

ORDINANCE NO. 15 - 1469

**AN ORDINANCE TO AMEND ARTICLE XXV OF THE
LICENSES AND BUSINESS REGULATIONS CHAPTER
(CHAPTER 12) OF THE CODE OF THE CITY OF
DEARBORN ENTITLED "SMOKING LOUNGES."**

THE CITY OF DEARBORN ORDAINS TO:

Amend Article XXV of Chapter 12 of the Code of the City of Dearborn to read as follows:

ARTICLE XXV. SMOKING LOUNGES

DIVISION 1. GENERALLY

Sec.12-1200. Purpose.

On May 1, 2010, the State of Michigan implemented Public Act 188 of 2009 which bans tobacco smoking in all public places and worksites including, but not limited to, bars, restaurants, hospitals, hotels, shopping malls, and bowling alleys. ~~Cigar Bars and Tobacco Specialty Retail Stores that qualify and were in existence on May 1, 2010, are exempt from the smoking in public prohibition. The exemptions, issued by the State of Michigan, may be sold, transferred or moved within a community or from one community to another.~~

The purpose of this Article is to recognize the harm caused by smoking tobacco and non-tobacco products (including secondhand smoke), the state's mandate to move toward a totally smoke free environment, and the potential for negative impact on commercial development as a result of an area saturated with smoking lounges.

It is also a purpose of this Article to recognize that smoking lounges are frequently a gathering place for younger members of the population resulting in underage smoking of tobacco and non-tobacco products, after hours activities, etc., that not only negatively impact the health and well-being of our youth, but negatively impact surrounding businesses and adjacent residential areas as well.

This Article is designed to establish reasonable, objective, and uniform regulations to minimize the potential for adverse community impact relating to these establishments.

Sec. 12-1201. Definitions.

For purposes of this Article, the words, terms, and phrases shall be defined as follows:

Cigar shall mean any roll of tobacco weighing three (3) or more pounds per 1,000, which roll has a wrapper or cover consisting of tobacco.

~~*Cigar bar* shall mean an establishment or area within an establishment that is open to the public and is designated for the smoking of cigars that has a State issued exemption certificate.~~

Disqualifying criminal act shall mean any of the following:

- (1) Any of the following misdemeanor or felony offenses under any of the following statutes, as amended, for which less than seven (7) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 - a. Michigan Penal Code, Chapter X, Arson and Burning;
 - b. Michigan Penal Code, Chapter XI, Assaults, except MCL 750.81(1) and (2);
 - c. Michigan Penal Code, Chapter XVII, Bribery and Corruption;
 - d. Michigan Penal Code, Chapter XXII, Compounding Offenses;
 - e. Michigan Penal Code, Chapter XXVA, Criminal Enterprises;
 - f. Michigan Penal Code, Chapter XXVIII, Disorderly Persons;
 - g. Michigan Penal Code, Chapter XXXI, Embezzlement;
 - h. Michigan Penal Code, Chapter XXXIII, Explosives, Bombs, Harmful Devices;
 - i. Michigan Penal Code, Chapter XXXIV, Extortion;
 - j. Michigan Penal Code, Chapter XLIII, Frauds and Cheats;
 - k. Michigan Penal Code, Chapter XLIV, Gambling;
 - l. Michigan Penal Code, Chapter XLV, Homicide;
 - m. Michigan Penal Code, Chapter XLVIII, Indecency and Immorality;
 - n. Michigan Penal Code, Chapter LVIII, Mayhem;
 - o. Michigan Penal Code, Chapter LXVII, Prostitution;
 - p. Michigan Penal Code, Chapter LXVIIA, Human Trafficking;

- q. Michigan Penal Code, Chapter LXXVI, Sexual Conduct;
 - r. Michigan Penal Code, Chapter LXXVIII, Robbery;
 - s. Michigan Penal Code, Chapter LXXXIII-A, Michigan Anti-Terrorism Act;
 - t. Michigan Compiled Laws, 333, Part 74, Controlled Substances Offense and Penalties;
 - u. Michigan Compiled Laws Section 205.27, Taxation-Prohibited Acts, including tax evasion.
- (2) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
 - (3) Any offense enumerated in the City Code of Ordinances which substantially corresponds to one of the foregoing state offenses; or
 - (4) Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.

Influential interest shall mean any of the following:

- (1) actual power to operate or control the operation, management, or policies of a current or prospective business, including the manager of the prospective business; or
- (2) ownership of a financial interest in the business, or ownership of an interest that is ten percent (10%) or more of the total interest of a current or prospective business, including such business entities as a firm, partnership, limited partnership, association, limited liability company, or corporation; or
- (3) holding an office, such as, president, vice president, secretary, treasurer, managing member, managing director, etc., in a legal entity which operates a current or prospective business.

Minor shall mean any person under eighteen (18) years of age.

Non-tobacco smoking products or substances shall include any product or substance, loose or contained within smoking paraphernalia, that can be consumed by smoking such as, but not limited to, clove cigarettes, herbal cigarettes, herbal hookah, steam stones, smoking gels or other smoked products.

Premises shall mean the location at which a smoking lounge establishment operates ~~under a State issued exemption certificate~~ and includes the land, and all improvements located thereon, including the primary building and all accessory and out-buildings, and is not limited to the smoking area.

Sale shall mean, the exchange, barter, traffic, or furnishing, of tobacco products, non-tobacco smoking products, and substances which are regulated by the State of Michigan and pursuant to this Article.

Smoking lounge shall mean an establishment that ~~has a State issued smoking exemption certificate~~ and allows smoking of tobacco products or non-tobacco products or

substances on the premises. The term “smoking lounge” includes, but is not limited to, facilities commonly described as tobacco retail specialty stores, cigar bars and lounges, hookah cafés and lounges, tobacco bars and lounges, tobacco clubs or 0% nicotine establishments.

~~State shall mean the State of Michigan.~~

~~State issued exemption certificate shall mean a valid exemption certificate issued by the State of Michigan for the premises which allows indoor smoking on the premises in compliance with Public Act No. 188 of 2009.~~

Tobacco product shall mean a product that contains tobacco and is intended for human consumption, loose or contained within smoking paraphernalia, including, but not limited to, cigars, cigarettes, non-cigarette smoking tobacco or smokeless tobacco as defined by the Tobacco Products Tax Act, MCL 205.422, e-cigarettes, bidis, and kreteks.

~~Tobacco specialty retail store shall mean an establishment that has a State issued exemption certificate and for which the primary purpose is the retail sale of tobacco products and smoking paraphernalia and in which the sale of other products is incidental. Tobacco specialty retail store does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.~~

Sec.12-1202 to 12-1205. Reserved.

DIVISION 2. LICENSE REQUIREMENTS

Sec. 12-1206. Business license required.

A person shall not operate a smoking lounge in the City without first obtaining a smoking lounge business license issued pursuant to the provisions of this Article.

Sec. 12-1207. Location.

(a) Special regulation of smoking lounges is necessary to insure that the adverse effects of this land use will not contribute to the deterioration of the surrounding neighborhood, including the diversity and vibrancy of business districts, or negatively impact the health and well-being of minors.

(b) The establishment of a smoking lounge is prohibited if it constitutes the second such use within a one thousand, two-hundred (1,200) foot radius.

(c) The establishment of a smoking lounge is prohibited if it is located within seven hundred (700) feet of a school, childcare facility, or a park.

Sec. 12-1208. Application.

Any person required by this Article to have a smoking lounge business license shall file an annual written application with the City Clerk on a form furnished by the Clerk. The application shall include the following information:

- (1) The applicant's full true name and any other names used by the applicant in the preceding seven (7) years. If the applicant is a partnership, corporation, limited liability company, or other legal entity, then all persons with an influential interest in the entity shall be deemed an applicant and shall

provide the information required by this Article. Each applicant must be qualified under Sec. 12-1209, each applicant must sign the application, and each applicant shall be considered a licensee if a license is granted;

- (2) Current business address or another mailing address of the applicant;
- (3) Written proof of identity, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency;
- (4) The business name, location, zoning classification, legal description, parcel identification number, mailing address and phone number;
- ~~(5)~~ A copy of the State issued exemption certificate for the premises;
- ~~(6)~~(5) The name and business address of the designated local agent who is responsible to supervise the premises and activities and who is authorized to receive service of process;
- ~~(7)~~(6) A statement of the status of monies owed to the City including, but not limited to, water bills, real property taxes, personal property taxes, and miscellaneous fees;
- ~~(8)~~(7) A statement of whether any applicant has been convicted of or has pled guilty or no contest to a disqualifying criminal act as defined in this Article and, if so, a list of each criminal act involved, including the date, place, jurisdiction, date of conviction, and release from confinement, where applicable;
- ~~(9)~~(8) A statement as to whether any business in which an applicant has had an influential interest has, in the previous seven (7) years, and at the time during which the applicant had the influential interest:
 - a. Been declared by a court of law to be a nuisance, as defined by the Revised Judicature Act, MCL 600.3801; or
 - b. Been subject to a court order of closure or padlocking;
 - c. Been subject to foreclosure proceedings; and
- ~~(10)~~(9) A statement of the nature of the proposed operation.

The information provided pursuant to paragraphs (1) through ~~(10)~~ (9) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the City Clerk within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

Sec. 12-1209. Issuance of license.

(a) *Pre-existing businesses.* All smoking lounges operating pursuant to a valid certificate of occupancy for a smoking lounge on the effective date of this ordinance are hereby granted a de facto temporary license to continue operating for a period of one hundred and eighty (180) days following the effective date. During this period all smoking lounge businesses shall apply for a license pursuant to this Article and, by the expiration date of the one hundred and eighty (180) days, shall conform to all requirements for issuance of a license.

- (1) All smoking lounges operating pursuant to a valid certificate of occupancy for a smoking lounge on the effective date of this ordinance, and who are otherwise eligible for a license pursuant to this Article, are exempt from the location requirements stated in Sec. 12-1207.
- (2) De facto temporary licenses will only be granted if the business is in good standing with the City (e.g., no taxes are owed, no water bills are unpaid, etc.).
 - (b) *Application review.* Upon the filing of a completed application for a smoking lounge business license, the City Clerk shall forward a copy to the following departments: Department of Law, Police Department, Fire Department, Department of Economic and Community Development, Treasury Division of the Finance Department, Water Division of the Department of Public Works, and any other department, to review the application for compliance with the requirements of this Article and all other applicable ordinances and codes.
 - (c) The City Clerk shall issue a license to the applicant, or issue to the applicant a written notice to deny the application. The City Clerk shall issue a license unless:
 - (1) *Information.* An applicant has failed to provide information as required by Sec. 12-1208 for issuance of a license, or has falsely answered a question or a request for information on the application form;
 - (2) *Fee.* The license application fee required by this Article has not been paid;
 - ~~(3) *State exemption certificate.* The applicant does not have a valid State issued exemption certificate;~~
 - ~~(4)~~**(3)** *Code compliance.* The subject premises lacks a current certificate of occupancy or does not comply with applicable building, zoning, plumbing, mechanical, electrical, health, or fire prevention codes.
 - ~~(5)~~**(4)** *Ventilation and parking.* The Department of Economic and Community Development has indicated that the premises lack the ventilation or parking required for the proposed use;
 - ~~(6)~~**(5)** *Unpaid fees.* Relevant City departments have indicated that there are unpaid fees or incurred violations under their purview related to the subject premises;
 - ~~(7)~~**(6)** *Taxes.* The Treasury Division has denied a real and/or personal property tax clearance pertaining to the subject premises;
 - ~~(8)~~**(7)** *Ownership/lease.* The applicant does not own the premises for which a license is sought or does not have a lease for the full period for which the license is sought;
 - ~~(9)~~**(8)** *Disqualifying criminal act.* An applicant has been convicted of, or has pled guilty or no contest to, a disqualifying criminal act as defined in this Article;
 - ~~(10)~~**(9)** *Additional licensing.* The business is not licensed to do business in Michigan or has not obtained a sales tax license;
 - ~~(11)~~**(10)** *Exceeding cap.* The cap of fifteen (15) ~~State issued exemption certificates~~ **smoking lounge business licenses assigned issued** to smoking lounges operating in this City, established by this Article, has been met and a waiver has not been obtained from the City Council;

~~(12)~~**(11) Location.** The proposed location of the smoking lounge violates Sec. 12-1207 above.

(d) *Reservation of authority.* Notwithstanding anything to the contrary in this Article, no applicant has a right to the issuance of a license. The City hereby reserves the right to determine who, if anyone, shall be entitled to the issuance of such a license, based on the objective criteria listed in this Article which relate to concerns for public health, safety, and welfare as identified herein.

(e) *License contents; posting; possession.* The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, the address of the business. The business license shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time.

Sec. 12-1210. Fees.

The fees for a license under this Article shall be established by resolution adopted by the City Council and shall be placed on file, and made available, at the office of the City Clerk.

Sec. 12-1211. Inspection.

Filing an application for a smoking lounge business license shall constitute consent to inspection by City officials and/or representatives for the purpose of ensuring compliance with the specific regulations of this Article. During City business hours or at other mutually agreeable time, the applicant shall allow the representatives of City departments onto the property and into the proposed licensed premises to complete an inspection. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Article.

Sec. 12-1212. Transfer of license.

(a) A licensee shall not transfer the license to another, nor shall a licensee operate a smoking lounge under the authority of a license at any place other than the address designated in the smoking lounge business license application. A proposed transfer shall require a new application and shall be subject to the same procedures, standards and fees required for a new license. Each location operated by a licensee requires a separate license.

~~(b) Approval of the transfer of a State issued exemption certificate by the State of Michigan shall not abrogate the requirement to apply for and obtain a smoking lounge license as required by this Article.~~

Sec. 12-1213. Annual license, expiration.

Each license shall expire annually on the thirty-first day of July unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of the fee as required by this Article.

Sec. 12-1214. Cap on allowable number of ~~State issued exemption certificates~~ smoking business licenses.

(a) The number of ~~State issued exemption certificates~~ assigned **smoking lounge business licenses issued** to smoking lounges operating in the City shall be capped at fifteen (15).

~~(b) Any person wishing to transfer a State issued exemption certificate into the~~

City obtain a smoking lounge business license and thereby exceeding the cap of fifteen (15), may petition the City Council for permission to do so.

Sec. 12-1215 to 12-1220. Reserved.

DIVISION 3. DENIAL, SUSPENSION, REVOCATION, HEARING

Sec. 12-1221. Denial.

In the event the City Clerk issues a written notice to deny for failure to comply with the requirements of Sec. 12-1209, the provisions of Sec. 12-1224 providing for an appeal hearing shall apply.

Sec. 12-1222. Suspension.

The City Clerk shall suspend the license for a period of thirty (30) days if the licensee has knowingly violated this Article or has knowingly allowed an employee to violate this Article. Upon receiving notice of a violation, the Clerk shall issue a written notice to suspend, which shall include the grounds for the suspension, the effective date of the suspension, and that the licensee may within twenty (20) days, request in writing, an appeal hearing before the City Council pursuant to the provisions of Sec. 12-1224. If an appeal hearing is not requested, the suspension shall take effect twenty-one (21) days after the date of the notice of suspension.

Sec. 12-1223. Revocation; non-renewal.

(a) *Violation after previous suspension.* The City Clerk shall issue a written notice of revocation if the licensee knowingly violates this Article or has knowingly allowed an employee to violate this Article and the licensee's license has been suspended within the previous twelve (12) month period.

(b) *Grounds for revocation/non-renewal.* The City Clerk shall issue written notice to revoke or non-renewal of the license if:

- (1) The licensee would not meet the standards set forth in section 12-1209 if the licensee were an applicant for a new license;
- ~~(2)~~ The licensee failed to receive a State exemption transfer or exemption renewal;
- ~~(3)~~**(2)** The licensee has knowingly or recklessly allowed two (2) or more violations of the regulations of this Article in the preceding twelve (12) month period and the violations have been adjudicated;
- ~~(4)~~**(3)** The licensee has knowingly or recklessly allowed a nuisance, as defined under the Revised Judicature Act, MCL 600.3801, to be maintained upon the premises;
- ~~(5)~~**(4)** The subject premises has existing violations of building, zoning, plumbing, mechanical, electrical, health, nuisance or fire prevention codes;
- ~~(6)~~**(5)** The operation of the licensed establishment has resulted in a pattern of patron conduct in the neighborhood of the establishment that substantially disturbs the peace, order, and tranquility of the neighborhood;
- ~~(7)~~**(6)** The licensee has failed to maintain the grounds and exterior of the

licensee's establishment by allowing litter, debris, and/or refuse to unreasonably remain on the property or adjoining properties;

- ~~(8)~~(7) The licensee knowingly or recklessly operated the business during a period of time when the license was suspended; and/or
- ~~(9)~~(8) The licensee has knowingly or recklessly engaged in illegal activity or allowed any illegal activity to occur in or on the licensed premises.

(c) *Effect of appeal of conviction.* The fact that any relevant conviction is being appealed shall have no effect on the revocation/non-renewal of the license, provided that, if any conviction which serves as a basis of a license revocation/non-renewal is overturned or reversed on appeal, that conviction shall be treated as null and of no effect and the license shall be reinstated.

(d) *Effective date.* The revocation/nonrenewal shall not take effect for twenty-one (21) days from the date of the notice of revocation/non-renewal.

(e) *Appeal.* The written notice to revoke or to not renew shall include the grounds for the revocation/non-renewal, the effective date of the revocation/non-renewal, and advise that the licensee may request in writing, within twenty (20) days of the date of the notice of revocation/non-renewal, an appeal hearing before the City Council pursuant to the provisions of Sec. 12-1224. If not appealed, the revocation/non-renewal shall take effect twenty-one (21) days after the date of the notice of revocation/non-renewal.

Sec. 12-1224. Appeal hearing.

(a) *Notice of hearing.* Upon receipt of a request for appeal, the City Council shall provide the licensee with notice and an opportunity to be heard. The City Council shall serve notice upon the licensee by certified mail, not less than twenty (20) days prior to the hearing date. The notice shall state:

- (1) The date, time and place of the hearing.
- (2) A statement that the licensee may present evidence and testimony, and may be represented by an attorney.

(b) *Hearing and decision.* The hearing shall be conducted by the City Council and shall be open to the public. The City Council shall, by resolution, decide the appeal at the public hearing. Within fourteen (14) days of the public hearing, the City Council shall provide the licensee with a copy of its resolution which shall include the specific grounds for its decision and, if relevant, a statement that the decision may be appealed to the circuit court.

Sec. 12-1225 to 12-1230. - Reserved.

DIVISION 4. REGULATIONS

Sec. 12-1231. Hours of operation; dining; outdoor dining; other outdoor activities prohibited.

(a) Businesses operating a licensed smoking lounge shall be closed between the hours of 2:00 a.m. and 10:00 a.m.

(b) Patrons of a licensed smoking lounge can have food on the premises one of two ways: 1) brought onto the premises by the patron in take-out containers; or 2) delivered to the front door of the premises in take-out containers at the request of the patron. Employees of a smoking lounge shall not have any involvement in food preparation or service.

(1) Outdoor dining may be permitted provided it is in compliance with the Zoning Ordinance and does not violate any other section of the Code or state law.

(2) No outdoor dining shall occur at a business operating a licensed smoking lounge with outdoor seating between the hours of 12:00 a.m. and 10:00 a.m.

(c) A licensee may petition the City Council for permission to allow smoking in an outdoor patio area.

(1) When considering a request for outdoor smoking, the Council shall consider the following (not an exhaustive list): proximity to food establishments; proximity to the public right-of-way; proximity to schools and parks; proximity to residential areas; free standing building v. adjoining businesses; nature of adjoining businesses. The Council may condition its approval of outdoor smoking.

(d) All other smoking lounge business activities, including but not limited to the smoking of any substance by any person, shall be conducted wholly indoors.

(e) Only employees and/or contractors shall be on the premises of a licensed smoking lounge between the hours of 2:00 a.m. and 8:00 a.m. and shall carry proof of employment.

Sec. 12-1232. Mechanical ventilation required.

Mechanical ventilation shall be supplied in compliance with the Michigan Mechanical Code to ensure sufficient ventilation of the smoking lounge. The recirculation and the natural ventilation of air from the smoking lounge are prohibited. The air supplied to the smoking lounge shall be exhausted and discharged to an approved location in compliance with the Michigan Mechanical Code.

Sec. 12-1233. Loitering, exterior lighting, and monitoring requirements.

It shall be the duty of the licensee or the designated local agent to:

(a) *Signs.* Post conspicuous signs stating that: ~~no loitering is permitted on the premises; no minors are permitted on the premises; and patrons must leave the parking area immediately upon close of the business;~~

(1) the business is a smoking lounge;

(2) the business is not a food service establishment;

(3) no loitering is permitted on the premises; and

(4) no minors are permitted on the premises.

(b) *Monitor.* Designate one (1) or more employees to monitor, while the premises are open for business, the activities of persons on the premises by visually inspecting the interior and exterior of the premises at least once every ninety (90) minutes or inspecting and monitoring the premises by use of video cameras; and

(c) *Exterior.* Ensure lighting of the exterior premises is provided, including all parking areas, for visual inspection and security. All exterior lighting shall comply with City Code and ordinances.

Sec. 12-1234. Minors prohibited.

No one shall be allowed on the premises of a smoking lounge business unless the individual is eighteen (18) years of age or older. The licensee and local agent shall ensure that identifications of individuals on the premises have been checked to determine that every individual is eighteen (18) years of age or older before entry into the premises. A sign shall be posted near the entrance stating "No one under the age of eighteen (18) allowed."

Sec. 12-1235 to 12-1240. Reserved.

DIVISION 5. PENALTIES AND ENFORCEMENT

Sec. 12-1241. Penalties and enforcement.

(a) *Misdemeanor.* A licensee, and/or a manager, agent, employee of a licensee, who violates or fails to comply with any of the provisions of this Article, shall be guilty of a misdemeanor, punishable by a maximum fine of five hundred dollars (\$500.00) and/or a maximum of ninety-three (93) days imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be treated as a separate offense.

Sec. 12-1242. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Sec. 12-1243. Severability.

If any section, clause or provision of this ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this ordinance, but the remainder of this ordinance shall stand and be in full force and effect.