

ORDINANCE NO. 80-802

AN ORDINANCE TO ADD CHAPTER 33.6 TO THE CODE OF ORDINANCES REGULATING “SMOKING LOUNGES,” AND ESTABLISHING A SPECIAL PERMIT FOR HOOKAH SMOKING AREAS IN SMOKING LOUNGES AND A SPECIAL PERMIT FOR LIVE ENTERTAINMENT AND/OR DANCING WITHIN THE SMOKING LOUNGE.

THE CITY OF WARREN ORDAINS:

SECTION 1. That the Code of Ordinances of the City of Warren, Michigan, is hereby amended by adding a chapter, to be numbered 33.6,

WHICH SHALL READ AS FOLLOWS:

Sec. 33.6-1. Short title.

This ordinance is known and cited as the “Smoking Lounge Ordinance”.

Sec. 33.6-2. Purpose and intent.

In 2008, the public health code was amended to prohibit smoking in public places. Since that time, smoking establishments have become increasingly popular. Cigar bars and tobacco specialty retail stores that meet certain qualifications and were in existence on May 1, 2010 are exempt from the prohibition on smoking in public places, and state-issued exemption certificates may be transferred and granted by the State of Michigan. Since 2010, the city has experienced an increase in the number of various types of smoking lounges in the city raising public health and welfare concerns. More recently, the city has also experienced an increase in the rate of incidents—involving shootings, fighting, illegal drugs, gambling and other serious criminal and life-threatening incidents—requiring police response at smoking lounges that is disproportionately higher than for other types of businesses in the community raising public safety concerns. The City has taken note that other communities in southeast Michigan have experienced the same issues. This article is intended to establish reasonable and uniform regulations to promote proper and responsible management and operation of smoking lounge establishments, prevent potential adverse impacts related to the operation of these smoking establishments, and generally protect the public health, safety and welfare.

Sec. 33.6-3. Definitions.

The following words, terms and phrases, when used in this article, shall have the following meanings:

Cigar means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. Cigar does not include a cigarette.

Cigarette means a roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

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, purchased on the premises or elsewhere.

Hookah means a device, including a water pipe, used for smoking hookah tobacco that consists of a tube connected to a chamber where the smoke is cooled passing through water.

Hookah tobacco means tobacco that is designed, manufactured, or otherwise intended for consumption by smoking in a hookah and that is flavored with honey, molasses, fruit, or other natural or artificial flavors. Hookah tobacco includes those products commonly known or referred to as narghile, argileh, shisha, hubble-bubble, molasses tobacco, water pipe tobacco, maassel, or goza.

Noncigarette smoking tobacco means tobacco sold in loose or bulk form that is intended for consumption by smoking and also includes roll-your-own cigarette tobacco, hookah tobacco, pipe tobacco, or a wrap.

Non-tobacco products shall include any product or substance that is not a tobacco product but may be consumed by smoking, including, but not limited to, e-cigarettes, bidis, kreteks, clover cigarettes, herbal cigarettes, electronic and herbal hookah, steam stones, and smoking gels.

Smoking lounge shall mean an establishment which allows use of tobacco products, non-tobacco products, or other similar legal substances on its premises, including, but not limited to, cigar bars and lounges, hookah cafes and lounges, tobacco bars and lounges, tobacco clubs, and similar types of establishments.

Smokeless tobacco means snuff, snus, chewing tobacco, moist snuff, and any other tobacco that is intended to be used or consumed, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, by any means other than smoking or combustion.

State of Michigan Exemption Certificate shall mean the exemption certificate required under Part 126 of the Michigan Public Health Code (MCL 333.12601 et seq.), being Public Act 368 of 1978, as amended from time to time.

Tobacco bar shall mean an establishment or area within an establishment that is open to the public and is designated for the smoking of tobacco products, purchased on the premises or elsewhere.

Tobacco product shall mean a product containing any amount of tobacco regardless of form including, but not limited to, cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco.

Sec. 33.6-4. License required.

- (a) A person shall not operate a smoking lounge in the city without a valid and effective smoking lounge license and any applicable special permits issued pursuant to the provisions of this Chapter, subject to subsection 33.6-4(d).
- (b) In addition to the smoking lounge license a special permit is required if the smoking lounge will allow hookah smoking on the premises.
- (c) In addition to the smoking lounge license, a special permit is required if the smoking lounge will allow live entertainment and/or dancing on the premises.
- (d) The licensing requirement under subsection 33.6-4(a), (b) and (c) shall not apply, for a period of ninety (90) days after the effective date of this section, to persons lawfully operating a smoking lounge on the effective date of this section, provided such persons shall submit a completed smoking lounge license application to the city in accordance with this article within a period of sixty (60) days after the effective date of this section.

Sec. 33.6-5. Chapter 18 applicability.

Smoking lounges shall be subject to the provisions of this Chapter as well as the provisions of Chapter 18.

Sec. 33.6-6. License application.

An applicant for a smoking lounge license shall submit to the city clerk a fully completed application on a form that is prepared and furnished by the city clerk. The application shall include at least the following information:

- (a) The full name, telephone number and current address of all owner(s) of the proposed smoking lounge, who, together, shall be referred to in this Chapter as the "applicant," and:
 - (1) If the applicant is a partnership, the name and address of each partner shall be listed, and a copy of any partnership agreement shall be included as part of the application.
 - (2) If the applicant is a privately held corporation, the name and address of each corporate officer, member of board of directors and stockholder shall be listed, and a copy of the articles of incorporation shall be included as part of the application.
 - (3) If the applicant is a publicly held corporation, the name and address of each corporate officer, member of the board of directors and each stockholder who owns ten (10) percent or more of the corporate stock shall be listed on the application.
 - (4) If the applicant is a limited liability company, the name and address of each member, manager and assignee of a membership interest shall be listed, and the articles of organization shall be included as part of the application.
- (b) If the name of the smoking lounge is or will be different than the name of the applicant, then the smoking lounge business name must be registered with the

State of Michigan as the applicant “doing-business-as” that business at the location proposed to be licensed, and the applicant must provide the City with a copy of all such DBA registration paperwork filed with the State and the doing business as name, address, and telephone number. Any license issued under this Article will be in the name of the applicant followed by applicant’s doing-business-as name, if any.

- (c) The address and phone number of the location at which the smoking lounge is proposed to be licensed to operate in the City.
- (d) A written statement as to the applicant's experience in operating a smoking lounge or a similar business.
- (e) The legal name and any aliases; home address; telephone numbers; date of birth; and driver's license number of all persons who will serve as a manager or agent or who will operate the proposed licensed premises, and the experience of each such person in operating a smoking lounge or a similar business.
- (f) A concise statement as to the prior and current employment of each individual identified on the application pursuant to subsections (a) through (e) above.
- (g) With respect to each individual identified on the application pursuant to subsections (a) through (e) above, a statement identifying and describing each and every charge and conviction or finding of responsibility of each such individual for a violation of any federal, state, or local law involving moral turpitude, dishonesty, fraud, violence, criminal sexual conduct, controlled substances, the sale, distribution, or furnishing of tobacco, or the sale, distribution, or furnishing of alcoholic liquors.
- (h) A security plan for maintaining the premises as a safe and secure environment for patrons and employees and to ensure that the smoking lounge, including interior and external areas, is maintained and operated, at all times, in such a manner as not to result in breaches of the peace or a menace to the health, safety, or welfare of the public.
- (i) A valid and effective State of Michigan Exemption Certificate and any other state or county permits, if required to operate the smoking lounge at the proposed licensed premises. The State of Michigan Exemption Certificates and all other state and county permits must be issued to and in the name of the applicant for the smoking lounge business to be licensed or its doing-business-as name.
- (j) A copy of a deed, lease, or rental agreement, including any amendments, addendums, exhibits and other materials attached thereto, providing the applicant the exclusive right of use, occupancy, and possession of the proposed licensed premises as a smoking lounge, including use as a hookah lounge and for dancing and/or live entertainment if applicable.
- (k) A fully executed indemnification agreement in a form approved by the City Attorney, in which the applicant agrees to indemnify and hold harmless the City and its officers, employees, agents, and representatives from any and all damages, injuries, adverse health impacts, liability, claims, actions, losses,

demands and/or lawsuits, including attorney fees and costs, that arise out of the applicant's operation of the smoking lounge, including use as a hookah lounge and for dancing and/or live entertainment if applicable.

- (l) Proof of insurance in the amounts and types of coverage established by resolution of City Council naming the city as an additional insured and evidencing that the applicant, as well as each person that will be employed by the applicant, is covered by such insurance policy for any and all damages, injuries, adverse health impacts, liability, claims, actions, losses, demands and/or lawsuits that arise out of the applicant's operation of the smoking lounge and as a hookah lounge and for dancing and/or live entertainment if applicable.
- (m) If the applicant is seeking a special permit to allow live entertainment and/or dancing at the proposed licensed premises, the application shall include a floor plan of the entire premises that is drawn to scale showing the following information:
 - 1. The proposed size and dimensions of the designated dance-entertainment area that will be utilized for the live entertainment and/or dancing, the floor area of which shall be no less than one hundred (100) square feet;
 - 2. The proposed location of the designated dance-entertainment area in relation to all walls, doors, windows, areas, rooms, seats, tables, chairs, and other furniture and installations within the premises;
 - 3. The materials that will be used to construct the designated dance-entertainment area;
 - 4. How the designated dance-entertainment area will be well defined and clearly marked; and
 - 5. How the designated dance-entertainment area will comply with all other requirements of this chapter.
- (n) If the applicant is seeking a special hookah smoking lounge permit at the proposed licensed premises, the application shall include the following information:
 - 1. A floor plan of the entire premises that is drawn to scale and identifies all areas that will be designated and utilized for the use of hookahs and the consumption of hookah tobacco, the location of all interior and exterior security video cameras and the recording equipment for such cameras, and the primary locations at which security personnel shall be posted during business hours;
 - 2. A written plan establishing that security cameras will be installed in locations and sufficient quantity to ensure that all doors, interior areas (except restrooms), and exterior areas of the smoking lounge and the parking lot will be video-taped at all times the smoking lounge is open for business or occupied by personnel or others;
 - 3. A written plan stating the number of security personnel that will be on hand during and after business hours and committing that such security

personnel will monitor and maintain security of all interior areas and at all ingress-egress points of the smoking lounge while the smoking lounge is open for business; and (iv) how the smoking lounge will comply with all other requirements of this chapter.

- (o) The proposed hours of operation;
- (p) Proof of installation of a ventilation system approved by the Building Department.
- (q) Payment of the correct license fee and any special permit fees to the City in the amounts established by resolution of the City Council.
- (r) Any other information reasonably determined by the city clerk to be pertinent to the applicant and the operation of the proposed licensed business.

In the event of a change in any of the data or information required or furnished to the City under this section after a smoking lounge license has been issued, the holder of the license shall notify the city clerk of each such change within ten (10) days after such change occurs.

Sec. 33.6-7. Investigation and approval.

Upon receipt of a completed application, the city clerk shall, at a minimum, forward the application materials to the Police Department, Fire Department, Building Division, and Planning and Community Development Department for review, investigation and certification. During business hours or at another mutually agreeable time, the applicant shall allow representatives of these departments and divisions onto the property and into the proposed licensed premises as part of their investigation, review and certification. If, after review, all City departments and divisions certify and recommend approval of the application and unless the Clerk finds that one (1) or more of the reasons for denial under section 33.6-8 applies, the City Clerk shall approve and issue a smoking lounge license to the applicant, including a special dance-entertainment permit and special hookah smoking lounge permit if applied for.

Sec. 33.6-8. Basis for denial.

An application for a license for a smoking lounge license may be denied upon a non-certification or recommendation for denial by any of the departments or divisions to which the application was submitted for review or for one or more of the following reasons:

- (a) An applicant has previously had a license to operate a smoking lounge revoked for cause in any other community or under this chapter.
- (b) An applicant has had an exemption certificate suspended or revoked by the State of Michigan.
- (c) If any of the individuals required to be identified on the application have been convicted or found responsible for a violation of any federal, state, or local law involving moral turpitude, dishonesty, fraud, violence, criminal sexual conduct,

controlled substances, the sale, distribution, or furnishing of tobacco, or the sale, distribution, or furnishing of alcoholic liquors.

- (d) If an applicant does not own, lease, or have some other exclusive right of possession of the proposed licensed premises.
- (e) If there is an existing violation of any applicable building, electrical, mechanical, plumbing or fire prevention code, zoning regulation, or public health code on or with respect to the proposed licensed premises.
- (f) The applicant does not possess a valid and effective State of Michigan Exemption Certificate and any other state or county permits, if required to operate the smoking lounge at the proposed licensed premises.
- (g) Any false, incomplete, or inaccurate statement on or in the application submitted to the city under this article.
- (h) If, within a twelve-month period preceding the date of the application, a smoking lounge was operated at the same location and a patron, owner, or employee of the former smoking lounge business were involved in any incidents, within the interior or exterior areas or parking lot of the former smoking lounge, relating to or involving illegal drugs, the illegal possession or use of alcohol, the illegal use or possession of tobacco by a minor, the illegal possession or discharge of a firearm, an assault or battery, illegal gambling or any other criminal activity causing a continuing concern for the public health, safety and welfare in connection with the issuance or renewal of the license.

Sec. 33.6-9. State and county permits.

Approval of the issuance or transfer of a State of Michigan Exemption Certificate or other state or county permits shall not abrogate the requirement to apply for and obtain a smoking lounge license pursuant to this Chapter.

Sec. 33.6-10. Expiration and renewal of licenses.

Every license and special permit issued pursuant to this chapter will terminate December thirty-first of each year unless sooner suspended or revoked. A smoking lounge license and special permit can be renewed in accordance with this Chapter, provided a completed renewal application is submitted and all renewal fees in the amounts established by resolution of City Council are paid to the City at least thirty (30) days prior to expiration of a license. The City may, but is in no way obligated to, consider a renewal application submitted late, if the city clerk determines in her or his discretion that exceptional circumstances exist.

Secs. 33.6-11-33.6-20. Reserved.

Sec. 33.6-21. Hours of operation.

A smoking lounge shall not be open to the public after 11:00 p.m. and before 8:00 a.m. on any day. No one other than current smoking lounge employees shall be on the

premises of a smoking lounge after 11:00 p.m. and before 8:00 a.m. on any day. Each manager and employee of a smoking lounge shall carry proof of employment at the establishment, such as an identification badge at all times while working at the smoking lounge. A manager and employees of a smoking lounge, while on the smoking lounge premises, shall provide proof of such employment when requested to do so by a member of the police department or fire department.

Sec. 33.6-22. Manager.

At least one (1) manager, who must be an individual identified on the license application submitted under this Chapter, shall be on the premises of a smoking lounge at all times that the licensed premises is open to the public. It shall be unlawful for any person not identified on the smoking lounge license application to work as a manager of a smoking lounge business, unless the proposed manager or operator has submitted a registration form with the individual's legal name and any aliases; home address; telephone numbers; date of birth; and driver's license number; and, is determined qualified to serve as a manager by the City Clerk, using the criteria, as set forth in this article. All managers must be over the age of twenty-one (21) years old. The licensee shall be responsible for notifying the city of any proposed change in management and ensuring that the proposed new manager has obtained the required approval before working or serving as a manager of the licensed establishment.

Sec. 33.6-23. Age restrictions.

No person under the age of eighteen (18) years old shall be allowed in a smoking lounge at any time. The manager and/or employees shall ensure that identifications of individuals on the premises have been checked to determine that every individual is over the age of eighteen (18) years of age or older before entry into the premises. The manager and/or employees shall secure exit doors to ensure that no one has or is attempting to gain secret entry into the premises.

Sec. 33.6-24. Standards of conduct.

A smoking lounge licensed under this chapter and the licensee, including its managers, agents, and employees, shall comply with and shall be responsible for ensuring that patrons and employees comply with this City Code, applicable state laws, and all of the following, at all times:

- (a) The consumption of alcoholic beverages and use of marijuana products, of any kind, shall not be allowed.
- (b) The unlawful possession, use, or delivery of any controlled substance shall not be allowed.
- (c) Persons visibly intoxicated from the use of any substance under (a) or (b) of this section shall not be permitted to enter, remain or loiter on the premises.
- (d) There shall be no live entertainment or dancing, unless a special dance-entertainment permit has been applied for and approved pursuant to this article. If a special dance-entertainment permit has been issued, then any live

entertainment and dancing on the licensed premises shall comply with this chapter.

- (e) There shall be no use of hookahs or consumption of hookah tobacco, unless a special hookah lounge permit has been applied for and approved as part of a smoking lounge license pursuant to this Chapter. If a special hookah lounge permit has been issued, then the use of hookahs or consumption of hookah tobacco on the licensed premises shall comply with this chapter.
- (f) There shall be no gambling.
- (g) Patrons shall not loiter in the parking lot and immediately leave the parking area upon exiting the licensed premises.
- (h) Patrons shall immediately exit the premises upon the close of business.
- (i) The licensee shall, at all times, maintain the premises as a safe and secure environment for patrons and employees and shall ensure that the smoking lounge, including interior and external areas, is maintained and operated, at all times, in such a manner as not to result in breaches of the peace or a menace to the health, safety, or welfare of the public.

Sec. 33.6-25. Dancing and live entertainment.

A licensee who is the holder of a dance-entertainment permit shall not allow dancing or live entertainment on the licensed premises, except in the designated dance-entertainment area that is the size, dimensions, and location indicated in the licensee's approved application. The designated dance-entertainment area shall be flush with the floor (not on a raised platform of any kind), shall be well defined and clearly marked, and shall be located at least eight feet away from any tables, chairs, and other obstacles while customers are dancing or the live entertainment is occurring.

Sec. 33.6-26. Hookah Lounge.

A licensee who is the holder of a special hookah lounge permit shall not allow the use of hookahs or the consumption of hookah tobacco on the licensed premises, unless:

- (a) the use of hookahs and the consumption of hookah tobacco is registered to and only occurs in the areas of the smoking lounge that have been designated for such use and consumption on the plans submitted with the license application under subsection 33.6-6(n)(1) of this chapter.
- (b) all interior and exterior security video cameras and the recording equipment for such cameras have been installed and are maintained in working order in the locations designated on the plan submitted with the license application under subsection 33.6-6(n)(2) of this chapter, and all such security cameras are video recording all doors, interior areas (except restrooms), and exterior areas of the smoking lounge and the parking lot,

at all times the smoking lounge is open for business or occupied by personnel or others;

- (c) all video recordings from the cameras installed on the interior and exterior of the premises are maintained on the premises in an uninterrupted, undamaged, and unaltered condition for a period of at least 30 days after the date of recording, and all recordings and recording equipment are made available to the City upon request for inspection and verification of compliance with the requirements of this subsection and subsection 33.6.25 above;
- (d) the locations and number of security personnel on hand during and after business hours are at all times in accordance with the plans submitted with the license application under subsection 33.6-6(n)(2) of this chapter, and such security personnel monitor and maintain security of all interior areas and at all ingress-egress points of the smoking lounge while the smoking lounge is open for business; and
- (e) the smoking lounge complies with all requirements of this Article.

Sec. 33.6-26. Temporary closures.

In the event of a police response to an incident at the location of a smoking lounge, which the police commissioner or his or her designee determines to involve a continuing or likely imminent threat to the public peace or the safety and welfare of the employees and patrons of the smoking lounge, the owner, manager, and all agents and employees of the smoking lounge shall comply with a request of the police commissioner or his or her designee to temporarily close the business for the period of time the police commissioner or his or her designee deems necessary to eradicate the threat, but not to exceed six (6) hours. This section does not apply to, supersede, or abrogate police or city authority under any other law to order the business closed.

Sec. 33-6.27. Cost Recovery.

If a smoking lounge causes property damage or personal injury through fire, or any other event reasonable related to the operation of the business, all responsible parties are jointly and severally liable for reimbursing the costs associated with the emergency response, property repair, remediation, medical expenses and prosecution.

Sec. 33-6.28. Inspection

During regular business hours, the Building Division, the Police Department, or the Fire Department may inspect the premises to determine compliance with City Ordinances and State Laws and Regulations.

Sec. 33.6-29. Savings.

The creation of this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the enactment of this Ordinance.

Sec. 33.6-29. 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, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated, and 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.

Secs. 33.6-29–33.6-50. Reserved.

State law references – The Michigan Clean Indoor Air Act, MCL 333.12601 *et seq.*

SECTION 2. This Ordinance shall take effect on March 1, 2023.

I HEREBY CERTIFY that the foregoing Ordinance No. 80 - 802 was adopted by the Council of the City of Warren at its meeting held on September 27, 2022.

SONJA BUFFA
City Clerk

Published: March 1, 2023