

RESOLUTION NO. 2022-R-008

**RESOLUTION APPROVING THE TERMS OF A CERTAIN CONSENT AGREEMENT
RELATING TO AN APPEAL OF A VESTED RIGHTS DETERMINATION UNDER
CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE AND AUTHORIZING
THE CITY ADMINISTRATOR OF THE CITY OF BLANCO TO EXECUTE A FINAL
AGREEMENT CONSISTENT WITH SUCH TERMS**

WHEREAS, the City of Blanco (the "City") and Vapor Genius, LLC, doing business as Texas Hill Country Vape & Smoke ("VG") are parties to a contested and disputed appeal of vested rights claimed by VG arising under Chapter 245 of the Texas Local Government Code;

WHEREAS, notwithstanding their existing contest and dispute, and without any admission of any liability or other rights or obligations, the City and VG have determined to enter into a consent agreement pursuant the City's Uniform Development Code Section 4.13(3), in accordance with the terms and conditions stated in the attached Exhibit "A"; and

WHEREAS, the City Council of the City finds that the proposed consent agreement terms are consistent with and support the public welfare and safety of the City of Blanco and its residents;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Blanco, as follows:

1. The terms and conditions of a proposed consent agreement (the "Terms"), which are attached hereto and incorporated herein as if set forth verbatim, at Exhibit "A", are approved;
2. The City Administrator is hereby authorized to execute a final consent agreement consistent with the Terms, and to take any and all additional actions and steps necessary to fully implement and execute such Agreement.

RESOLVED AND ADOPTED this 4 day of October 2022.

Rachel Lumpee

Rachel Lumpee, Mayor

ATTEST:

Laurie Cassidy
Laurie Cassidy, City Secretary



Consent Agreement between City of Blanco and Vapor Genius LLC

This Consent Agreement (the “Agreement”) is made by and between the City of Blanco, a municipality in the state of Texas (the “City”) and Vapor Genius, LLC doing business as Texas Hill Country Vape & Smoke (“VG”) (the City and/or VG may be referred to as a “Party” or the “Parties”), to be effective upon the last date stated hereinbelow, as follows:

The City and VG are parties to a pending and contested request for determination of vested rights filed by VG, which the Parties have now determined to resolve and settle pursuant to a consent agreement, as permitted under Section 4.13(3) of the City’s Unified Development Code;

Now therefore, for good and valuable consideration, the Parties agree as follows:

1. The pending appeal of determination of vested rights by VG is suspended and tabled without prejudice to VG and the City, so long as this consent agreement remains in force and is not revoked. This consent agreement is a compromise of disputed claims with no admission by either Party. All claims and defenses of VG and the City, and any related deadlines relating to the appeal, are suspended and tolled so long as this Agreement is in force and has not been revoked.
2. This Agreement will cover only the use and operation of a business on the property located at Suite B, 48 Main Street, Blanco, Texas (the “Location”), and not any other location, including by interior interconnection or other possible expansion into the adjacent suite at 48 Main Street, Blanco, Texas.
3. This Agreement will remain in place so long as the Location or any part thereof is used in operation of a VG retail store. This Agreement may be revoked by either Party for substantial non-compliance with its terms, in accordance with other provisions of the Agreement.
4. The Location or any part thereof may be used in operation of a vape & smoke retail store; provided,
 - i. In accordance with City Ordinance 2022-O-003, the Location will not be used primarily and substantially for the sale of nicotine-

based cigarettes, nicotine-based e-cigarettes or tobacco products ("Nicotine Products"), as defined upon the following terms:

1. VG will deemphasize the marketing of Nicotine Products during the life of the VG retail store at the Location;
2. VG will implement a marketing and advertising plan (including but not limited to limited floor space placement, limited exterior signage and other limited visible exterior advertising), and such that a reasonable person would not view the Location as primarily a Nicotine Products retail store or operation;
3. VG will post "No Loitering" signage or similar signage at the Location and take good faith reasonable efforts to enforce the restriction, but will not be penalized for any good faith oversight or mistake;
4. VG shall submit for approval by the City (by the City Admin) an exterior signage and exterior plan, prior to the commencement of the VG retail store operation. The City Admin may approve or disapprove such plan, with any appeal of a denial is to be submitted for consideration and approval or denial by the entire City Council within 30 days of any such denial;
5. VG shall age restrict entry at the Location to "18 and up, unless accompanied by a parent or guardian" and post signage on entry door(s), and take good faith reasonable efforts to enforce the restriction, but will not be penalized for any good faith oversight or mistake; and
 - ii. No sales financial data or other financial data shall be requested or exchanged between VG and the City for the purpose of determining whether VG is operating in accordance with the provisions of City Ordinance 2022-O-003.
5. The City shall provide water utility service to the property and other general City services generally provided to all citizens or businesses resident in the CITY.
6. No property is dedicated for public purpose under this agreement.

7. Upon execution of this Agreement, the City shall issue a certificate of occupancy to the Location, provided all other applicable legal and regulatory requirements are met.
8. The foregoing limitations and conditions on use of the Location shall in no way limit the application and requirement of compliance with other applicable legal or regulatory requirements for operation of the property.
9. The operation of a VG retail store at the Location may commence at any time after execution of this Agreement and the issuance of a certificate of occupancy.
10. City staff and City attorney shall review the status of and compliance with this Agreement at least once, but no more than twice, every twelve (12) months to determine if there has been good faith compliance with the terms of the Agreement.
11. If the City Council finds based on substantial competent evidence that VG or its operator has failed to comply with the terms of this Agreement, the Agreement may be revoked or modified by the City Council after public hearing which has been noticed at least fifteen (15) days in advance by publication and online, and for which written notice has been expressly provided to VG and any of its designated representatives.
12. If this Agreement is revoked by action of the City, VG may reinstitute its appeal of the determination of vested rights, and the City may act thereupon. In such case, VG may reinstitute its appeal by written submission and notice to the City at any time but not later than thirty (30) days after the relevant revocation; and thereafter, the City Council shall approve or deny such appeal within thirty (30) days of its submission.
13. The Parties represent that they each have the legal authority to enter into this Agreement.
14. This Agreement shall be governed and interpreted under the law of the state of Texas, and exclusive jurisdiction for any dispute hereunder shall be in Blanco County, Texas.
15. Any notices required or permitted under this Agreement shall be sent via first class mail and email to each Party as follows:

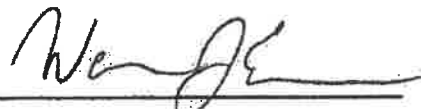
- i. If to the City: City of Blanco, ATTN: City Administrator, 300 Pecan St., Blanco, TX 78606, and cityadmin@cityofblancotx.gov; and Tim Tuggey at tnt@timtuggeylaw.com;
- ii. If to VG: Vapor Genius, LLC, ATTN: Paul Dunn, 225 Onion Creek Ranch Rd., Driftwood, TX 78619, and dunnbrandt@gmail.com; and Eric Gomez, at Braun & Gresham, P.O. Box 1148, Dripping Springs, TX 78620, and egomez@braungresham.com.


16. The Parties agree that they may execute multiple counterpart originals of this Agreement, and any such original document, or a true and correct copy thereof, shall be binding upon and enforceable by either Party.

This Agreement is executed and made effective the last date stated hereinbelow.

City of Blanco

Vapor Genius, LLC

By: 
Warren Escovy
City Administrator

By: 
Paul Dunn
Manager

Date: Oct 11, 2022

Date: 10/11/22