

**CITY OF DEARBORN HEIGHTS
ORDINANCE NO. H-19-06**

AN ORDINANCE OF THE CITY OF DEARBORN HEIGHTS, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF DEARBORN HEIGHTS, BE AMENDED BY ADDING ARTICLE V, CONCERNING ESTABLISHMENT AND OPERATION OF SMOKING LOUNGES.

THE CITY OF DEARBORN HEIGHTS ORDAINS THAT THE CODE OF ORDINANCES OF THE CITY OF DEARBORN HEIGHTS, MICHIGAN, IS HEREBY AMENDED BY ADDING A SECTION, TO BE NUMBERED CHAPTER 8, ARTICLE V, WHICH SHALL READ AS FOLLOWS:

ARTICLE V. - SMOKING LOUNGES

DIVISION 1. - GENERALLY

Sec. 8-61. - Findings and purpose.

The City Council finds that, based on the characteristics of this use and past experience with these uses, a need has emerged to develop regulations to protect public health, safety and welfare applicable to smoking lounges and facilities commonly described as tobacco retail specialty stores, cigar bars, 0% nicotine establishments, hookah lounges and bars and other smoking facilities by any other name ("establishments"), that may desire to operate within the City.

Sec. 8-62. - Definitions.

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

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

Disqualifying criminal act shall mean any of the following misdemeanor or felony offenses under any of the following statutes, as amended, for which less than seven years elapsed since the date of the conviction or the date of release from confinement for the conviction, whichever is the later date:

Michigan Penal Code, Chapter X, Arson and Burning;

Michigan Penal Code, Chapter XI, Assaults, except MCL 750.81(1) and (2);

Michigan Penal Code, Chapter XVII, Bribery and Corruption;

Michigan Penal Code, Chapter XXII, Compounding Offenses;

Michigan Penal Code, Chapter XXVA, Criminal Enterprises;

Michigan Penal Code, Chapter XXVIII, Disorderly Persons;

Michigan Penal Code, Chapter XXXI, Embezzlement;

Michigan Penal Code, Chapter XXXIII, Explosives, Bombs and Harmful Devices

Michigan Penal Code, Chapter XXXIV, Extortion;

Michigan Penal Code, Chapter XLIII, Frauds and Cheats;

Michigan Penal Code, Chapter XLIV, Gambling;

Michigan Penal Code, Chapter XLV, Homicide;

Michigan Penal Code, Chapter XLVIII, Indecency and Immorality;

Michigan Penal Code, Chapter LVIII, Mayhem;

Michigan Penal Code, Chapter LXVII, Prostitution;

Michigan Penal Code, Chapter LXVIIA, Human Trafficking;

Michigan Penal Code, Chapter LXXVI, Sexual Conduct;

Michigan Penal Code, Chapter LXXVIII, Robbery,

Michigan Penal Code, Chapter LXXXIII-A, Michigan Anti-Terrorism Act;

Michigan Compiled Laws, 333, Part 74, Controlled Substances - Offense and Penalties;

Michigan Compiled Laws Section 205.27, Taxation-Prohibited Acts, including tax evasion;

Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

Any offense enumerated in the City Code of Ordinances which substantially corresponds to one of the foregoing state offenses;

Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses; or

Any offense(s) in another jurisdiction that derive from the operation of a Smoking Lounge as defined in this Section.

Influential interest shall mean any of the following:

Actual power to operate or control the operation, management, or policies of a current or prospective business; including the manager of the prospective business, possessory

interest in the Premises (as defined in this Section) for which a smoking lounge establishment operates, or

Ownership of a financial interest in the business, or ownership of an interest that is ten percent 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

Holding an office, such as, e.g., 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 18 years of age.

Non-tobacco smoking product or substances shall include any product or substance that can be consumed by smoking such as, but is limited to: e-cigarettes, bidis, kreteks, clove cigarettes, herbal cigarettes, electronic and herbal hookah, steam stones, smoking gels or other smoked product.

Premises shall mean the location for 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, furnishing, or giving away of tobacco products and non-tobacco smoking products and substances which is regulated by the State of Michigan and pursuant to this article.

Smoking lounge shall mean an establishment, which has a state issued smoking ban exemption certificate, and that 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 describes as tobacco retail, specialty stores, cigar bars and lounges, hookah cafes and lounges, tobacco bars and lounges, tobacco clubs or 0% nicotine establishments.

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

DIVISION 2. - LICENSE REQUIREMENTS

Sec. 8-63. - 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. 8-64. – Location.

- (a) Special regulation of smoking lounges is necessary to ensure that the adverse effects of this use will not contribute to the deterioration of the surrounding neighborhood, including the diversity and vibrancy of the business districts, or negatively impact the health and well-being of the community.
- (b) The establishment of a smoking lounge is prohibited if it constitutes the second such use within 3,500-foot radius.

Sec. 8-65. - Application requirements.

Any person required by this article to have a smoking lounge license shall file an annual written application with the City clerk, on a form furnished by the clerk, which application shall include all of the following:

- (a) The full name, complete address, and telephone number of the applicant and whether the applicant is an individual, partnership, corporation, or other form of business entity, and if a corporation, the state of incorporation.
- (b) The current business address or another mailing address of the applicant.
- (c) Written proof of identity of the applicant, 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.
- (d) The business name, location, zoning classification, legal description, parcel identification number, mailing address and phone number.
- (e) A copy of the state issued smoking exemption certificate or specialty retail license for the premises.
- (f) A statement of whether any applicant has been convicted of or has plead guilty or nolo contendere to a disqualifying criminal act as defined in this article, and if so, specify each criminal act involved, including the date, place and jurisdiction of each, as well as, the dates of conviction and release from confinement where appropriate.
- (g) The name of the 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.
- (h) A tender of the correct smoking license application fee as established by resolution adopted by the City Council.

Sec. 8-66 - Issuance of license (procedures and standards).

(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 Article are hereby granted a de facto temporary license to continue operating for a period of 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 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 Article, and who are otherwise eligible for a license pursuant to this Article, are exempt from the Location requirements stated in Sec 8-64.

(2) Smoking lounges granted a de facto license pursuant to this Article will only be granted a smoking lounge license if the business is in good standing with the City.

(b) *Application review.* Upon receipt of an application for any license under this article, the clerk shall forward a copy of such application to the police department, building department, zoning department and fire department for their review of the application for compliance with the requirements of this Article and all other applicable ordinances.

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.* The applicant has failed to provide information as required by this article for the 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 or license or the exemption has been revoked.

(4) *Code compliance.* The subject premises lacks a current certificate of occupancy, certificate of zoning compliance or does not comply with applicable building, zoning, plumbing, mechanical, electrical, health, or fire prevention codes;

(5) *Disqualifying criminal act.* An applicant has been convicted of, or pled guilty, or nolo contendere, or no contest or entered an Alford plea, to a disqualifying criminal act as Identified in this article;

(6) *Additional licensing.* The business is not licensed to do business in Michigan or has not obtained a sales tax license.

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

(d) *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. 8-67. - Fees.

Any person required to obtain a license pursuant to this article shall pay a nonrefundable application fee at the time of the application or renewal of the application in the amount established by resolution of the City Council. Such fees shall be payable to the City treasurer and shall be in addition to any other license, permit or fee required under this article or any other provision of this Code.

Sec. 8-68. - Inspection

Filing an application for a smoking lounge shall constitute consent of the applicant to permit the City to conduct routine inspections of any licensed smoker's lounge during City business hours and during anytime that employees or managers are on the premises. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Article.

Sec. 8-69. - Transfer of license.

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 license application unless properly applied for and approved by the State and City. Any unauthorized transfer shall be grounds for suspension and/or revocation. A proposed transfer shall require a new application be filed 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.

Approval of the transfer of a state issued exemption certificate or license by the State of Michigan shall not abrogate the requirement to apply for and obtain a new smoking lounge license as required by this article.

Sec. 8-70. - Annual license, expiration.

Each license shall expire annually on the date of original issuance of the license unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of the fee as required by this article. A licensee shall be permitted to continue to operate under a license that has expired so long as the application for renewal has been submitted for review by the City Clerk by the expiration date as set forth herein.

Sec. 8-71 - Cap on allowable number of smoking business licenses; reservation of license.

(a) The number of smoking lounge business licenses issued to smoking lounges operating in the city shall be capped at 7.

(b) Any person wishing to obtain a smoking lounge business license and thereby exceed the cap of 7, may petition the city council for permission to do so.

(c) An individual who has submitted an application to the city clerk for a smoking lounge license and has submitted a special land use application to the planning division of the department of law or has received special land use approval shall be considered to have reserved a license, provided that one is available under the cap of 7 active or reserved licenses. A license may only be reserved for a period of six months from the date the smoking lounge business license or special land use application is submitted, whichever is earlier. An extension of time may be granted by the city council to an applicant who has shown diligence toward fulfilling all requirements for a smoking lounge business license.

(d) The city clerk shall not issue a smoking lounge license application, nor shall the planning commission consider a special land use application for a smoking lounge license after 7 smoking lounge business licenses have been approved and/or reserved, unless the applicant has received prior approval from the city council to exceed the cap of 7 active and/or reserved licenses.

DIVISION 3. - DENIAL, SUSPENSION, REVOCATION, HEARING

Sec. 8-72. - Denial.

In the event the City clerk issues a written notice to deny for failure to comply with the requirements of section 8-65, the provisions of section 8-75 providing for an appeal hearing shall apply.

Sec. 8-73. - Suspension.

The City clerk shall suspend the license for a period of 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 from a City representative with jurisdiction over the subject matter of the violation, and only after first providing written notice to the licensee for purposes of correcting the violation within fourteen (14) days of receiving written notice, 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 20 days, request in writing, an appeal hearing before the township board pursuant to the provisions of section 8-75. The suspension shall take effect 21 days after the date of the notice of suspension.

Sec. 8-74. - Revocation; non-renewal.

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

- (1) The licensee would not meet the standards set forth in section 8-65 if the licensee were an applicant for a new license.
- (2) The licensee has intentionally allowed a nuisance, as defined under the Revised Judicature Act, MCL 600.3801, to be maintained upon the premises.
- (3) The subject premises have existing violations of building, zoning, plumbing, mechanical, electrical, health or fire codes.
- (4) The licensee knowingly, recklessly and intentionally operated the business during a period of time when the license was suspended.
- (5) The licensee has knowingly, recklessly and intentionally engaged in illegal activity or knowingly, recklessly and intentionally allowed any illegal activity to occur in or on the licensed premises.

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

(c) *Notice of suspension.* The City shall post a notice of suspension or revocation in a publically visible location on the front door or window of the business for any smoking lounge whose license has been suspended or revoked.

(d) *Appeal.* The written notice to revoke/non-renewal, shall include the grounds for the revocation/non-renewal, the effective date of the revocation/non-renewal, and that the licensee may request in writing, within 20 days of the date of the notice of suspension, or revocation/non-renewal, an appeal hearing before the City Council pursuant to the provisions of section 8-75. If not appealed, the suspension shall take effect 21 days after the date of the notice of suspension. The suspension, revocation/non-renewal shall not take effect until after the adjudication of the appeal if

an appeal is requested within 20 days of the notice of suspension, or revocation/non-renewal.

Sec. 8-75. - Appeal hearing.

(a) *Notice of hearing.* Upon receipt of a request for appeal, the City Council shall provide the licensee with notice and opportunity to be heard. The City Council shall serve notice upon the licensee by certified mail, not less than 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 submit within 14 days to the licensee a written statement of its findings, decision, specific grounds for its decision, and a statement that the decision may be appealed to a court of competent jurisdiction.

DIVISION 4. - REGULATIONS

Sec. 8-76. - Hours of operation.

Businesses operating a licensed smoking lounge shall be closed between the hours of 2:00 a.m. and 8:00 a.m. on any day.

Sec. 8-77. - Outdoor activities

Outdoor seating shall be permitted provided it is in compliance with City zoning as an acceptable use. In no event shall designated on-site parking areas be used for any other purpose than parking of passenger vehicles.

Sec. 8-78. - Spacing requirements

A smoking lounge may not be located within 1,000 feet from any school, church, park. All smoking lounges operating pursuant to a valid certificate of occupancy for a smoking lounge on the effective date of this Article, and who are otherwise eligible for a license pursuant to this Article, are exempt from this Section 8-77.

Sec. 8-79. - Loitering, exterior lighting, and monitoring requirements.

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

- (1) *Signs and loitering.* Post conspicuous signs stating that no loitering is permitted on the premise; no minors are permitted on the premises;

- (2) *Monitor.* Designate one or more employees to monitor, while the premises are open for business and activities of persons on the premises by visually inspecting the interior and exterior of the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitoring.
- (3) *Exterior.* Ensure lighting of the exterior premises is provided, including all parking areas, for visual inspection and security. All exterior lighting shall comply with all provisions of the Dearborn Heights Zoning Ordinance.

Sec. 8-80. - Prohibited activities.

Minors prohibited. No one shall be allowed on the premises of a smoking lounge business unless the individual is 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 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) is allowed."

DIVISION 5. - PENALTIES AND ENFORCEMENT

Sec. 8-81. - Penalties and enforcement.

Misdemeanor. A person, firm or corporation who violates or fails to comply with any of the provisions of this article shall be guilty of a misdemeanor, punishable by a maximum of \$500.00 and/or a maximum penalty of 90 days imprisonment. Each day a violation is committed or permitted to continue, it shall constitute a separate offense and shall be treated as a separate offense.

REPEAL

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.

SEVERABILITY

Should any section, subsection, clause, or phrase of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

EFFECTIVE DATE

This ordinance shall become effective upon publication as provided by law.

AUTHENTICATION

This is to certify that the undersigned do hereby authenticate the foregoing record of the ordinance herein set forth.

DANIEL S. PALETKO, Mayor

WALTER J. PRUSIEWICZ, Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of this ordinance adopted by the Council for the City of Dearborn Heights at a regular meeting of the Council held on the 25th day of June, 2019, and became effective by publication in the official newspaper of the City of Dearborn Heights and/or by publication as otherwise permitted by the City Charter on the 10th day of July, 2019.

WALTER J. PRUSIEWICZ, Clerk

Publication Date: July 10, 2019