

**CHARTER TOWNSHIP OF WEST BLOOMFIELD**

**ORDINANCE NO. C- 779-A**

**SMOKING LOUNGES ORDINANCE AMENDMENT**

An Ordinance to amend Chapter 6 of the Code of Ordinances titled Amusements and Entertainments, Article VI, Smoking Lounges, Division 1, Sections 6-191 and 6-192; Division 2, Sections 6-195 to 6-201; and Division 4, Section 6-225.

**THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:**

**Section 1 of Ordinance**

Chapter 6, Article VI, Smoking Lounges, Division 1, sections 6-191 and 6-192 are hereby amended to read as follows:

**Sec. 6-191. Purpose.**

- (a) Since the State of Michigan enacted Public Act 188 of 2009, found at MCL 333.12601, *et seq.*, to prohibit smoking in public places, smoking lounges have become increasingly popular. 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. State issued Exemptions may be transferred and result in an increase in the number of establishments in the Township.
- (b) Potential adverse impacts associated with these establishments have been identified, such as large numbers of patrons during the evening and night time, crowds overflowing into parking areas and impeding on nearby businesses, leaving behind trash, broken alcohol bottles and debris, incidents requiring police response, fights, alcohol possession on unlicensed premises, traffic, noise, and complaints from neighboring businesses and residents. The purpose of this article is to regulate smoking lounges for the public health, safety, and welfare of the Township and persons within its jurisdictional boundaries; to prevent access to tobacco and non-tobacco smoking products by minors at these establishments, and to prevent the spread of smoke fumes to adjacent properties and persons passing by these establishments.
- (c) This article is designed to establish reasonable and uniform regulations to prevent potential adverse impacts relating to these establishments. The regulations adopted are designed to provide objective and orderly procedures for the administration of this article.

## **Sec. 6-192. 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 thousand (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 Exemption.

*Influential interest* shall mean any of the following: 1) having the authority to operate the business or control the operation, management or policies of the business; or 2) the legal entity which operates the business; or 3) an ownership of a financial interest of ten percent (10%) or more of a business or of any class of voting securities of a business; or 4) holding an office such as: president, vice president, secretary, treasurer, managing member, or managing director in a legal entity which operates the business.

*Minor* shall mean any person under twenty-one (21) years of age.

*Non-tobacco smoking products or substances* shall include any product or substance that can be consumed by smoking such as, but is not limited to: e-cigarettes, bidis, kreteks, clover 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 Exemption 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 regulated by the State of Michigan and pursuant to this article.

*Smoking lounge* shall mean an establishment which has a State Exemption 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 described as tobacco retail specialty stores, cigar bars and lounges, hookah cafés and lounges, tobacco bars and lounges, tobacco clubs or 0% nicotine establishments.

*Specified 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:

- i Michigan Penal Code, Chapter X, Arson and Burning;
- ii Michigan Penal Code, Chapter XI, Assaults, except MCL 750.81(1) and (2);
- iii Michigan Penal Code, Chapter XVII, Bribery and Corruption;
- iv Michigan Penal Code, Chapter XXII, Compounding Offenses;
- v Michigan Penal Code, Chapter XXVA, Criminal Enterprises;
- vi Michigan Penal Code, Chapter XXVIII, Disorderly Persons;
- vii Michigan Penal Code, Chapter XXXI, Embezzlement;
- viii Michigan Penal Code, Chapter XXXIII, Explosives, Bombs, Harmful Devices;
- ix Michigan Penal Code, Chapter XXXIV, Extortion;
- x Michigan Penal Code, Chapter XLIII, Frauds and Cheats;
- xi Michigan Penal Code, Chapter XLIV, Gambling;
- xii Michigan Penal Code, Chapter XLV, Homicide;
- xiii Michigan Penal Code, Chapter XLVIII, Indecency and Immorality;
- xiv Michigan Penal Code, Chapter LVIII, Mayhem
- xv Michigan Penal Code, Chapter LXVII, Prostitution;
- xvi Michigan Penal Code, Chapter LXVIIA, Human Trafficking;
- xvii Michigan Penal Code, Chapter LXXVI, Sexual Conduct;
- xviii Michigan Penal Code, Chapter LXXVIII, Robbery;
- xix Michigan Penal Code, Chapter LXXXIII-A, Michigan Anti-Terrorism Act;
- xx Michigan Compiled Laws, 333, Part 74, Controlled Substances –  
Offense and Penalties;
- xxi 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.

(3) Any offense enumerated in the Township Code of Ordinances which substantially corresponds to one of the foregoing state offenses.

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

*State* shall mean the State of Michigan.

*State Exemption* shall mean a valid State of Michigan Exemption from the smoking in public ban which allows indoor smoking on the premises in compliance with Part 126, Smoking in Public Places, of the Michigan Clean Indoor Act, Public Act 188 of 2009, as amended and found in MCL 333.12601, *et seq.*

*Tobacco product* shall mean a product that contains tobacco and is intended for human consumption 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.

*Tobacco specialty retail store* shall mean an establishment that has a State Exemption for the premises and for which the primary purpose is the retail sale of tobacco products, non-

tobacco smoking products and substances, and smoking paraphernalia, and in which the sale of other products is incidental.

## **Section 2 of Ordinance**

Chapter 6, Article VI, Smoking Lounges, Division 2, sections 6-195 to 6-201 are hereby amended to read as follows:

### **Sec. 6-195. Annual business license required.**

- (a) *Licensed required.* A person shall not operate a smoking lounge in the Township without first obtaining a State Exemption and a smoking lounge business license issued pursuant to the provisions of this article.
- (b) *Annual license, expiration.* Each license shall expire annually on the thirty-first day of August unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of the fee as required by this article.
- (c) *Renewal.* An application for renewal of a smoking lounge business license shall be considered in the same manner as an original application. A renewal application shall be filed at least sixty (60) days prior to the date of expiration.

### **Sec. 6-196. Application.**

- (a) *Annual application required.* An applicant for a smoking lounge business license shall annually, on or before June 30 of each year, file in person at the office of the Township Clerk, a completed application made on a form provided by the Clerk. The application shall be signed as required herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in paragraphs (1) through (10) below, accompanied by the required fee.
  - (1) *Applicants names.* 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 section 6-197, and each applicant shall be considered a licensee if a license is granted.
  - (2) *Address.* Current business address or another mailing address of the applicant.
  - (3) *Proof of identity.* 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) *Business location.* The business name, location, zoning classification, legal description, parcel identification number, mailing address and phone number.
  - (5) *Copy of Exemption.* A copy of the State Exemption for the premises; or if a transfer has been applied for, a copy of the application filed with the State of Michigan for transfer, and proof of a transferable State Exemption.
  - (6) *Local agent.* 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) *Statement of criminal history.* A statement of whether any applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal act as defined in this article and, if so, specify each criminal act involved including the date, place, and jurisdiction of each, and where applicable include the dates of conviction and release from confinement.
  - (8) *ICHAT.* A criminal background report of each applicant's criminal history through the Internet Criminal History Access Tool (ICHAT) will be ordered by the Township. The applicant is responsible for all charges incurred by the township for the ICHAT report(s).
  - (9) *Statement as to nuisance.* 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:
    - i. Been declared by a court of law to be a nuisance as defined under the Revised Judicature Act, MCL 600.3801;
    - ii. Been subject to a court order of closure or padlocking;
    - iii. Had a business license revoked, suspended, denied, or not renewed for cause; and the reason for the denial, suspension, non-renewal, or revocation;
    - iv. Had regulatory ordinance violations issued, the reasons for each violation, and the outcome of each proceeding.
  - (10) *Liability insurance.* Evidence of current general commercial liability insurance, in the amount of two hundred fifty thousand dollars (\$250,000.00) and workers compensation in statutory amounts. Insurance shall be maintained for the duration of the license period and the licensee shall submit proof of insurance within twenty-four (24) hours of any renewal. Licensee shall notify the Township Clerk within twenty-four hours (24) hours of the cancellation of insurance.
- (b) *Supplementation required.* The information provided pursuant to paragraphs (1) through (10) of this subsection shall be supplemented in writing by certified mail,

return receipt requested, to the Township Clerk within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (c) *Signature required.* If a person who wishes to operate the business is an individual, the person shall sign the application. If a person who wishes to operate a business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant.
- (d) *Application fee required.* A non-refundable license fee in an amount established by resolution of the township board shall be included with the application submission.
- (e) *Disclosure.* The information provided by an applicant in connection with an application for a license under this article shall be maintained by the Township Clerk's Office and all personal information shall be deemed confidential and may be disclosed only as required by law or by court order.

#### **Sec. 6-197. Application review.**

- (a) *Department review.* Upon the filing of a completed application for a smoking lounge business license, the Township Clerk shall forward a copy to the following departments: police, fire, building, planning, treasurer, water utilities, code enforcement and any other department, to review the application for compliance with the requirements of all applicable ordinances and codes. Within thirty (30) days, each department shall make a recommendation to the Township Clerk concerning compliance with the requirements of this article and other applicable township ordinances and codes.
- (b) *Inspection.* Filing an application for a smoking lounge business license shall constitute consent to inspection by township officials for the purpose of ensuring compliance with the specific regulations of this article. The township shall inspect all portions of the premises where patrons are permitted during open business hours. This section shall be narrowly construed by the township to authorize reasonable inspections of the licensed premises pursuant to this article.
- (d) *Reservation of authority.* Notwithstanding anything to the contrary in this article, no applicant has a right to the issuance of a license; and the township hereby reserves the right to determine who, if anyone, shall be entitled to the issuance of a license based on the objective criteria listed in this article which relates to concerns for public health, safety, and welfare, as identified.
- (e) *Time for decision.* The Township Clerk shall issue a license to the applicant or issue a written notice to deny the application within sixty (60) days from the date the complete application was accepted by the township clerk's office.

**Sec. 6-198. Grounds for denial.**

(a) The Township Clerk shall issue a license to the applicant unless one (1) of the following grounds for denial exist:

- (1) *Information.* An applicant has failed to provide information as required by section 6-196 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.* The applicant does not have a valid State Exemption, the State has denied the application for a transfer, or the State Exemption has been revoked.
- (4) *Code compliance.* The subject premises lack a current certificate of occupancy or does not comply with applicable building, zoning, plumbing, mechanical, electrical, health, or fire prevention codes.
- (5) *Ventilation and parking.* The building department has indicated that the premises lack the ventilation or parking required for the proposed use.
- (6) *Unpaid fees; violations.* The building, code enforcement, fire, or water utilities department, or the treasurer's office, has indicated that there are unpaid fees or uncured violations under its purview related to the subject premises.
- (7) *Taxes.* The Township Treasurer's Office has denied a real estate tax clearance pertaining to the subject premises.
- (8) *Previous revocation/non-renewal.* An applicant has had a smoking exemption revoked or not renewed for cause in the last seven (7) years under this article or a comparable city or township ordinance or state law, whether in Michigan or otherwise.
- (9) *Prior nuisance.* Any business in which the 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:
  - i. Been declared by a court of law to be a nuisance as defined under the Revised Judicature Act, MCL 600.3801; or
  - ii. Been subject to an order of closure or padlocking.
- (10) *Regulatory compliance history.* In the previous seven (7) years an applicant was found responsible or pled responsible for violating an ordinance regulation or State law in the operation of a smoking lounge business in which the applicant had an influential interest, whether in the State of Michigan or other state.

- (11) *Specified criminal act.* An applicant has been convicted of, or pled guilty, or nolo contendere, or no contest or entered an Alford plea to a specified criminal act as defined in this article.
- (12) *Additional licensing.* The business is not licensed to do business in Michigan or has not obtained a sales tax license.
- (13) *Insurance.* Applicant did not submit proof of required insurance.
- (b) *Other laws applicable.* Nothing in this article shall be construed to exempt the applicant or licensee from any other requirements set forth by township ordinance, State or federal law.

**Sec. 6-199. Fees.**

The fees for a business license under this article shall be established by resolution adopted by the Township Board which resolution shall be placed on file, and made available, at the office of the Township Clerk.

**Sec. 6-200. Posting of license; contents.**

The business 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 name and address of the business. The business license shall be posted in a conspicuous place at or near the entrance of the business so that it may be read at any time.

**Sec. 6-201. 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 license application. Any transfer shall be grounds for suspension and revocation. A proposed transfer shall require a new application be filed. The new application 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 Exemption shall not abrogate the requirement to apply for and obtain a smoking lounge license as required by this article.

**Section 3 of Ordinance**

Chapter 6, Article VI, Smoking Lounges, Division 4, section 6-225 is hereby amended to read as follows:



#### **Sec. 6-225. Prohibited activities.**

It is unlawful for a licensee or local agent to knowingly violate the following regulations or to knowingly allow an employee, patron or any other person to violate the following regulations. The licensee or local agent shall remove anyone violating the following regulations:

- (a) *Minors prohibited.* No one shall be allowed on the premises of a smoking lounge business unless the individual is twenty-one (21) 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 twenty-one (21) years of age or older before entry into the premises. The exit doors shall be monitored to ensure that no one is attempting to gain secret entry into the premises. A sign shall be posted near the entrance stating "No one under the age of twenty-one (21) allowed."
- (b) *Alcoholic liquor.* No person shall sell, offer for sale, trade, provide, allow, possess, consume or attempt to consume any alcoholic liquor on the premises unless the licensee has obtained the appropriate license from the Liquor Control Commission pursuant to MCL 436.1101, *et seq.*, as amended.
- (c) *Nudity prohibited.* No one shall be allowed on the premises of a smoking lounge business to appear nude or in a state of nudity as defined in section 6-125 of this article.
- (d) *Controlled substances prohibited.* No person shall sell, offer for sale, trade, provide, allow, possess, consume or attempt to consume any controlled substance on the premises in violation of Article 7 of the Public Health Code, MCL 333.1101, *et seq.*

#### **Section 4 of Ordinance**

Should any section, subdivision, sentence, clause, or phrase of this Ordinance, be declared by the Courts to be invalid, it shall not affect the validity of the remainder of the Ordinance or any part other than the part invalidated. It is further declared that such provisions would have been adopted independently of the provision found to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

#### **Section 5 of Ordinance**

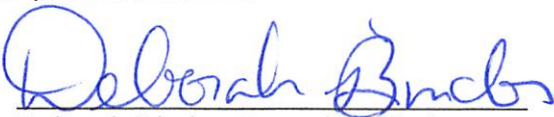
This Ordinance shall take effect immediately upon publication.

**CERTIFICATION**

STATE OF MICHIGAN     )  
                                      ) SS  
COUNTY OF OAKLAND    )

I, Deborah Binder, the duly elected Clerk for the Charter Township of West Bloomfield, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of the Ordinance adopted by the Township Board for the Charter Township of West Bloomfield at a meeting held on the 26th day of April, 2021, the original of which is on file in the Office of the Township Clerk.

I affix my official signature/seal this 26th day of April, 2021.

By:   
Deborah Binder, Township Clerk

INTRODUCED: 04-12-2021  
ADOPTED: 04-26-2021  
PUBLISHED: 05-12-2021  
EFFECTIVE: 05-12-2021

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