



**TO:** Mayor and Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Christopher J. Forsyth, Assistant City Attorney  
**DATE:** July 18, 2007  
**SUBJECT:** Proposed Smoking Lounge Ordinance

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At the last regular City Council meeting, members of Council requested that our office present an ordinance that would regulate hookah cafes and other establishments that promote the smoking of tobacco on the premises. This request was initially made by the Troy Community Coalition, and was based on concerns that minors were increasing their use of tobacco. This increase in the unlawful use of tobacco could be linked to the increasing popularity of hookah or smoking lounges in the City of Troy. A licensing requirement for smoking or hookah lounges provides the City with some preventative safeguards to address the unlawful use of tobacco by minors. Upon information and belief, Troy is one of only a few jurisdictions in the State to consider a Smoking Lounge License for those businesses in the City.

As set forth in the attached propose ordinance, the license requirement would only apply to those establishments that, as one of its principal business purposes, promotes the smoking of tobacco and other legal substances on the premises. Prior to any license being issued, a prospective smoking lounge operator would be subject to an investigation and background check by City staff, which is designed to screen the proposed operators of these types of businesses. If the proposed operators or the proposed location do not meet the City's criteria for a Smoking Lounge License, then the City can deny a license application. For example, a person who was convicted of furnishing tobacco or alcohol to a minor may be denied a smoking lounge license, and a license may be denied when the premises is in violation of the zoning or building ordinances.

Violation of the provisions of this ordinance would be a misdemeanor, punishable by up to 90 days in jail and /or a fine of up to \$500. This includes the operation of a smoking lounge without a license.

The proposed ordinance, and corresponding necessary amendments to Chapters 3 and 60 are attached for your review. This item is for informational purposes, and is planned to be an action item on the next City Council agenda. If you have any questions concerning the above, please let us know.

CITY OF TROY  
AN ORDINANCE TO ADD A NEW CHAPTER TO THE CODE  
OF THE CITY OF TROY WHICH CHAPTER SHALL BE  
DESIGNATED AS CHAPTER 77

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as Chapter 77, Smoking Lounges, of the Code of the City of Troy.

Section 2. Adoption of Article VII, Chapter 77

Chapter 77 of the Code of the City of Troy, to provide for the licensing of smoking lounges, to provide for definitions of smoking lounges, to provide for application for a license, to provide for specific requirements and conditions for smoking lounges and to provide for a penalty for violation thereof, is hereby adopted as set forth below:

Section 3. Smoking Lounge Ordinance

1. Definitions. The following definitions shall apply in this Chapter.
  - a. "Smoking Lounge" means an establishment, which, as one of its principal business purposes, promotes the smoking of tobacco products or other legal substances on its premises. The term "Smoking Lounge" includes, but is not limited to: cigar lounges, hookah cafés, tobacco lounges, tobacco clubs or tobacco bars.
  - b. "Principal business purpose" means:
    - i. The devotion of more than 50 percent of its interior floor space for the promotion of smoking tobacco products or other legal substances at the establishment; or
    - ii. The receipt of more than 35 percent of its revenues from the smoking of tobacco products or other legal substances at the establishment; or
    - iii. The devotion of more than 35 percent of its advertising expenditures to the promotion of smoking tobacco products or other legal substances at the establishment.

- c. "Tobacco Products" mean cigars, cigarettes, or non-cigarette smoking tobacco.
- d. "Other Legal Substances" include clove cigarettes, kreteks, herbal cigarettes, and any other legal substance that can be consumed by smoking.

## 2. License Required

No person shall operate a Smoking Lounge in the City of Troy without first obtaining a smoking lounge license issued pursuant to the provisions of this Chapter.

## 3. Application for Smoking Lounge License

- a. An applicant shall submit to the City Clerk a fully completed application, on a form that is prepared and furnished by the City Clerk.
- b. The application shall include at least the following information:
  - i. The full and complete name and current address of the applicant(s).
    - 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 attached to 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 attached to the application.
    - 3. If the applicant is a publicly held corporation, the name and address of each corporate officer, each 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 attached to the application.

- ii. The complete name, address, and telephone number of the proposed licensed business;
  - iii. Written statement as to the applicant's experience in operating similar businesses;
  - iv. A concise statement as to the individual applicant's past employment;
  - v. Any other information pertinent to the applicant and the operation of the proposed licensed business.
- c. An applicant shall attach to the completed application a floor plan, drawn to scale, showing the interior of the proposed business, and uses of the proposed spaces.

#### 4. Licensing

Smoking Lounge Licenses shall be subject to the provisions of Chapter 59 of this Code.

#### 5. License Fees

The fee for a Smoking Lounge License shall be as specified in Chapter 60 of this Code.

#### 6. Investigation

- a. After the City Clerk has received a completed application, it shall be, at a minimum, forwarded to the following City Departments for review and investigation:
- i. Police
  - ii. Fire
  - iii. Building Inspection
- b. During City business hours or at another mutually agreeable time, the applicant shall allow the representatives of the above referenced City Departments onto the property and into the proposed licensed premises to complete an investigation.

- c. If all of the above listed City Departments approve the application, and it conforms to the provisions of this Chapter, the City Clerk shall issue a Smoking Lounge License to the applicant.

7. Reasons for Denial

- a. Requirements for Applicants. A license may be denied as a result of one or more of the following factors:
  - i. An individual applicant, who has previously received a Smoking Lounge License, has had the license revoked for cause, as defined in Chapter 59 of this Code.
  - ii. If the applicant is a co-partnership, and any of the members of the co-partnership fail to qualify to obtain a Smoking Lounge License.
  - iii. A corporation if any officer, manager or director or a stock owner or stockholders owning in the aggregate more than ten (10) percent of the stock of such corporation, would not be eligible to receive a license or related permit hereunder for any reason.
  - iv. If the applicant proposes to hire a manager or agent to handle the business operations, and the proposed manager or agent does not possess the same qualifications as those required of the licensee.
  - v. If any of the individuals who are required to be identified on the application, as set forth in section 3 above, have been convicted or found responsible for a violation of any federal, state, or local law involving moral turpitude, dishonesty, fraud, violence, controlled substances, the sale, distribution, or furnishing of tobacco, or the sale, distribution, or furnishing of alcoholic liquors.
  - vi. If an applicant does not own the premises for which a Smoking Lounge License is sought or does not have a lease or other right of exclusive possession of the premises proposed for the business for the full period for which the license is issued.
- b. Requirement for the Proposed Licensed Premises. Smoking Lounge License shall not be issued if there are any violation(s) of the applicable building, electrical, mechanical, plumbing, or fire prevention codes, applicable zoning regulations, or applicable

public health regulations, unless such violation can be remedied within a stated period of time as determined by the Fire Department or Building Department.

- c. Location. No license shall be issued to a business located within 500 feet (500'), from the nearest lot line to the nearest lot line, on a straight line basis, of a school.

#### 8. Display of Smoking Lounge License

A Smoking Lounge License issued pursuant to the provisions of this Chapter shall be prominently displayed near the entrance of the licensed premises.

#### 9. Revocation and Suspension of a License

The City Manager, or his or her designee, may immediately revoke or suspend a Smoking Lounge License, upon the applicant's violation of any provisions of this Ordinance or for other good cause. The procedure for the suspension and revocation of the license shall be governed by the provisions of Chapter 59 of this Code.

#### 10. Violations and Penalties

Any person, firm or corporation convicted of violating any provision of this Chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500 and/or 90 days in jail, as well as the penalties provided herein.

#### Section 4. 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.

#### Section 5. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 6. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 7. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a Regular Meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Louise E. Schilling, Mayor

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Tonni L. Bartholomew, MMC  
City Clerk

CITY OF TROY  
AN ORDINANCE TO AMEND  
CHAPTER 3 OF THE CODE OF ORDINANCES  
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This ordinance shall be known and may be cited as an amendment to Chapter 3 of the Code of the City of Troy.

Section 2. Amendment to Section 1.141 (6) of Chapter 3

Section 1.141 (6) is hereby amended to provide that a City of Troy Building Inspector shall have authority to issue and serve appearance tickets to Smoking Lounges if he/she has reasonable cause to believe that the person has committed a violation of Chapter 77.

Section 1.141 (6) is amended by the addition of the following:

Section 1.141 (6) A City of Troy Building Inspector shall have authority to issue and serve upon a person an appearance ticket, a Municipal Civil Infraction notice of violation and/or a Municipal Civil Infraction citation, if he/she has reasonable cause to believe that the person has committed a violation of any of the following provisions of the Troy City Code.

Chapter 77: Smoking Lounges

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This Ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this Ordinance adopting this penal regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this Ordinance shall remain in full force and effect.

Section 5. Effective Date.

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver Road, Troy, MI, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Louise E. Schilling, Mayor

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Tonni Bartholomew, MMC  
City Clerk

CITY OF TROY  
AN ORDINANCE TO AMEND  
CHAPTER 60 OF THE CODE OF ORDINANCES  
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This ordinance shall be known and may be cited as an amendment to Chapter 60 of the Code of the City of Troy.

Section 2. Amendment to Section 60.03 – Fee Schedule of Chapter 60.

Section 60.03 - Fee Schedule is hereby amended to provide a license fee and renewal fee for Adult Use Businesses.

Section 60.03 - Fee Schedule. Is amended by the addition of the following new fees:

**ITEM/SERVICE:**

**FEE:**

***Smoking Lounges***

Annual License Fee

\$100.00

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this Ordinance adopting this penal regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this Ordinance shall remain in full force and effect.

Section 5. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver Road, Troy, MI, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Louise E. Schilling, Mayor

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Tonni Bartholomew, City Clerk