that is enclosed as defined herein.

*Establishment* means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture. The term "establishment" includes but is not limited to the following:

- (1) Automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale;
- (2) Grocery, pharmacy, specialty, department and other stores which sell goods or merchandise;
- (3) Service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products;
- (4) Barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public;
- (5) Video arcade, pool hall, and other amusement centers;
- (6) Offices providing professional services such as legal, medical, dental, engineering, and architectural services;
- (7) Banks, savings and loan offices, and other financial establishments;
- (8) Hotels and motels and other places that provide accommodations to the public; and
- (9) Restaurants and cafeterias.

*Freestanding bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and which derives at least fifty (50) percent of its total annual gross food and beverage sales from the sale of beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

*Health care facility* means any licensed general or specialized hospital, institutional infirmary, public health center, or diagnostic and treatment center, as defined by O.C.G.A. § 31-7-1(2), as amended.

*Intermediate care (nursing) home* means any long-term custodial care facility that provides for the physical and mental welfare of the aged.

*Outdoor recreational public place* means any outdoor area of a place to which the public is invited or in which the public is permitted that is used, or intended for use, as a recreational area, regardless of any fee or age requirement. The term "outdoor recreational public place" includes but is not limited to, parks, picnic areas, playgrounds, athletic or sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pool facilities, aquatic areas, water parks, skateboard parks, amusement parks, stadiums, amphitheaters, beaches, lakes, and outdoor areas of roller- and ice-skating rinks, concert venues, sports pavilions, gymnasiums, health spas, boxing arenas, bingo facilities, video arcades, pool halls, bowling facilities, amusement centers, and theaters.

*Personal care home* means a residential facility having at least twenty-five (25) beds and providing, for compensation, protective care and oversight of ambulatory, non-related persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes include those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals, or boarding facilities which do not provide personal care. Personal care homes shall also mean residential care facilities for the elderly.

*Place of employment* means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias and snack bars, conference and meeting rooms, lobbies and reception areas. A private residence is not a place of employment unless it is used as a childcare facility, an adult day care facility, or a health care facility. The dining area of a restaurant shall be treated as a place of employment under this division.

*Playground* means any outdoor area that is used or designed to be used by children for recreation, including areas containing play or sports equipment or designated or landscaped for play or sports activities if such outdoor area is located in a common area, or on public or private elementary or secondary school grounds, or on property owned, leased, or operated by the City. A playground in the outdoor area of a private residence is not a playground regulated by this division.

*Public place* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, restaurants, stores, waiting rooms, lobbies, reception areas, hallways, concession areas, public transit, restrooms, shopping malls, elevators, service lines, service stations, offices providing professional services, banks and other financial institutions, educational, recreational and health care facilities, childcare facilities, auditoriums, enclosed facilities in outdoor recreational public places, theaters, arenas, meeting rooms, repair shops, automobile dealerships, convention halls, and polling places. Porches, courtyards or decks with a contiguous connection to a public place shall be considered a public place. A private residence is not a public place unless it is used as a childcare facility, an adult daycare facility or a health care facility.

*Restaurant* means any establishment or area which is primarily devoted to the serving of food to the public or guests and which contains a dining area. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a freestanding bar area as previously defined. The term "restaurant" shall include any dining area located within a health care, educational, or childcare facility. Food courts within enclosed shopping malls shall be treated as restaurants under this division.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.



*Service line* means any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

*Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, e-cigarette, oral smoking device, or pipe, or any other lighted or heated tobacco intended for inhalation, in any manner or in any form.

Sec. 20-103. - Prohibited smoking.

Except as allowed in this division, smoking is prohibited in all public places, outdoor recreational public places, common areas, and places of employment.

Sec. 20-104. - Prohibition of smoking applicable to city property.

Smoking shall be prohibited in all common areas, public places, places of employment, outdoor recreational public places, parking lots, and vehicles owned, leased, or operated by the City.

Sec. 20-105. - Reasonable distance.

(a) Smoking shall be prohibited within:

- (1) Twenty (20) feet of any outside entrance, operable window, or ventilation system of a common area, public place, place of employment, or outdoor recreational public place;
- (2) Twenty (20) feet of outdoor seating or serving areas of restaurants; or
- (3) Twenty (20) feet of any service line.

(b) Smoking shall be allowed in the parking lot(s) of a common area, public place, place of employment, or outdoor recreational public place owned, leased or operated by anyone other than City, except in the following situations:

- (1) Smoking in such parking lot(s) is prohibited if it occurs in an area of the parking lot that is within twenty (20) feet of any outside entrance, operable window or ventilation system of a common area, public place, place of employment, or outdoor recreational public place.
- (2) Smoking is prohibited in the parking lot(s) of a common area, public place, place of employment, or outdoor recreational public place if the owner, operator, manager, employer, or other person who controls the common area, public place, place of employment or outdoor recreational public place has posted in the parking lot(s) "No Smoking" signs that comply with the requirements of this division.

Sec. 20-106. - Exceptions.

(a) The smoking prohibition shall not apply in the following areas:

- (1) "Freestanding bar" areas;
- (2) Retail tobacco stores;
- (3) Adult entertainment establishments, as defined by this Code;
- (4) Private residences, including private residences which may serve as an office workplace, except if used as a childcare, an adult day care or a health care facility;

- (5) Any property owned or leased by municipalities, the State of Georgia, or the federal government;
  - (6) Designated smoking rooms in hotels and motels rented by guests provided that such designated smoking rooms shall not comprise more than twenty-five (25) percent of the total number of rooms available for rent; and
  - (7) Outdoor areas of places of employment, except where an owner or employer declares that the outdoor area is a smoke-free environment, as provided in this division.
- (b) Notwithstanding any other provision of this division, any owner, operator, manager or other person who controls any establishment described in this division may declare that the entire establishment is a non-smoking establishment.

Sec. 20-107. - Employers' responsibility.

- (a) It is the responsibility of employers to provide a smoke-free workplace for all employees of public places, and places of employment but employers are not required to make expenditures or structural changes to create a smoke-free work area.
- (b) Each employer having an enclosed place of employment located within City of Tucker is encouraged to adopt, implement, make known and maintain a written smoking policy that incorporates the smoking prohibitions of this division.
- (c) The written smoking policy should be provided to all employees.

Sec. 20-108. - Posting of signs and notification.

- (a) At every entrance to every place where smoking is prohibited by this division, "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted by the owner, operator, manager, employer or other person having control of such building or area.
- (b) In every area where smoking is prohibited by this division, all ashtrays shall be removed by the owner, operator, manager, employer or other person having control of the area.
- (c) A copy of the City Smoke-Free Air Ordinance shall be given to each applicant for a City business license.

Sec. 20-109. - Enforcement.

- (a) Any police officer, as defined by Georgia law, may issue a citation for any violation of this division.
- (b) Any citizen who desires to register a complaint under this division may initiate enforcement with the chief of police or designee.
- (c) Any owner, operator or manager of any establishment regulated by this division shall inform persons whom they witness violate this division of the appropriate provisions, and request compliance. In the event persons violating this division refuse to comply with this division after being informed by such owner, operator, or manager, the person smoking, and not the owner, operator, or manager, shall be subject to an action for violation of this division.

Sec. 20-110. - Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment as afforded by this division.

Sec. 20-111. - Violations and penalties.

Any person who violates any provision of this division shall be subject to the following penalties:

- (1) A fine not exceeding fifty dollars (\$50.00) for a first violation;
- (2) A fine not exceeding seventy-five dollars (\$75.00) for a second violation of this division within one (1) year; and
- (3) A fine not exceeding one hundred dollars (\$100.00) for each additional violation of this division within one (1) year.

Sec. 20-112. - Other applicable laws and disclaimer.

This division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. By regulating smoking the city is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the city, its officers nor its employees are liable in money damages to any person who claims that any breach of this division caused injury.

Secs. 20-113—20-199. - Reserved.

DIVISION 3. - REGULATION OF HAZARDOUS SPORTS ACTIVITY

Sec. 20-200. - Findings and purpose.

- (a) The governing authority recognizes that the City of Tucker Parks and Recreation, with its numerous after-school and weekend athletic programs, plays an integral role in promoting physical activity among City's youth.
- (b) The governing authority also finds that coaches who require persons under the age of eighteen (18) to participate in exercise when the heat index is at or above ninety-five (95) degrees Fahrenheit may be putting those citizens in a hazardous situation.
- (c) Accordingly, the governing authority finds and declares that the purpose of this division is to protect the public health and welfare of its children by prohibiting such exercise when it may be hazardous to their health.

Sec. 20-201. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Athlete* means a person or group of persons under the age of eighteen (18) years who are participating in an individual or group sports activity.

*Coach* means a person who trains or directs athletes in individual or group sports activities.

*Heat index* means an accurate measure of how hot it actually feels when the relative humidity is added to the actual air temperature.

*Sports activity* means any outdoor or non-air conditioned indoor activity involving physical exertion and skill governed by rules or customs and often undertaken competitively but does not include outdoor or indoor activities that occur in water.

Sec. 20-202. - Prohibited activity.

Department of parks and recreation coaches and staff shall not allow athletes to participate in individual or group sports activities when the heat index is at or above ninety-five (95) degrees Fahrenheit.

Sec. 20-203. - Policies.

- (a) Parks and recreation coaches and staff involved in instructing or training athletes within City shall adopt, implement and maintain a heat illness prevention policy that incorporates the applicable provisions of this division.
- (b) The DeKalb County Board of Health (DCBOH) may assist the department of parks and recreation in educating their staff on signs and symptoms of heatstroke and heat exhaustion, providing literature and guidelines regarding hazardous sport activity.
- (c) The DeKalb County Board of Health may monitor the heat index and notify the department of parks and recreation when the index has reached or exceeded ninety-five (95) degrees Fahrenheit.

Sec. 20-204. - Enforcement and penalty.

- (a) Any police officer, as defined by Georgia law, may issue a citation for any violation of this division that occurs within the city.
- (b) Any citizen who desires to register a complaint under this division within the city may initiate enforcement with the chief of police or designee.
- (c) Any person who violates any provision of this division in City shall be subject to the penalties in section 1-7 of this Code.

Sec. 20-205. - Other applicable laws and disclaimer.

This division shall not be interpreted or construed to regulate sports activities where such activity is otherwise restricted by other applicable laws. By regulating sports activities in this manner the city is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the city, its officers, nor its employees are liable in money damages to any person who claims that any breach of this division caused injury.

Secs. 20-206—20-210. - Reserved.

#### DIVISION 4. - SANITARY AND FUNCTIONAL RESTROOM FACILITIES

Sec. 20-211. - Findings and purpose.

- (a) The City finds that the existence of public restroom facilities in bad repair constitutes a nuisance.
- (b) The City further finds that the existence of public restrooms in facilities must be regulated to avoid such a nuisance.
- (c) Accordingly, the City finds and declares that the purpose of this division is to protect the public health and welfare of patrons and employees of facilities with public restrooms by prohibiting the existence of such restrooms in a state of bad repair.

Sec. 20-212. - Definitions.

Words or terms not defined in this section but defined in applicable state law or the Code of the City of Tucker shall be given that meaning. All other words or phrases shall be given their common, ordinary meaning unless the context requires otherwise. The following words terms and phrases, when used in this section 20-211 through 20-215, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

*Bad repair* means a state that does not permit the use of the restroom for the designed purpose, with adequate sanitary conditions.

*Facilities* means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture, public primary or secondary school, as well as City buildings and parks.

*Owner* means the business occupation tax certificate ("business license") holder or employee with supervisory authority for the facility.

*Public restroom* means a room with toilet(s) within a facility that is designated for use as a bathroom by patrons and/or visitors.

Sec. 20-213. - Prohibited nuisance.

Facilities with public restrooms are prohibited from allowing those restrooms to exist in a state of bad repair during operating hours.

Sec. 20-214. - Enforcement and penalty.

- (a) With respect to all facilities, the provisions of this division may be enforced by City Code Enforcement Officers. Code enforcement officers are encouraged to issue warnings to obtain compliance with requirements of this chapter.
- (b) When inspecting the cafeteria of a public primary or secondary school, the board of health shall also inspect the student's restroom closest to the cafeteria.
- (c) Any citizen who desires to report a violation may do so with code enforcement officers.
- (d) The owner of any facility that is found to have public restroom(s) in bad repair may be subject to a fine in accordance with section 1-7, with the minimum penalty of two hundred fifty dollars (\$250.00).

Sec. 20-215. - Other applicable laws and disclaimer.

This division shall not be interpreted or construed to permit public restrooms in bad repair where it is otherwise restricted by other applicable laws. By regulating public restrooms, the city is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the city, its officers nor its employees are liable in money damages to any person who claims that any breach of this division caused injury.

Secs. 20-216—20-230. - Reserved.