



## CITY COUNCIL AGENDA ITEM

Date: May 8, 2013

To: Brian Kischnick, City Manager

From: Gary G. Mayer, Chief of Police  
 Thomas Gordon, Police Lieutenant *TL*  
 George Zielinski (Preparer), Police Sergeant *GZ*

Subject: Proposed Revisions to Chapter 77 Smoking Lounges

### History

Hookah establishments have become increasingly popular in the area. In the past nine months, three have opened in Troy and another two have applications in-process. Hookah establishments are considered "Tobacco Specialty Retail Stores" by the State of Michigan and have an exemption to the Dr. Ron Davis Smoking Law (No Smoking Law). State exemption certificates may be transferred into Troy with state approval.

Having no restrictions on hours of operation, hookah establishments draw large numbers of patrons during the evening and night time hours, particularly on weekends. These large crowds result in overflow parking into other nearby businesses, often leaving behind trash, broken alcohol bottles, and various other debris for business owners to clean up.

In addition, these large crowds have generated multiple incidents requiring police response, including one shooting, fights, drug and alcohol possession, and noise, traffic, and parking complaints from area businesses and residents, with many occurring after 12:00am (midnight). Complaints have also been received that hookah establishments are allowing minors (under 18) into their businesses, contrary to state law.

Despite extra attention and enforcement by the police department, we continue to have incidents as recently as this past weekend.

### Recommendation

Revisions to the current city ordinance Chapter 77 regarding hookah establishments will help alleviate some of these issues by restricting transfers of state exemption certificates into Troy, requiring specific information on operational management, limiting the hours of operation, reinforcing current state laws, implementing parking-related restrictions, and establishing specific "codes of conduct" for these establishments. Further, because of the frequency and sometimes serious nature of these occurrences, the police department requests these revisions **take effect immediately**.

### City Attorney's Review as to Form and Legality

  
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 Lori Grigg Bluhm, City Attorney

  
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 Date

Prepared by Sgt. George Zielinski

CITY OF TROY  
AN ORDINANCE TO AMEND  
CHAPTER 77 OF THE CODE 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 77 – Smoking Lounges of the Code of the City of Troy.

Section 2. Amendment.

Chapter 77 of the Troy Code of Ordinances is hereby amended to add the following language and to complete any renumbering necessitated by the additions:

Chapter 77 – Smoking Lounges

9. No Transferability; Change of Ownership

- a. Licenses issued under this Chapter shall not be transferable except as provided herein. There shall be no transfer of any State of Michigan Exemption Permit under the Dr. Ron Davis Act of 2009 (MCL 333.12601, et. seq., as amended) from another jurisdiction into the City of Troy. Existing Exemption Permits that have already been issued for businesses in the City of Troy can be transferred only upon the City Clerk's approval of a smoker's lounge license application for the prospective transferee. This approval or denial shall be based on the same procedure and terms as set forth in this Chapter.
- b. Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he/she holds. A separate license shall be issued for each specific smoking lounge business within the City of Troy.

10. Manager; Change of Manager

At least one registered manager who has been identified on the application for a Smoker's Lounge License shall be on the premises at all times that the business is open. It shall be unlawful for any person not identified on the Smoker's 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 Troy City Clerk, using the criteria as set forth in this Ordinance. 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 insuring that the proposed new manager has obtained the required approval before working or serving as a manager of the licensed establishment.

#### 11. Hours of Operation

It shall be unlawful for a smoking lounge business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons to enter into the licensed premises between midnight (12:00 am) of each day until eight am (8:00am) the next day. All individuals except employees of the smoking lounge business shall be required to leave or be removed from the building by (12:30 a.m.). Only a maximum of three (3) employees shall remain on the premises after 12:30 am and each shall carry proof of employment at the licensed establishment, such as an identification badge. The manager and/or employees shall provide proof of such employment when requested to do so by a member of the Troy Police Department or Troy Fire Department.

#### 12. Age Restrictions

No one shall be allowed on the premises of a smoking lounge business unless the individual is the age of eighteen (18) years of age or older. 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.

#### 13. Parking Restrictions

The manager and/or employees shall require patrons to leave the parking lot of the smoking lounge business by 12:30 a.m. The manager and/or employees shall insure that patrons of the smoking lounge business are not parking in adjacent or neighboring parking lots or in residential areas that are not part of the parking area provided to the licensed premises.

#### 14. Standard of Conduct.

- a. The following standards of conduct shall be adhered to by managers and employees of any smoker's lounge business:
  - i. Alcohol and Liquor: No manager, employee, volunteer, or representative of the licensee shall serve or engage in the sale of alcoholic beverages on the premises, including, but not limited to: any spirituous, vinous, malt or fermented liquor, beverages, liquids and compounds.

- ii. Consumption of alcohol: It shall be unlawful to permit the consumption of alcoholic beverages in any smoking lounge business. The licensee's manager and/or employees shall immediately remove any person who opens or consumes alcoholic beverages on the premises.
- iii. Controlled Substances: It shall be unlawful to permit the use, sale or presence of controlled substances (as defined under MCL 333.7212, et. seq, of the Public Health Code as amended, or a rule promulgated under that Act or Code), on the licensed premises. The manager and/or employees shall immediately remove any person possessing, distributing, selling, consuming and/or using controlled substances on the licensed premises.
- iv. There shall be no live entertainment in a licensed establishment.
- v. It is the duty of the licensee to ensure that at least one manager is on duty and on the premises at all times that persons are on the licensed premises, and that the manager is visible to any patron who is present on the premises.
- iv. It is the duty of the licensee and managers of the premises to ensure that any doors to public areas on the premises remain unlocked during business hours.

#### 15. Compliance with Laws

The business licensee, the manager and employees shall comply with all federal and state laws and the City of Troy Code of Ordinances, including, but not limited to, building and fire codes.

#### 16. Right of Entry.

The filing of an application for a smoker's lounge license shall constitute consent of the applicant and licensee and his/her or its agents, managers and/or employees to permit the City's Police Department, Building Department, Planning Department or any other department or agent of the city to conduct routine inspections of any licensed smoker's lounge business during the hours the establishment is conducting business and during any time that employees or managers are on the premises. The Troy Police Department and the Troy Fire Department shall be allowed unannounced access to the smoking lounge premises to inspect for violation of this Chapter.

#### 17. 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.

**18.** ~~40.~~ 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 3. 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 4. 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 5. 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 6. Effective Date

This Ordinance shall become effective immediately, since it is an emergency ordinance which is immediately necessary for the preservation of the public peace, health or safety, as allowed under the Troy Charter, Section 5.3.

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 Monday, May 13, 2013.

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Dane Slater, Mayor

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M. Aileen Bittner, City Clerk