

**STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE**

ORDINANCE NO. C-374-25

**AN ORDINANCE TO AMEND CHAPTER 18
“BUSINESSES”, OF THE CITY OF WALLED LAKE CODE
OF ORDINANCES TO ADOPT A NEW ARTICLE XIII “
SMOKING LOUNGES” TO REGULATE AND REQUIRE
LOCAL LICENSING OF SMOKING LOUNGE BUSINESSES
AND ESTABLISHMENTS WITHIN THE CITY.**

THE CITY OF WALLED LAKE ORDAINS:

Section 1. Purpose

The purpose of this Ordinance Amendment is to protect public health, safety and welfare by adopting requirements, conditions and regulations pertaining to Smoking Lounges through the adoption of local business licensing requirements.

Section 2 of Ordinance

Chapter 18 “Businesses” of the Code of Ordinances, City of Walled Lake, Michigan, is hereby amended by adopting a new Article XIII “Smoking Lounges” as follows:

Sec. 18-414. 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 city.
- (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 city 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. 18-415. 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, or requires, a state exemption.

City business license shall mean a city license required by this Article.

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 or inhalation such as, but is not limited to: e-cigarettes, bidis, kreteks, clover cigarettes, herbal cigarettes, electronic and herbal hookah, nicotine containing vapor products, steam stones, smoking gels or other smoked or inhaled product.

Premises shall mean the location for which a smoking lounge establishment operates under, or requires, a state exemption and includes any areas or facilities accessible for use by patrons or employees 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, or requires, a state exemption permit and that allows smoking of tobacco products or non-tobacco products or substances on the premises. The term "smoking lounge" further 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 or smoking clubs or zero (0) percent nicotine establishments.

Specified criminal offense shall mean any misdemeanor or felony offense under state, federal or local law punishable by a maximum penalty of not less than a \$500.00 fine and/or ninety (90) days in jail.

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, as amended.

Tobacco specialty retail store shall mean an establishment that has, or requires, 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 provision of other products and/or services is incidental.

Sec. 18-416. *License required.* A person shall not engage in the business or occupation of a Smoking Lounge within the city without first obtaining:

- (1) A state exemption for the Smoking Lounge premises; and
- (2) A city business license issued by the city pursuant to the requirements and procedures set forth in this article and articles II, III of this chapter 18, as amended.

In the event of any conflict between the provisions of this article and articles II and III of this chapter, this article shall be controlling.

Sec. 18-417. *General license requirements, limitations and conditions.* A city business license shall be subject to all conditions, limitations and requirements set forth in this Article, including without limitation, the following:

- (a) A city business license shall issue only in the name of an applicant. An applicant shall identify, provide and disclose all applicant information and documentation required by this Chapter.
- (b) A city business license shall be conditional upon the applicant obtaining and possessing a valid state exemption for the same Smoking Lounge establishment authorized by the city business license and obtaining all other applicable approvals as may be required by local ordinance, state law or building code. For purposes of administering City Codes and Ordinances, a conditionally approved application shall be deemed an approved application. A conditionally approved city business license shall be held in escrow by the city until the applicant provides, or the city receives, written verification that the applicant has obtained:
 - (1) A valid state exemption for a Smoking Lounge establishment at the same location, and;
 - (2) Certificate(s) of occupancy as may be required by applicable building and zoning regulations for the Smoking Lounge establishment location, and;
 - (3) Zoning approvals, other than site plan approval, as may be required by applicable zoning regulations.

Upon obtaining timely verification of the above requirements and receipt of the applicant's yearly licensing fee, the city shall deliver the city business license to the applicant. An approved city business license shall not authorize active operation of a Smoking Lounge until delivered to the applicant by the city and the applicant pays all required fees. In the event the applicant fails to provide verification of the above requirements within six (6) months of notification of conditional approval of a city business license, the city business license shall be deemed canceled.

- (c) A city business license shall not be approved, issued or renewed for a Smoking Lounge located within 500 feet of a school. For purposes of this article "school" means any public or private school meeting all requirements of the compulsory education laws of the state.
- (d) Issuance or renewal of a city business license constitutes unconditional and irrevocable acceptance and agreement by the city licensee and all persons and entities operating under a city business license or otherwise utilizing the establishment to hold harmless, defend and indemnify the city, including its agents, employees and officers and officials to the fullest extent permitted by law for any and claims, damages, injuries or liabilities at law or equity in any way arising out of related to any acts, omissions, activities or conditions in any way related to the Smoking Lounge establishment operated under a city business license.

- (e) A city business license shall be for a specific fixed location which shall be considered the licensed premises. A city business license may be transferred to another qualifying location within the city upon application and approval of a transfer request. A transfer request shall not be approved until the city licensee provides written verification of state approval of the requested transfer and issuance of a state exemption for the new location. Each city business license is exclusive to the city licensee and is non-assignable and shall not be sold, conveyed or purchased. A city business license is a revocable privilege granted by the city and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. A licensee or any other person shall not lease, pledge, or borrow or loan money against a city business license.
- (f) A city business license shall be conditional upon compliance with all applicable zoning and building regulations, including, but not limited to, building code compliance and applicable site plan and/or special land use approval requirements and/or conditions, if any. A city business license shall be conditional upon compliance with all applicable state laws including 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. and the Tobacco Products Tax Act, MCL 205.422, as amended. Issuance or approval of a city business license does not waive other applicable regulations arising under state, local or federal law. Issuance of a city business license does not guarantee or represent that the Smoking Lounge establishment meets or satisfies other applicable regulations, including, but not limited to, building code and zoning regulations.
- (g) *Waiver of liability.* As a condition to applying for and/or obtaining a license pursuant to this article, the applicant/licensee, by submitting an executed license application form, acknowledges and agrees to release the city, including all city employees and officials, from any and all liability, claims, damages and causes of action of any kind in any way arising out of the applicant's application and/or any action or disposition by the city on the applicant's application, including, but not limited to, denial of a requested license and/or renewal.

Sec. 18-418. General procedures and fees.

- (a) *General procedures.* Except as otherwise specifically provided in this article, the general procedures and requirements for issuance and administration of business licenses by the city, as set forth in articles II and III of this chapter, shall apply to Smoking Lounge establishments. Upon receipt of an application and payment of all required fees, the city clerk shall conduct a preliminary review of the application for the purpose of determining completeness. The city clerk shall notify the applicant of deficiencies rendering the application incomplete. Unless the applicant withdraws the application, the clerk shall forward a completed application and all supporting materials to the department head for each city department for review, investigation and recommendation. Consultant reviews may be obtained at the request of a department head or city manager. The city manager shall review the application, and all findings and recommendations of the city department heads and consultants for compliance with the requirements of this Article and applicable state law requirements.
- (b) *Inspections and entry by city officials.* Following submission and review of a complete application and payment of all required fees, a walk through inspection of the entire finished Smoking Lounge premises shall be conducted by officials of the city police, fire and building

departments for purposes of determining compliance with all applicable codes, ordinances, regulations and laws. The applicant shall call for the final city inspections after any build-out, improvements and modifications are complete and all furnishings, equipment and facilities have been installed and the premises is otherwise ready to open for business. Inspections required by this Article shall be required and completed prior to renewal of an existing license.

- (1) Submission of a signed application under this Article shall constitute irrevocable consent by the applicant, licensee and premises owner and/or occupant to inspect and enter upon the Smoking Lounge premises to conduct all inspections or entries required or authorized by this Article or applicable code. Any claimed revocation or repudiation of consent under this subsection shall constitute grounds for denial of an application, including a renewal application, and/or revocation of an existing license upon providing written notice of revocation to the licensee.
 - (2) A city police officer, fire marshal or code enforcement officer may enter upon the Smoking Lounge premises at any time when the Smoking Lounge is open for business or when the city official has reasonable cause to believe the premises is occupied by patrons.
 - (3) In addition to yearly licensing and renewal inspections, the city may require additional inspections when the City has reasonable cause to believe any violation of applicable code, ordinance, regulation or law has or maybe occurring.
 - (4) Failure to call for, obtain or allow any inspection or entry required or authorized by this Article shall constitute grounds for denial of an application, including a renewal application, and/or revocation or suspension of an existing license upon the city providing written notice of revocation or suspension to the licensee.
- (c) *Freedom of Information Act.* Information the city obtains from an applicant related to licensure under this article shall be disclosed as required by state law unless exempt from disclosure under the Freedom of Information Act, Public Act No. 442 of 1976, MCL 15.231 to 15.246.
- (d) *Zoning compliance.* A proposed Smoking Lounge must comply with all applicable zoning requirements including applicable site plan and special land use approval requirements. A city business license authorizes only the uses and occupancies specifically and expressly authorized by the required zoning approval(s) and this Article. A Smoking Lounge must further comply with generally applicable zoning requirements and approvals that are nonspecific to Smoking Lounge establishments and facilities. Signs must comply with applicable provisions of the city's sign ordinance.
- (e) *Fees.* An application fee in the amount of five hundred dollars (\$500.00) must be paid at the time of filing an application for a city business license, or for renewal, to defray the administrative costs of processing and reviewing an application. Except as expressly provided by this article, application fees are nonrefundable. In the event an application is referred for a consultant review, the applicant shall pay all consultant review fees as provided by city ordinance or resolution.

Sec. 18-419. Application.

- (a) Application for a city business license shall be made to the city clerk upon city application forms for a city business license and signed by the applicant, verifying:
- (1) The truth and accuracy of all information and representations in the application; and
 - (2) The applicant's legal authority to make application for the proposed Smoking Lounge establishment at the proposed location.
 - (3) Irrevocable consent for entry upon and inspection of the Smoking Lounge premises by city officials as provided by this Article

In addition to information and submittals required by articles II and III of this chapter, the application shall include payment of an application fee and consultant escrows in an amount set by ordinance or resolution of council and all of the following:

- (1) The name, address, phone number, and state exemption number issued by the state, if any, for all the following:
 - a. The owners and/or proprietors of the proposed Smoking Lounge establishment.
 - b. If the proposed licensee is an entity (i.e., corporation, limited liability company, trust, etc.) the name, address and telephone number of the entity;
 - c. The owners, members, trustees, officers and shareholders of an entity if the proposed licensee is an entity.
- (2) The address, location and zoning district for the proposed Smoking Lounge establishment and a copy of any lease or rental agreement pertaining to the proposed establishment premises.
- (3) A copy of any state exemption for the proposed establishment, if issued;
- (4) An executed release of liability, indemnification and hold harmless agreement in the form set forth in the city's application form;
- (5) Identification and a detailed description of all services, products, items, uses, activities, operations or merchandise produced, sold, offered, conducted, allowed or provided by the proposed establishment.
- (6) Whether the applicant and/or proposed city licensee or any owner, member or operator of the proposed licensee or Smoking Lounge establishment 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.
- (7) Detailed description of any proposed or anticipated improvements or modifications to the proposed site, establishments or buildings.
- (8) *Liability insurance.* Evidence of current general commercial liability insurance, in the minimum amount of five hundred thousand dollars (\$500,000.00) 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 clerk within twenty-four (24) hours of the cancellation of insurance.

- (9) A scaled drawing of the site, including depiction of all buildings, structures, parking, outdoor storage or other outdoor use areas.
- (10) A description of an operating plan for the proposed establishment, including the following:
 - a. A list of all products and services to be provided or offered by the establishment, including sales of any items or products offered for smoking, inhalation or consumption on or off the premises, if any, and any related accommodations or amenities.
 - b. A floor plan, drawn to scale, showing the layout of the establishment and the principal uses of the floor area depicted therein, including a detailed depiction of where any uses other than smoking related uses are proposed to occur on the premises.
 - c. A detailed description of any private events, activities or uses not open to the general public.
- (11) A description of waste disposal methods and facilities.
- (12) A description of any proposed signs, including a detailed depiction of sign language or displays, dimensions, locations, quantity, configuration and illumination.
- (b) *ICHAT*. A criminal background report of each applicant's criminal history through the Internet Criminal History Access Tool (ICHAT) will be ordered by the city. The applicant is responsible for all charges incurred by the city for the ICHAT report(s).
- (c) An application shall also be signed and dated by the property owner, or his duly authorized agent, of the premises where the proposed establishment will be located certifying that the property owner has reviewed and been provided with a complete copy of the application and consents to use and occupancy of the premises as a Smoking Lounge establishment as described and referenced in the application and consent for all entries or inspection required or authorized by this Article. Execution of an application by a property owner merely confirms consent to the proposed use and neither creates nor conveys any property right, expectancy or interest to use or occupy the premises by the applicant.

Sec. 18-420. Criteria for issuance, denial of license.

- (a) Upon reviewing the application and all findings and recommendations of the city department heads and consultants, the city manager shall deny or approve the application subject to conditions and requirements set forth in this article.
- (b) The city manager shall approve a city business license, provided:
 - (1) The application and proposed Smoking Lounge establishment are in full compliance with the requirements and approval criteria under this article.
 - (2) The Smoking Lounge establishment as proposed complies with all applicable requirements of this article and state law; and
 - (3) The applicant has paid the application fee and all consultant review fees.
- (c) The city manager shall deny:

- (1) Any application that is incomplete.
 - (2) Any application that contains false or materially misleading information;
 - (3) Any application proposing a Smoking lounge establishment that does not comply with the requirements of this article and/or chapter; or
 - (4) Any application or proposed Smoking Lounge establishment that does not qualify for approval under this article and/or chapter.
- (d) The city manager shall further deny a city business license for any of the following:
- (1) The proposed Smoking Lounge lacks any zoning approval required under the city zoning ordinance;
 - (2) Two or more specified criminal offenses by the applicant and/or licensee within seven years or two or more violations of any or city code or ordinance at or upon the Smoking Lounge premises within a calendar year.
 - (3) The applicant lacks a state exemption for the proposed Smoking Lounge;
 - (4) The applicant and/or licensee is in default to the city in an amount exceeding \$100.00 including, but not limited to, non-payment of past due taxes, fees, fines, judgments or contractual obligations or if any unpaid, past due or delinquent city taxes, assessments or liens have not been paid in full as of the date of application for the property where an existing or proposed Smoking Lounge establishment is located;
 - (5) The proposed Smoking Lounge, or any actual or proposed use thereof, fails to comply with any applicable state law, or any applicable code, including building code or fire code requirements, or local ordinance, rule or zoning regulation.
- (e) The city manager may conditionally approve an application that contains only minor deficiencies conditional upon curing any deficiencies within a timely manner.
- (f) An aggrieved party may appeal any decision, action or condition by the city manager in the same manner and pursuant to the same procedures for appealing a suspension or revocation as provided by section 18-41.

Sec. 18-421. Operating requirements.

All Smoking Lounges in the city shall be maintained, occupied, used and operated in compliance with all applicable provisions, limitations, qualifications, restrictions and requirements arising under applicable state law, state exemption permit conditions, zoning approval conditions, this article and all other applicable city codes and ordinances, including applicable building and fire code regulations. Operating requirements, restrictions and limitations set forth in this Article, including this section, shall be deemed a term, condition and requirement of any city business license issued or renewed pursuant to this Article.

- a) *Hours of operation.* Smoking Lounges shall not operate or otherwise be open for business except as follows:
 - 1) If located within five hundred feet (500 ft.) or less of any lot or parcel in a single-family zoning district, 10 am – 9pm Sunday thru Thursday and 10 am – 11pm Friday and Saturday.

- 2) If located more than five hundred feet (500 ft.) of any lot or parcel in a single-family zoning district, 10 am – 10 pm Sunday thru Thursday and 10 am – midnight Friday and Saturday.
- b) *Prohibited Activities.* Unless all required state and local approvals have been obtained and issued authorizing a use or activity at or upon the Smoking Lounge premises that is otherwise prohibited by this subsection, a licensee, patron, landlord, occupant or employee of a Smoking Lounge shall not engage in, allow, permit, facilitate or participate in any of the following at or upon a Smoking Lounge premises:
 - 1) Gaming, gambling or wagering for money or other valuable items or consideration.
 - 2) Serving food; provided food may be delivered by outside vendors or brought onto the premises by or at the request of patrons. Prepared and packaged food items and non-alcoholic beverages offered by vending machines is allowable.
 - 3) Preparing food at or upon the premises
 - 4) Serving or consuming alcoholic beverages at or upon the premises
 - 5) Storing or possessing alcoholic beverages at or upon the premises
 - 6) Allowing patrons to bring their own alcoholic beverages onto the premises
 - 7) Minors shall be prohibited from entering or remaining upon the premises.
 - 8) Smoking, use or ingestion of marijuana or any marijuana derived product or any other illegal or controlled substance.
- c) *Prohibited uses and occupancies.* Any use or occupancy maintained at or upon a Smoking Lounge that violates any provision of state law, this Article, or any local code, ordinance or zoning regulation shall constitute a prohibited use or occupancy in violation of this article.

Sec. 18-422. Assignment of license prohibited.

The assignment of or attempt to assign any license issued pursuant to this article is unlawful and any such assignment or attempt to assign a license shall render the license null and void.

Sec. 18-423. License expiration, renewal.

- (a) A city business license expires and may be renewed as provided by this chapter.
- (b) A city business license may be renewed if:
 - (1) The city licensee submits written request for renewal to the city on any forms prescribed by the city on or prior to expiration and pays a five-hundred-dollar (\$500.00) renewal fee;
 - (2) The city manager, or his designee, verifies that at or immediately prior to expiration, the information, conditions and representations contained in the original approved application remain materially correct, true and accurate;
 - (3) The applicant presents proof of a current valid state exemption for the renewal year;

- (4) The Smoking Lounge establishment is in compliance with all applicable building code requirements, local ordinances and zoning regulations as determined by an annual walk-through inspection by city police, fire code enforcement officials;
- (5) All conditions, requirements and approval criteria applicable to a new license application have been satisfied
- (6) The prior city business license has not been revoked or suspended and there is no cause warranting suspension or revocation.

Upon obtaining timely verification of the above requirements and receipt of all required fees the city shall deliver the renewed city business license to the city licensee. An approved renewal of a city business license shall not be valid until delivered to the city licensee by the city and the city licensee pays all required fees.

Sec. 18-424. Revocation, suspension.

The city manager may suspend or revoke a city business license for cause as provided in this chapter or any other reason expressly providing for suspension or revocation under this Article.

Sec. 18-425. Penalties, remedies, declaration of nuisance per se.

Any person or licensee violating any provision of this article shall be guilty of a misdemeanor punishable by a fine of \$500.00 and/or not more than ninety (90) days in jail. Additionally, the city may seek enforcement and abatement of any violation of this article by instituting any legal or equitable action in any court of competent jurisdiction. Any use, occupancy or activity maintained or occurring at or upon a Smoking Lounge premises that constitutes a violation of this Article and/or a specified criminal act shall render the Smoking Lounge establishment a public nuisance and abatable nuisance per se.

Section 3. 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.

Section 4. Savings

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

