

AGENDA IV.A.

Unfinished Business

Consideration of the proposed text amendment amending Chapter 50 of the 2019 Detroit City Code, Zoning, Zoning Ordinance by add smoking lounges, including hookah lounges and cigar bars, and tobacco stores as specific land uses with spacing regulations, specific use standards, and off-street parking requirements

July CPC Meetings

July 7 Public Hearing

- Intro and Summary of Research
- 1st Version of Draft ZO Text Amendment

Goals for 2nd Version

- Desire to separate Cigar Bars from Hookah Lounges (Smoking Lounges)
- Additional Spacing Regulations (Sec. 4-4-1)
- Consideration of Hookah Lounges as a Conditional Use in B5 and B6 (was By-right)
- Public comment: increase spacing to 2,000'
- Prohibit outdoor activities

July 21 Meeting – 2nd Version

- Expanded proposed definitions and use terms: cigar, hookah, TRS, TSRS
- Separated permissibility of cigar vs. hookah
- Added “Advertisement-sensitive property” spacing requirements
- Discussed how the state regulates cigar bars and hookah lounges differently

Introduction

Background

- Initiated by Council Member Scott Benson
- To specifically identify hookah and vape shops/lounges as a specific land use
- For inclusion in the B3 district, or a more intense district, as a Conditional use
- The ZO does not currently specifically address smoking-related uses such as hookah lounges or vape/tobacco stores
- Concerns with hookah lounges: characteristics of a night club, unauthorized after-hours est., or “blind pig”; traffic, noise, loitering, and violence

NEWS



Police step up patrols outside Detroit hookah cafe after multiple noise complaints, crimes reported



Detroit police are stepping u being broken at the business

By: Simon Shayk

Posted at 5:27 PM, Oct 26, 2

(WXYZ) — Detroit hookah ca both inside and o months, they've h outside TakeOut I to making sure pr

8 stabbed and hospitalized after fight breaks out at Detroit hookah lounge

No fatal injuries reported



None of the injuries from the fig

DETROIT – Eight peopl hookah lounge and co

Police added that the t at around 4:41 a.m. or

None of the injuries w although no one invol

Man, woman hospitalized after shots fired outside Detroit hookah lounge, police say

27-year-old man, 21-year-old woman stable at hospital, officials say



The scene of an April 18, 2022, shooting on Strathmoor Street in Detroit. (WDIV)

DETROIT – A man and a woman were taken to the hospital overnight after someone fired shots at them from a car while they were leaving a hookah lounge in **Detroit**, police said.

The 27-year-old man and 21-year-old woman were leaving the hookah lounge around 2:50 a.m. Monday (April 18) in the 16800 block of Strathmoor Street on **Detroit's west side**, according to authorities.

Ordinances

1. Zoning Ordinance

- The ZO does not currently specifically address tobacco-related uses
- When a retail use is not specifically addressed, the ZO permits “stores of a generally recognized retail nature”
- By-right retail, service, and commercial use (when does not include drive-up/through): B2 – B6, M1 – M4, PCA, TM, SD1, SD2, SD4
- By amending the ZO, hookah lounges and tobacco stores would be new specific land uses, not general retail

2. Smoking Lounge Ordinance

- In our research, we’ve been made aware of concerns of the MDHHS that Detroit does not currently require a business license for hookah lounges
- This is something several Metro Detroit communities have required through smoking lounge ordinances
- In addition to a ZO text amendment, future information will be provided on a potential smoking lounge ordinance and business license requirement

Summary of Research

Resources

1. Census North American Industry Classification System
2. Cigar Bars vs. Tobacco Specialty Retail Stores – P.A. No. 188 of 2009
3. Existing Detroit Establishments – MDHHS
4. Model Metro Detroit Zoning Ordinance Requirements
5. Model Business License Ordinance Requirements – MDHHS

1. U.S. Census – Use Classifications

N.A. Industry Classification System

- CPC staff could not identify any national or state zoning resources on best practices for regulating hookah and vape shops/lounges
- The U.S. Census Bureau provides a standardized resource for considering uses and how they may relate to local zoning
- The NAICS structure has been incorporated into the proposed use categories
- NAICS does not have an index entry for cigar bars/lounges

Hookah Lounges & Vape Shops

2022 NAICS	
713990	All Other Amusement and Recreation Industries
link	This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services.
	Corresponding Index Entry
	Hookah lounges (except primarily selling food and beverages)
459991	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers
link	This U.S. industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies.
	Corresponding Index Entries
	Vape shops , Cigar stores, Cigarette stands, Electronic cigarette stores, Smokers' supply stores, Tobacco stores

2. Michigan's Smoke-Free Indoor Air Law

P.A. No. 188 of 2009

- Establishments or locations where tobacco smoking is legal:
 1. Cigar Bars with a State exemption
 2. Tobacco Specialty Retail Stores (includes hookah) with a State exemption
 3. Gaming floors of 3 Detroit casinos
 4. Any tribal-owned establishment
 5. Personal residences (unless HUD/landlord)

- Only 1 and 2 would be subject to the proposed text amendment

Cigar Bar & TSRS Exemptions

- Exemptions are not a newly created status
- Refers to an est. that was in existence prior to the P.A. effective date of May 1, 2010
- Max of 300 exemptions that will ever exist in the State of MI: 100 for Cigar, 200 for TSRS
- Exemptions may be purchased and located within any jurisdiction within the state
- Local restrictions can limit the potential number of exemptions within jurisdictions

3. Existing Detroit Est. – MDHHS

MDHHS Approval Status

- MDHHS list of Detroit est. that possess either a Cigar Bar or Tobacco Specialty Retail Store (hookah) exemption to P.A. 188
- MDHHS groups into 3 status categories:
 1. Approved for use in 2022
 2. In-process for potential approval (build-out/renewal)
 3. Not approved for use in 2022 (earliest could be approved is January 2023)

Maintaining Approval

- All est. must submit for exemption renewal on an annual basis no later than Feb. 21
- Est. that have not had their exemption approved for use in 2022 (2 and 3 to left) may operate without tobacco smoking permitted until exemption approved

3. Existing Detroit Est. – MDHHS

Summary of MDHHS List of Existing Detroit Establishments				
	TSRS (Hookah)	Cigar Bar	Zoning District	Council District
Exemption Not Approved for 2022	7	3	B4 - 4 B2 - 3 B5 - 1 SD4 - 1 R1 - 1	D2 - 4 D6 - 2 D5 - 2 D4 - 1
Exemption Approved for 2022	1	3	B5 - 2 B4 - 1 R2 - 1	D5 - 3 D6 - 1
Application/Renewal In Process for 2022	3	11	B4 - 4 B2 - 3 B5 - 2 B3 - 2 B6 - 1 M4 - 1	D2 - 5 D6 - 3 D5 - 2 D4 - 2 D7 - 1 D3 - 1
Hookah Lounge Totals (Cigar Excl.)	10	N/A	B2 - 5 B4 - 4 B5 - 1	D2 - 5 D4 - 2 D7 - 1 D6 - 1 D5 - 1

3. Existing Detroit Est. – CPC Staff Findings

MDHHS List Findings

- 10 hookah lounges listed: 5 are zoned B2, 4 are zoned B4, and 1 is zoned B5
- Only one hookah lounge in Detroit has an exemption approved for use in 2022 (B4)
- Cigar bar exemptions are indicated for 2 sites with residential zoning (Detroit Golf Club and Abick’s Bar), and 1 with M4 zoning (Bayview Yacht Club)
- Private (golf/yacht) clubs are required to obtain a State exemption

Est. Not Listed by MDHHS

- Google Maps indicates over 20 “hookah lounges” within Detroit, only 7 of which are included in the MDHHS list
- Some 13+ est. may not be included in the MDHHS list as they are strictly a retail store (no indoor smoking) but may refer to their business as a “hookah lounge/café”
- Other hookah lounges may be operating illegally with indoor smoking

4. Model Zoning Ordinances

Model Communities

- MDHHS has provided model smoking lounge ordinances from 9 communities
- Of the 9 Metro Detroit model smoking lounge ordinances provided by MDHHS, 5 municipalities specifically address in ZO's:
 1. Canton Township
 2. Dearborn
 3. Dearborn Heights
 4. West Bloomfield Township
 5. Ypsilanti Township

CPC Staff Findings

- Definition. “Smoking lounge” is the preferred term used for State approved lounges, which matches each municipalities “smoking lounge ordinance” for business licensing
- Districts Permitted. There is not consistency with what districts smoking lounges are permitted. 3 permit as Conditional in one intermediate zoning district (such as B3)
- Use Standards. There is consistency in that 4 municipalities require setbacks from certain low intensity uses and other lounges

5. Model Business Licenses Ordinances

Model Communities

- MDHHS has emphasized that communities that have had problems with hookah lounges have addressed them through a business license requirement

Unique Requirements

- 3 of the 5 municipalities provide a maximum number of licenses that may be issued (Dearborn flexible max at 15)
- Dearborn also permits take-out food within smoking lounges

Common Requirements

- Hours of operation restrictions
- Mechanical ventilation; prohibition of recirculation and natural ventilation
- Signage specifying prohibited activities
- Constant visual or video monitoring
- Lighting and parking
- Outdoor activity prohibitions/restrictions
- Violation: misdemeanor with maximum \$500 fine and/or maximum 90 days in jail

Summary of Amendments

Parts Affected – In order of ZO

- 1. Zoning Districts**
- 2. Use Regulations**
- 3. Development Standards**
4. Nonconformities (prevents change from-to)
- 5. Definitions**
6. Appendix A (to match body of ZO)

Draft Definitions 1-3 (Indoor Smoking)

- **Hookah.** A type of water pipe used to smoke tobacco or other legal non-tobacco smoking products or substances, in which air is heated by charcoal or burning embers and passed through the tobacco or other substance to form smoke, and the smoke then passes through a water-filled chamber where it is filtered and cooled, and then inhaled through a tube and mouthpiece by one or more users during a smoking session. At the end of a smoking session, the dirty water is discarded and the water chamber is refilled for the next session. The term “hookah” may also be referred to as a water pipe, narghile, argileh, goza, or hubble bubble.

Use Category: Recreation and entertainment, indoor

- **Smoking lounge, cigar.** An establishment or area within an establishment that has a corresponding State issued smoking ban exemption certificate and is designated for the smoking of cigars as defined by the Tobacco Products Tax Act, MCL 205.422, on premises. Smoking lounge, cigar, does not include smoking lounge, other, as defined by this article, or medical marijuana facilities or adult-use marijuana establishments as defined by this chapter.
- **Smoking lounge, other (*hookah*).** A retail establishment that has a State issued smoking ban exemption certificate in which the primary purpose is the retail sale of tobacco products as defined by the Tobacco Products Tax Act, MCL 205.422; non-tobacco smoking products or substances as defined in Chapter TBD of this Code, Smoking Lounges; smoking paraphernalia; and is designated wholly or in part for the smoking of tobacco products or non-tobacco smoking products or substances on premises, which may include the on-premise use of hookah as defined by this article. Smoking lounge, other, does not include tobacco retail store as defined by this article, smoking lounge, cigar, as defined by this article, medical marijuana facilities or adult-use marijuana establishments as defined by this chapter, a tobacco department or section of a larger commercial establishment, or any establishment with any type of liquor, food, or restaurant license.

Draft Definition 4 (No Indoor Smoking)

Use Category: Retail sales and service, sales-oriented

- **Tobacco retail store (carry-out use).** A retail establishment that **does not have a State issued smoking ban exemption certificate** in which the primary purpose is the retail sale of tobacco products as defined by the Tobacco Products Tax Act, MCL 205.422; non-tobacco smoking products or substances as defined in Chapter TBD of this Code, Smoking Lounges; smoking paraphernalia, and **is not designated for the smoking of tobacco products or non-tobacco smoking products or substances on premises**. Tobacco retail store does not include smoking lounge, cigar, as defined by this article, smoking lounge, other, as defined by this article, medical marijuana facilities or adult-use marijuana establishments as defined by this chapter, a tobacco department or section of a larger commercial establishment, or any establishment with any type of liquor, food, or restaurant license.

Zoning Districts – Smoking Lounges

Use Category	Specific Land Use	Residential						Business						Industrial					Special and Overlay										Standards General (Art. XII, Div. 2) Specific (Art. XII, Div. 3)			
		R1	R2	R3	R4	R5	R6	B1	B2	B3	B4	B5	B6	M1	M2	M3	M4	M5	P1	P2	P3	PCA	T	PR	W1	SD1	SD2	SD3		SD4	SD5	
Recreation/entertainment, indoor	Arcade									C	C	C	C	R	R	R	R	R	L		R	R	R							C		CU; P; SPC; Sections 50-12-213, 50-12-515
	Cabaret							C	C	C/R	C/R	C/R	C	C	C	C	C	L		C/R	C						C	C		RU; SPC; Section 50-12-218		
	Casinos and casino complexes																		L											R		
	<u>Smoking lounge, cigar</u>							<u>R</u>	<u>R</u>	<u>R</u>	<u>R</u>	<u>R</u>						<u>L</u>		<u>R</u>					<u>R</u>	<u>R</u>		<u>R</u>				
	<u>Smoking lounge, other</u>							<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>						<u>L</u>		<u>C</u>					<u>C</u>	<u>C</u>		<u>C</u>		SPC; Section 50-12-324		
	Firearms target practice range, indoor									C	C	C	C	C	C	C	C	C	L												P; Section 50-12-224	
	Pool hall									C	C	R	R	R	R	R	R	R	L		R	R				C	C				CU; P; SPC; Section 50-12-305	
	Recreation, indoor commercial and health club							R	R	R	R	R	R	R	R	R	R	L		R	R	R			R	R		R		Section 50-12-308		
	Theater and concert café, excluding drive-in theaters								R	C	R		R	R	R	R	R	L		R	R				C/R		R			Section 50-12-317		

Zoning Districts – Stores (No Indoor Smoking)

Use Category	Specific Land Use	Residential						Business						Industrial					Special and Overlay										Standards General (Art. XII, Div. 2) Specific (Art. XII, Div. 3)							
		R 1	R 2	R 3	R 4	R 5	R 6	B 1	B 2	B 3	B 4	B 5	B 6	M 1	M 2	M 3	M 4	M 5	P D	P 1	P C	P C A	T M	P R	W 1	S D 1	S D 2	S D 3		S D 4	S D 5					
	Pawnshop									C					C	C	C	C		L				C												P; RU; SPC; GRT; Section 50-12-302
	Pet shop								R	R	R	R	R		R	R	R	R		L				R			R	R								Section 50-12- 303
	Precious metal and gem dealers									C	C	C			R	R	R	R		L			C	C			C	C								SPC; Section 50-12-304
	Produce or food markets, wholesale													R	R	R	R	R		L				R												
	Specially designated distributor's (SDD) or specially designated merchant's (SDM) establishment									C	C	C	C	C		C	C	C	C		L			C			C	C			C					CU; P; SPC; Section 50-12- 314
Retail sales and service; sales-oriented (cont'd)	Storage or killing of poultry or small game for direct, retail sale on the premises or for wholesale trade												R		R	R	R	R		L															Section 50-12- 315	
	<u>Tobacco retail store</u>									C	C	R	R							L			C				C	C			C				SPC; Section 50-12-324	
	Trailer coaches or boat sale or rental, open air display									C		R	R	R	R	R				L				R												GRT
	Trailers, utility—sales, rental, or service; moving truck/trailer rental lots									C		R	R	R	R	R				L				R												
	Used goods dealer									C	C	C			R	R	R	R		L			C	C			C	C								SPC; Section 50-12-320
	All other									C	C	C			C	C	C	C		L				C									C			

Draft Required Spacing

Use Type	Minimum Distance from Same Use Type (Existing or Approved)	Minimum Distance from Other Use Types (Existing or Approved)	Comment
<u>Smoking lounge, other</u>	<u>2,000 feet</u>	<u>- Advertisement-sensitive property as defined in Section 4-1-1 of this Code: 1,000 feet;</u>	<u>Section 50-12-324</u>
<u>Tobacco retail store</u>	<u>N/A</u>	<u>- Advertisement-sensitive property as defined in Section 4-1-1 of this Code: 1,000 feet;</u>	<u>Section 50-12-324</u>

Draft Required Spacing

Section 4-1-1 Definitions

1. Child-care home and center
2. Child-caring institution
3. Juvenile detention or correctional facility (county facility/institution or a state institution/agency)
4. Public library
5. Park: city, county, or state
6. Playfield (major field sports) : city, county, or state
7. Playground (up to age 14): city, county, or state
8. Playlot (up to age 8): city, county, or state
9. Recreation Center: city, county, or state
10. School K-12: public, charter, parochial, or private
11. Youth activity center

Use Type	Minimum Distance from Same Use Type (Existing or Approved)	Minimum Distance from Other Use Types (Existing or Approved)	Comment
<u>Smoking lounge, other</u>	<u>2,000 feet</u>	- <u>Advertisement-sensitive property as defined in Section 4-1-1 of this Code: 1,000 feet;</u>	<u>Section 50-12-324</u>
<u>Tobacco retail store</u>	<u>N/A</u>	- <u>Advertisement-sensitive property as defined in Section 4-1-1 of this Code: 1,000 feet;</u>	<u>Section 50-12-324</u>

Draft Specific Use Standards

Smoking lounges, other, and Tobacco retail stores shall be subject to the following requirements:

- (1) Points of vehicular ingress and egress shall be determined by the Department of Public Works Traffic Engineering Division.
- (2) Outdoor activities shall be prohibited.
- (3) Smoking lounges, other, shall require a smoking ban exemption certificate issued by the State of Michigan and shall also be licensed by the City of Detroit in accordance with Chapter TBD of this Code, *Smoking Lounges*. Proof of such certificate and licensing is required prior to opening for business and as a condition for the continued operation of any smoking lounge, other.
- (4) Smoking lounges, other, shall be physically separated from any areas of the same or adjacent establishments in which smoking is prohibited by State law such that smoke does not infiltrate into those nonsmoking areas. “Physically separated” shall mean an area that is enclosed on all sides by any combination of solid walls, windows, or doors that extend from the floor to the ceiling.
- (5) Smoking lounges, other, are not permitted as an accessory use and must not include an accessory use.

Draft Parking Requirements

Use Category	Specific Land Use	Off-Street Parking Spaces Required, Minimum. (References are to square feet of gross floor area unless otherwise indicated.)	Maximum Distance (feet)
Recreation and entertainment, indoor	Arcade	1 per 100 square feet	100
	Cabaret	3 (minimum) + 1 per 100 square feet for each 100 square feet in excess of 1,000	100
	Casino or casino complex	See provisions for SD5 District in Section 50-11-337	300
	<u>Smoking lounge, cigar/Smoking lounge, other</u>	<u>3 (minimum) + 1 per 100 square feet for each 100 square feet in excess of 1,000</u>	<u>100</u>
	Firearms target practice range, indoor	1 per 2 employees + 1 per target lane	100
	Pool hall	1 per 250 square feet or 1 per pool table, whichever is greater	100
	Recreation, indoor commercial and health club	Schedule C, where 1 space per 200 square feet of gross floor area is deemed by the Planning and Development Department to be inappropriate	Where Schedule C does not apply, 100; except <u>where</u> developed under the "school building adaptive reuses" provision as defined in Section 50-16-381; same lot
	Theater and concert café	1 per 4 seats	500
	All other	1 per 100 square feet	100

Conclusion

If approved by City Council, the proposed amendments to the Zoning Ordinance would specifically regulate the three proposed specific land use terms, instead of continuing to administer these uses, specifically hookah (smoking) lounges as a general retail use. In addition to the proposed ZO text amendment, CPC staff and the Law Department will also be providing future information on a potential smoking lounge ordinance and business license requirement that would supplement the proposed ZO text amendment, which would be considered at future meetings.

Based on the above analysis and consistent with the approval criteria of Section 50-3-49 of the Zoning Ordinance, CPC staff recommends **APPROVAL** of the proposed text amendment.