

# **Regular City Council Meeting**

## **March 28, 2016**

### **Agenda**

**7:30 p.m.**      **Call to Order**  
                 **Pledge of Allegiance**  
                 **Roll Call**  
                 **Approval of Minutes: To be presented at April, 11 Meeting** (clerk absent for Conference week of 3/21)  
                 **Approval of Bills: None**  
                 **Approval of Agenda**  
                 **Public Comment**

#### **I.    Old Business –**

1. Consider approval of second reading of Ordinance to amend Chapter 58 and add provisions regulating tobacco products, vapor products and alternative nicotine delivery products
2. Consider approval of second reading of Ordinance to amend Sec 58-221 and add provisions prohibiting the use of vapor products and alternative nicotine delivery products on school property
3. Consider approval of second reading of Ordinance to amend Chapter 22 and add Mobile Food Vending
4. Consider approval of second reading of Ordinance to amend Chapter 2 Administration by addition Article VIII – Review Fee Escrow Deposits

#### **II.   New Business**

- 1)      Resignation from Cultural Arts Commission: Cheryl Moreno
- 2)      Resolution to Establish and Designate Permissible Locations for Mobile Food Vending on City-Owned and Public Property Within the City of South Lyon
- 3)      Resolution to Establish Fire Department Regulations and Requirements Pertaining to Mobile Food Vending Units and Operations Within the City of South Lyon
- 4)      Resolution to Establish and Set Mobile Food Vending Application and License Fees
- 5)      Annual Report presentation by Cultural Arts Commission

#### **III.   Discussion – Downtown**

#### **IV.   Manager's Report**

#### **V.    Council Comments**

#### **VI.   Adjournment**

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:** Per Council comments, City Attorney

**AGENDA TOPIC:** Second reading of Ordinance to amend the South Lyon Code of Ordinances to amend and add provisions regulating tobacco products, vapor products and alternative nicotine delivery products.

**EXPLANATION OF TOPIC:**

- No substantive revisions to the proposed ordinance
- The definitions of vapor product and alternative nicotine delivery product include equipment (e.g. e-cigarette and other similar heating and vaporizing devices and equipment)
- Minors are prohibited from possessing tobacco products, vapor products and alternative nicotine delivery products.

There is currently no federal or Michigan regulations prohibiting the sale of e-cigarettes, vapor products, and alternative nicotine delivery products to minors.

This ordinance is intended to add provisions to the Code of Ordinances to prohibit minors from possessing, using and purchasing tobacco products, vapor products and alternative nicotine delivery products. It also prohibits the sale and furnishing of tobacco products, vapor products and alternative nicotine delivery products to minors.

A general summary of the sections to be added is as follows:

Section 58-271 Purpose and findings

Section 58-272 Definitions

Section 58-273 Prohibited conduct

- Subsection (a) generally lists the prohibited conduct.
- Subsection (b) provides for penalties. Penalty for violation is misdemeanor punishable by fine of not more than \$50 (See Youth Tobacco Act, Public Act 31 of 1915), MCL 722.641(1). But, the ordinance does provide for alternative penalties based on specific conditions which are consistent with the Youth Tobacco Act.
- Subsection (c) provides for exemptions from the general prohibited conduct.
- Subsection (d) provides for another specific exemption relating to the handling and transporting of tobacco products, vapor products and alternative nicotine delivery products by a minor in the course of employment

- Subsection (e) provides that nothing in this section prohibits a person from being charged, convicted or sentenced for a violation of subsection (a).
- Subsection (f) provides that this section does not interfere with a parent's rights to raise their child within the bounds of their own private property.

#### Section 58-274 Furnishing to minors

- Subsection (a) provides that the sale and furnishing of tobacco products, vapor products and alternative nicotine delivery products to a minor is prohibited and that a violation is a misdemeanor punishable by a fine of not more than \$50.00.
- Subsection (b) requires specific point of sale signage for tobacco products, vapor products and alternative nicotine delivery products. This is consistent with the Youth Tobacco Act.
- Subsections (c) and (d) also address signage requirements for the sale of tobacco products, vapor products and alternative nicotine delivery products.
- Subsection (e) provides for an affirmative defense to a violation of the prohibition on selling or furnishing tobacco products, vapor products and alternative nicotine delivery products to a minor.
- Subsection (f) requires that the prosecuting attorney provide notice of evidence to rebut an affirmative defense.
- Subsection (g) provides an exemption relating to the handling and transporting of tobacco products, vapor products and alternative nicotine delivery products by a minor in the course of employment.
- Subsection (h) sets out identification verification procedures and requirements for the sale of tobacco products, vapor products and alternative nicotine delivery products.

This ordinance will repeal the current Section 58-217 pertaining to tobacco products.

#### **MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed Ordinance Amendment adding Section 58-271 through 58-280.
- Current South Lyon Section 58-217
- Youth Tobacco Act, 722.641 et seq.
- Michigan Senate Bill 231 and legislative analysis summary
- What You Should Know About Electronic Cigarettes (E-Cigarettes), prepared by Michigan Department of Health and Human Services, Division of Chronic Disease and Injury Control, Tobacco Section.
- South Lyon Drug paraphernalia ordinance

**POSSIBLE COURSES OF ACTION:** approve/deny/postpone/table second reading of proposed ordinance amendment

**RECOMMENDATION:** Approve the second reading of the ordinance amendment

**SUGGESTED MOTION:** Motion to approve the second reading of the ordinance to add Sections 58-271 through 58-280 to add provisions regulating the possession, use and sale of tobacco products, vapor products and alternative nicotine delivery products specifically as to minors.

ORDINANCE NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CITY OF SOUTH LYON CODE OF ORDINANCES, CHAPTER 58 - OFFENSES AND MISCELLANEOUS PROVISIONS, TO ADD ARTICLE V - OFFENSES INVOLVING MINORS, TO ADD DIVISION 3 - TOBACCO PRODUCTS, VAPOR PRODUCTS AND ALTERNATIVE NICOTINE DELIVERY PRODUCTS, SECTIONS 58-271 THROUGH 58-280, TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE OF THE CITY OF SOUTH LYON, OAKLAND COUNTY BY PROHIBITING MINORS FROM POSSESSING AND USING TOBACCO PRODUCTS, VAPOR PRODUCTS AND ALTERNATIVE NICOTINE DELIVERY PRODUCTS AND PROHIBITING THE SALE AND FURNISHING OF TOBACCO PRODUCTS, VAPOR PRODUCTS AND ALTERNATIVE NICOTINE DELIVERY PRODUCTS BY MINORS.

**THE CITY OF SOUTH LYON ORDAINS:**

**PART I. Amendment to Chapter 58 - Offenses and Miscellaneous Provisions, Article V - Offenses Involving Minors, by Adding Division 3 - Tobacco Products, Vapor Products and Alternative Nicotine Delivery Products, Sections 58-271 through 58-280.** Chapter 58 – Offenses and Miscellaneous Provisions, Article V - Offense Involving Minors, of the City of South Lyon Code of Ordinances is hereby amended to add Division 3 - Tobacco Products; Vapor Products and Alternative Nicotine Delivery Products, to read as follows:

**ARTICLE V. - OFFENSES INVOLVING MINORS**

**DIVISION 3. - TOBACCO PRODUCTS, VAPOR PRODUCTS AND ALTERNATIVE NICOTINE DELIVERY PRODUCTS**

**Sec. 58-271. - Purpose and findings.**

The purpose of this division is to protect the public health, safety and welfare of the property and persons in the city by prohibiting persons under eighteen (18) years of age from possessing tobacco products, vapor products, and alternative nicotine delivery products, and prohibiting the sale and furnishing of tobacco products, vapor products, and alternative nicotine delivery products to persons under eighteen (18) years of age.

Persons under age eighteen (18) are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. There are new tobacco-less products, however, commonly referred to as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," or "electronic nicotine delivery systems," which allow the user to simulate cigarette smoking and ingest nicotine. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people.

E-cigarettes, and similar vapor and alternative nicotine delivery devices and products, are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have a few basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) is heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer's specifications, and many manufacturers make nicotine-free solutions.

The production and distribution of e-cigarettes and vapor products is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration has not completed testing of these products. But, initial studies by the FDA have determined that e-cigarettes can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks.

The use of e-cigarettes, vapor products and similar alternative nicotine delivery products has increased significantly in recent years, as evidenced by the fact that:

- Between 2011 and 2012 the percentage of all youth in grades 6 to 12 who had tried electronic smoking devices doubled;
- 6.8% of all youth in grades 6 and 12 report trying electronic smoking devices;
- 10% of high school students have tried electronic smoking devices;
- 9.3% of youth who have used electronic smoking devices have never smoked conventional cigarettes; and
- Between 2010 and 2011, rates of both awareness and use of unregulated electronic smoking devices by adults also increased significantly.

Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:

- Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;
- PM2.5, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke;
- Inconsistent labeling of nicotine levels in electronic smoking device products; and
- In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans.

Several studies have concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping.

Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine, and as a result:

- In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans;
- Poisonings from electronic smoking devices have increased dramatically in the last three and one-half (3½) years from "one (1) [a month] in September 2010 to two hundred fifteen (215) a month in February 2014;"

- Analysis of reports of poisonings from electronic smoking devices finds that calls reporting exposure to electronic smoking devices are much more likely to involve adverse health effects when compared to calls reporting exposure to conventional cigarettes.

Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over four hundred (400) brands of electronic smoking devices that are on the market and for this reason, consumers currently have no way of knowing:

- Whether electronic smoking devices are safe;
- What types or concentrations of potentially harmful chemicals the products contain; and
- What dose of nicotine the products deliver.

The World Health Organization has strongly advised consumers against the use of electronic smoking devices until they are "deemed safe and effective and of acceptable quality by a competent national regulatory body."

The World Medical Association has determined that electronic smoking devices "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation, nor their safety as cigarette replacements is established."

A study published in the Journal of Environmental and Public Health suggests that electronic smoking devices "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously."

Electronic smoking devices often mimic conventional tobacco products in shape, size and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

In September of 2013, forty (40) state attorneys general (including Michigan's) signed a letter to the Commissioner of the United States Food and Drug Administration, outlining their concerns with e-cigarettes and requesting the implementation of regulations that would address the advertising, ingredients, and sale to minors of e-cigarettes at the federal level.

It is the intent of the city council, in enacting the ordinance codified in this division, to provide for the public health, safety and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices, vapor products, and alternative nicotine delivery products to minors.

Therefore, the South Lyon City Council determines that prohibiting the sale, giving, or furnishing of e-cigarettes and vapor products to minors and prohibiting the purchase, possession, or use of e-cigarettes and vapor products by minors is in the city's best interests

and will promote public health, safety and welfare. For purposes of this division, the city is adopting the terms "vapor product" and "alternative nicotine delivery product" to address e-cigarettes and all similar devices, because these terms has been defined by the Michigan House and Senate in Senate Bills 667 and 668, enrolled in June of 2014, and Senate Bill 231 introduced in March 2015 as part of proposed amendments to the Youth Tobacco Act, being Public Act 31 of 1915.

#### **Sec. 58-272. - Definitions.**

For the purpose of construction and application of this division, the following definitions shall apply:

*Alternative nicotine product* means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

*Minor* means an individual who is less than eighteen (18) years of age.

*Person who sells tobacco products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to state sales tax.

*Person who sells vapor products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.

*Possession of a tobacco product* shall mean either actual physical control of the tobacco product without necessarily owning that product, or the right to control the tobacco product even though it is in a different room or place than where the person is physically located.

*Public place* means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or premises, or in a public place of business.

*Tobacco product* means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, and cigars. Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.

*Use a tobacco product, vapor product or alternative nicotine delivery product* means to smoke, chew, suck, inhale, or otherwise consume a tobacco product, vapor product or alternative nicotine delivery product.

*Vapor product* means a noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration.



**Sec. 58-273. - Prohibited conduct.**

(a) Subject to subsection (c) of this section, a minor shall not do any of the following:

1. Purchase or attempt to purchase a tobacco product, vapor product, or alternative nicotine delivery product.
2. Possess or attempt to possess a tobacco product, vapor product or alternative nicotine delivery product.
3. Use a tobacco product, vapor product or alternative nicotine delivery product in a public place.
4. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product, vapor product or alternative nicotine delivery product.

(b) An individual who violates subsection (a) above, is guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) for each violation. Pursuant to a probation order, the court may also require participation in a health promotion and risk reduction assessment program. An individual who is ordered to participate in a health promotion and risk reduction assessment program under this subsection is responsible for the costs of participating in the program. In addition, an individual who violates subsection (a) is subject to the following:

1. For the first violation, the court may order the individual to do one (1) of the following:
  - a. Perform not more than sixteen (16) hours of community service in a hospice, nursing home or long-term care facility.
  - b. Participate in a health promotion and risk reduction program, as described in this subsection.
2. For a second violation, in addition to participation in a health promotion and risk reduction program; the court may order the individual to perform not more than thirty-two (32) hours of community service in a hospice, nursing home or long-term care facility.
3. For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than forty-eight (48) hours of community service in a hospice, nursing home or long-term care facility.

(c) Subsection (a) of this section does not apply to a minor participating in any of the following:

1. An undercover operation in which the minor purchases or receives a tobacco product, vapor product or alternative nicotine delivery product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

2. An undercover operation in which the minor purchases or receives a tobacco product, vapor product or alternative nicotine delivery product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product, vapor product or alternative nicotine delivery product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

3. Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted under the direction of a substance abuse coordinating agency, as defined in the Public Health Code, 1978 PA 368, MCL 333.6103, and with the prior approval of the state police or a local police agency.

(d) Subsection (a) of this section does not apply to the handling or transportation of a tobacco product, vapor product or alternative nicotine delivery product by a minor under the terms of that minor's employment.

(e) This section does not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law that arises out of the violation of subsection (a) of this section.

(f) This section does not interfere with the right of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

#### **Sec. 58-274. - Furnishing to minors.**

(a) A person shall not sell, give or furnish a tobacco product, vapor product or alternative nicotine delivery product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or subsection (h) of this section is guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) for each violation.

(b) A person who sells tobacco products, vapor products, or alternative nicotine delivery products at retail shall post, in a place close to the point of sale and conspicuous to employees and customers, a sign that includes the following statement:

"The purchase of a tobacco product, vapor product or alternative nicotine delivery product by a minor under 18 years of age and the provision of a tobacco product, vapor product or alternative nicotine delivery product to a minor are prohibited by law. A minor who unlawfully purchases or uses a tobacco product, vapor product or alternative nicotine delivery product is subject to criminal penalties."

(c) If the sign required under subsection (b) above, is more than six (6) feet from the point of sale, it shall be five and one-half (5½) inches by eight and one-half (8½) inches and the statement required under subsection (b) shall be printed in 36-point bold-faced type. If the sign required under subsection (b) is six (6) feet or less from the point of sale, it shall be two (2) inches by four (4) inches and the statement required under subsection (b) shall be printed in 20-point bold-faced type.

(d) The signs required by subsection (c) above, may be procured from the department of community health pursuant to state law. The seller may add the "vapor product" and "alternative nicotine delivery product" language to the sign if the department of community health does not or will not include it.

(e) It is an affirmative defense to a charge under subsection (a) of this section, that the defendant had in force at the time of arrest and continues to have in force, a written policy to prevent the sale of tobacco products, vapor products, and alternative nicotine delivery products to persons under eighteen (18) years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file and serve notice of the defense, in writing, with the court and serve a copy of the notice on the prosecuting attorney. The defendant shall serve the notice not less than fourteen (14) days before the date set for trial.

(f) If the prosecuting attorney proposes to offer testimony to rebut the affirmative defense described in subsection (e) above, the prosecuting attorney shall file a notice of rebuttal, in writing, with the court and serve a copy of the notice on the defendant. The prosecuting attorney shall serve the notice not less than seven (7) days before the date set for trial and shall include in the notice the name and address of each rebuttal witness.

(g) Subsection (a) of this section does not apply to the handling or transportation of a tobacco product, vapor product or alternative nicotine delivery product by a minor under the terms of the minor's employment.

(h) Before selling, offering for sale, giving, or furnishing a tobacco product, vapor product or alternative nicotine delivery product to an individual, a person shall verify that the individual is at least eighteen (18) years of age by doing one (1) of the following:

1. If the individual appears to be under twenty-seven (27) years of age, examining a government-issued photographic identification that establishes that the individual is at least eighteen (18) years of age.

2. For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.

**Secs. 58-275—58-280. - Reserved.**

**PART II. Severability.** Should any division, section, subsection, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART III. Savings Clause.** The amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance.

**PART IV. Repealer.** Section 58-217 is hereby repealed, and all other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**PART V. Effective Date; Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the South Lyon City Council this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John Galeas, Jr., Mayor

\_\_\_\_\_  
Lisa Deaton, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the South Lyon City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Lisa Deaton, City Clerk

Adopted:  
Published:  
Effective:

Sec. 58-217. - Purchase, sale and possession of tobacco, cigarettes, papers, etc., by minors.

- (a) It shall be unlawful for any juvenile to misrepresent his age to purchase cigarettes, wrapper, tobacco, papers for the purpose of making cigarettes.
- (b) It shall be unlawful for any juvenile under the age of 18 years to have in his/her possession any cigarettes, papers, wrappers and tobacco from which cigarettes might be made.
- (c) It shall be unlawful for any person to sell, furnish, procure for or give away, to any juvenile under the age of 18 years, any tobacco, cigarettes, wrapper or any substitute for either, or persuade, counsel or advise any minor to smoke cigarettes.

*(Code 1988, § 9.212)*

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**YOUTH TOBACCO ACT**  
**Act 31 of 1915**

AN ACT to prohibit the selling, giving, or furnishing of tobacco products to minors; to prohibit the purchase, possession, or use of tobacco products by minors; to regulate the retail sale of tobacco products; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

History: 1915, Act 31, Eff. Aug. 24, 1915;—Am. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 1992, Act 272, Imd. Eff. Dec. 16, 1992;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

*The People of the State of Michigan enact:*

**722.641 Selling, giving, or furnishing tobacco products to minor prohibited; misdemeanor; penalty; sign required; copies of sign; affirmative defense; notice; rebuttal testimony; notice of rebuttal; exception.**

Sec. 1. (1) A person shall not sell, give, or furnish a tobacco product to a minor. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation.

(2) A person who sells tobacco products at retail shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the department of community health that includes the following statement:

"The purchase of tobacco products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties."

(3) If the sign required under subsection (2) is more than 6 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2 inches and the statement required under subsection (2) shall be printed in 36-point boldfaced type. If the sign required under subsection (2) is 6 feet or less from the point of sale, it shall be 2 inches by 4 inches and the statement required under subsection (2) shall be printed in 20-point boldfaced type.

(4) The department of community health shall produce the sign required under subsection (2) and have adequate copies of the sign ready for distribution to licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products free of charge. Licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products shall obtain copies of the sign from the department of community health and distribute them free of charge, upon request, to persons who are subject to subsection (2). The department of community health shall provide copies of the sign free of charge, upon request, to persons subject to subsection (2) who do not purchase their supply of tobacco products from wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products licensed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

(5) It is an affirmative defense to a charge under subsection (1) that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file and serve notice of the defense, in writing, upon the court and the prosecuting attorney. The notice shall be served not less than 14 days before the date set for trial.

(6) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (5) shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall be served not less than 7 days before the date set for trial and shall contain the name and address of each rebuttal witness.

(7) Subsection (1) does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

History: 1915, Act 31, Eff. Aug. 24, 1915;—CL 1915, 5185;—CL 1929, 12826;—CL 1948, 722.641;—Am. 1972, Act 29, Imd. Eff. Feb. 19, 1972;—Am. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

**722.642 Prohibited conduct by minor; violation as misdemeanor; penalty; participation in health promotion and risk reduction assessment program; costs; community service; exceptions; other violations.**

Sec. 2. (1) Subject to subsection (3), a minor shall not do any of the following:

- (a) Purchase or attempt to purchase a tobacco product.
- (b) Possess or attempt to possess a tobacco product.
- (c) Use a tobacco product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or

her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product.

(2) An individual who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation. Pursuant to a probation order, the court may also require an individual who violates subsection (1) to participate in a health promotion and risk reduction assessment program, if available. An individual who is ordered to participate in a health promotion and risk reduction assessment program under this subsection is responsible for the costs of participating in the program. In addition, an individual who violates subsection (1) is subject to the following:

(a) For the first violation, the court may order the individual to do 1 of the following:

(i) Perform not more than 16 hours of community service in a hospice, nursing home, or long-term care facility.

(ii) Participate in a health promotion and risk reduction program, as described in this subsection.

(b) For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility.

(c) For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 48 hours of community service in a hospice, nursing home, or long-term care facility.

(3) Subsection (1) does not apply to a minor participating in any of the following:

(a) An undercover operation in which the minor purchases or receives a tobacco product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a tobacco product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(c) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted under the direction of a substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, and with the prior approval of the state police or a local police agency.

(4) Subsection (1) does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

(5) This section does not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of subsection (1).

History: 1915, Act 31, Eff. Aug. 24, 1915;—CL 1915, 5186;—CL 1929, 12827;—CL 1948, 722.642;—Am. 1972, Act 29, Imd. Eff. Feb. 19, 1972;—Am. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

#### **722.642a Selling cigarette separately prohibited; exception; violation as misdemeanor; penalty.**

Sec. 2a. (1) Except as otherwise provided in subsection (2), a person who sells tobacco products at retail shall not sell a cigarette separately from its package.

(2) Subsection (1) does not apply to a person who sells tobacco products at retail in a tobacco specialty retail store or other retail store that deals exclusively in the sale of tobacco products and smoking paraphernalia.

(3) A person who violates subsection (1) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 for each offense.

History: Add. 1992, Act 272, Imd. Eff. Dec. 16, 1992.

#### **722.643 Noninterference with right of parent or guardian.**

Sec. 3. This act does not interfere with the right of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

History: 1915, Act 31, Eff. Aug. 24, 1915;—CL 1915, 5187;—CL 1929, 12828;—CL 1948, 722.643;—Am. 1972, Act 29, Imd. Eff. Feb. 19, 1972;—Am. 1988, Act 314, Eff. Mar. 30, 1989.

#### **722.644 Definitions.**

Sec. 4. As used in this act:

(a) "Minor" means an individual under 18 years of age.

(b) "Person who sells tobacco products at retail" means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to state sales tax.

(c) "Public place" means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business.

(d) "Tobacco product" means a product that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, and cigars.

(e) "Use a tobacco product" means to smoke, chew, suck, inhale, or otherwise consume a tobacco product.

History: Add. 1988, Act 314, Eff. Mar. 30, 1989;—Am. 1992, Act 272, Imd. Eff. Dec. 16, 1992;—Am. 2006, Act 236, Eff. Sept. 1, 2006.

Compiler's note: Previous section 4 of this act was not compiled.

#### **722.645 Short title.**

Sec. 5. This act shall be known and may be cited as the "youth tobacco act".

History: Add. 1988, Act 314, Eff. Mar. 30, 1989.





Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 231 (as passed by the Senate)  
Sponsor: Senator Rick Jones  
Committee: Regulatory Reform

Date Completed: 6-1-15

**RATIONALE**

The Youth Tobacco Act prohibits a retailer from selling or furnishing tobacco products to minors (individuals under 18 years old), and makes it illegal for a minor to purchase or possess tobacco products in all but a few limited circumstances. The Act also prescribes penalties associated with the possession of tobacco products by minors and the sale of tobacco products to minors. The Act applies only to tobacco products, however. Concerns have been raised by health advocates and others about the use of vapor products (e.g., electronic, or e-cigarettes) and alternative nicotine products by minors. Likewise, people are concerned because businesses and individuals can legally sell these products to minors. To address these concerns, it has been suggested that the sale of vapor products and alternative nicotine products to minors, and the possession and use of these products by minors, should be prohibited.

**CONTENT**

**The bill would amend the Youth Tobacco Act to do the following:**

- Prohibit a person from selling or giving a vapor product or alternative nicotine product to a minor.
- Require signs posted by retailers to indicate that the purchase of vapor or alternative nicotine products by minors was illegal.
- Require a person to verify that an individual was at least 18 before selling or furnishing a vapor product or alternative nicotine product to him or her.
- Extend the affirmative defense of having and enforcing a preventative written policy to a charge of selling a vapor or alternative nicotine product to a minor.
- Prohibit a minor from possessing or using a vapor product or alternative nicotine product.

The bill would take effect 90 days after its enactment.

**Selling, Giving, or Furnishing Vapor or Alternative Nicotine Product to a Minor**

The bill would prohibit a person from selling, giving, or furnishing a vapor product or alternative nicotine product to a minor, including through a vending machine or other means. Currently, it is a misdemeanor to sell, give, or furnish a tobacco product to a minor, and a violator is subject to a maximum \$50 fine for each violation. The bill would extend this penalty to the proposed prohibition.

The bill specifies that "tobacco product" would not include a vapor product, an alternative nicotine product, or a product regulated as a drug or device by the U.S. Food and Drug Administration (FDA). The bill would define "alternative nicotine product" as "a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means". The term would not include a tobacco product, a vapor product, or a product regulated as a drug or device by the FDA.

The bill would define "vapor product" as "a noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form". The term would include an electronic cigarette, electronic cigar, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in such a product or device. It would not include a product regulated as a drug or device by the FDA.

#### Required Retail Sign

The Act requires a person who sells tobacco products at retail to post a conspicuous sign in a place close to the point of sale. The sign must include a specific statement about the illegality of the purchase of tobacco products by a minor. The Act also requires the Department of Community Health to produce the signs, and distribute them free of charge to people who sell tobacco products at retail. The bill would extend the sign requirement to a person who sells vapor products or alternative nicotine products at retail, and would modify the sign's statement to include those products. Also, where the Act refers to the Department of Community Health, the bill instead would refer to the Department of Health and Human Services.

"Person who sells vapor products or alternative nicotine products at retail" would mean a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products or alternative nicotine products.

#### Age Verification Requirement

The bill would require a person to verify that an individual was at least 18 years old before selling, offering to sell, giving, or furnishing a vapor or alternative nicotine product to the individual. If the individual appeared to be under 27 years old, the person would have to examine a government-issued photographic identification that established that the individual was at least 18 years old. If the sale were made by the internet or another remote sales method, the person would have to perform an age verification through an independent, third-party age verification service that compared information from a commercially available database, or aggregate of databases, that was regularly used by government agencies and businesses for the purpose of verifying age and identity, to the personal information entered by the individual when ordering, that established that the individual was at least 18 years old. A person who violated the age-verification requirement would be guilty of a misdemeanor, and would be subject to a maximum \$50 fine for each violation.

#### Affirmative Defense & Employment Exemption

Currently, it is an affirmative defense to a charge of selling a tobacco product to a minor that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products to minors and that the defendant enforced and continues to enforce the policy. The bill would extend this affirmative defense to a charge of selling vapor products or alternative nicotine products to minors.

The Act's prohibition against giving or furnishing a tobacco product to a minor does not apply to the handling or transportation of the product by a minor under the terms of his or her employment. The bill would extend this exception to a minor's handling or transportation of a vapor product or alternative nicotine product.

#### Purchase, Possession, or Use of Vapor or Alternative Nicotine Products

The Act prohibits a minor from purchasing or attempting to purchase a tobacco product, possessing or attempting to possess a tobacco product, or using a tobacco product in a public place. It also prohibits a minor from presenting or offering to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age, for the purpose of purchasing, possessing, or attempting to purchase or possess a tobacco product. A violation is a misdemeanor punishable by a maximum fine of \$50 for each violation. Pursuant to a probation order, the court also may

require a violator to participate in a health promotion and risk reduction assessment program, if available. The Act also allows a court to order a violator to perform community service in a hospice, nursing home, or long-term care facility.

Under the bill, the prohibitions and penalties also would apply to activities involving tobacco products, vapor products, or alternative nicotine products.

The prohibitions do not apply to a minor participating in an undercover law enforcement operation or compliance check. They also do not apply to the handling or transportation of a tobacco product by a minor under the terms of his or her employment. The bill would refer to a vapor product or alternative nicotine product, as well as a tobacco product, in those provisions.

MCL 722.641 et al.

## **BACKGROUND**

### **Introduction**

E-cigarettes, and similar devices, are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have a few basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) is heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer's specifications, and many manufacturers make nicotine-free solutions.

### **Regulation of E-Cigarettes**

The Food and Drug Administration regulates tobacco products through the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), unless a product is marketed for therapeutic purposes, in which case it is regulated by the drugs and devices provisions of the Federal Food, Drug, and Cosmetic Act (FDCA). In 2010, the FDA attempted to use its regulatory power under the FDCA to block shipments of e-cigarettes (marketed and labeled for "smoking pleasure") into the U.S., asserting that the e-cigarettes were adulterated, misbranded, or unapproved drug-device combinations regulated by the FDCA. The U.S. Court of Appeals for the District of Columbia Circuit, in *Sottera, Inc. v Food & Drug Administration*, 627 F.3d 891 (2010), held that the proper authority to regulate e-cigarettes arises out of the Tobacco Control Act, unless the device is marketed for therapeutic purposes.

The FDA signaled its intent to act along the jurisdictional boundaries set by the *Sottera* decision and regulate e-cigarettes and similar devices in accordance with the Tobacco Control Act. While rules regulating the advertising, ingredients, and sale of e-cigarettes and like devices were originally expected in late-2013, the FDA issued a Notice of Proposed Rulemaking (NPRM) and announced its proposed rules on April 24, 2014.<sup>1</sup> Among other things, the proposed rules would deem all products meeting the Tobacco Control Act's definition of a "tobacco product" to be subject to the FDA's authority.<sup>2</sup> The NPRM comment period ended on July 9, 2014, and final action on those rules is expected in June 2015.

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<sup>1</sup> "Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products", 79 Federal Register 23141, April 25, 2014; "FDA proposes to extend its tobacco authority to additional tobacco products, including e-cigarettes", FDA Press Release, 4-24-14, retrieved 5-21-15, at: <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm394667.htm>.

<sup>2</sup> Under the Tobacco Control Act, "tobacco product" means "any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product)". The definition does not include an article regulated as a drug or device. 21 U.S.C. § 321(rr)(1)-(2).

State regulation of e-cigarettes has taken a variety of approaches. A majority of states have enacted legislation banning the sale e-cigarettes to minors, or are in the process of enacting such legislation.<sup>3</sup> Some jurisdictions (e.g., New York City and New Jersey) have chosen to regulate vapor products in the same ways as their tobacco product counterparts.<sup>4</sup> In Michigan, there are no laws or regulations banning the possession and use of e-cigarettes or similar devices by minors, or the sale of these devices to minors.

### Health Impacts

Little is known about the health impact of vapor products, as few studies have been done to determine the effectiveness of e-cigarettes as nicotine delivery devices, or their impact on public health. The research conducted to-date has yielded mixed results from a public health perspective. For example, some studies have shown that smokers who use e-cigarettes for smoking cessation are more likely to report continued abstinence.<sup>5</sup> Other work suggests that e-cigarette vapors may have an effect similar to cigarette smoke in COPD-emphysema pathogenesis, or rejects, among other things, the claims made by e-cigarette manufacturers that e-cigarettes are a safer method of smoking or function as an effective smoking cessation method.<sup>6</sup> The effects of nicotine on the human body are well documented. In concentrations found in cigarettes, nicotine is a pharmacological agent that has a marked effect on brain and cardiovascular function.<sup>7</sup> However, small doses of nicotine can be highly toxic and potentially fatal.

One concern with vapor products is accidental skin exposure to the nicotine solution used in e-cigarettes, as nicotine is readily absorbed through the skin.<sup>8</sup> Exposure to some higher-concentration vapor product solutions could lead to systemic poisoning and death, simply through skin contact, or accidental ingestion.<sup>9</sup> This concern is heightened in the case of children, who generally have less tolerance to nicotine.<sup>10</sup> In addition, less is known about the impact of nicotine on adolescent development.

Other concerns deal with the operation of the devices themselves. Users and manufacturers of e-cigarettes have claimed that e-cigarettes may be a healthy alternative to smoking tobacco; however, much remains unknown about e-cigarette use. For instance, very little research has been done to determine the long-term effects of inhaling the vapor-causing components of the liquid (e.g., propylene glycol). Another issue is determining the actual concentration of nicotine delivered in the course of the product's use. A set of tests performed by the Georgetown University School of Medicine and the Schroeder Institute for Tobacco Research and Policy Studies, in addition to testing by the FDA, indicated that nicotine concentrations for e-cigarettes vary based on manufacturers, devices, and liquids, as well as "puff-to-puff".<sup>11</sup> The tests also indicated the

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<sup>3</sup> "Alternative Nicotine Products, Electronic Cigarettes", National Conference of State Legislatures, 5-19-15, retrieved 5-21-15, at: <http://www.ncsl.org/research/health/alternative-nicotine-products-e-cigarettes.aspx>.

<sup>4</sup> Morgan Windsor, "Bloomberg signs his last 22 bills; one regulates e-cigarette use", *CNN*, 12-31-13, retrieved 2-20-14 at: <http://edition.cnn.com/2013/12/30/politics/mayor-bloomberg-last-bills/index.html>; Reid Wilson, "Awaiting FDA, states pursue their own e-cigarette rules", *Washington Post GovBeat*, 10-29-13, retrieved 2-20-14 at: <http://www.washingtonpost.com/blogs/govbeat/wp/2013/10/29/awaiting-fda-states-pursue-their-own-e-cigarette-rules>.

<sup>5</sup> See, e.g., Jamie Brown, et al., "Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study", Research Report, *Addiction*, vol. 109: 1531-1540 (2014).

<sup>6</sup> See, respectively, Prashanth Shivalingappa, Colln Westphal, and Neeraj Vij, "Airway exposure of e-cigarette vapors Impairs autophagy and induces aggressive-formations", Abstract, *The FASEB Journal*, vol. 29 no. 1 Supplement, LB631 (April 2015), retrieved 5-21-15 at: [http://www.fasebj.org/content/29/1\\_Supplement/LB631.short](http://www.fasebj.org/content/29/1_Supplement/LB631.short), and Rachel Grana, Neal Benowitz, and Stanton Glantz, "E-Cigarettes: A Scientific Review", *Circulation*, vol. 129:1972-1986 (2014).

<sup>7</sup> U.S. Surgeon General, U.S. Department of Health and Human Services, *The Health Consequences of Smoking: Nicotine Addiction* (1988), iv, at: <http://profiles.nlm.nih.gov/ps/access/NNBBZD.pdf>.

<sup>8</sup> U.S. Surgeon General, *The Health Consequences of Smoking: Nicotine Addiction*, 16, 31, and 593.

<sup>9</sup> U.S. Surgeon General, *The Health Consequences of Smoking: Nicotine Addiction*, 607.

<sup>10</sup> International Programme on Chemical Safety, "Nicotine", *Poison Information Monograph*, at: <http://www.inchem.org/documents/pims/chemical/nicotine.htm#DivisionTitle:7.2.1.2%20Children>. See Section 7, on Toxicology.

<sup>11</sup> Nathan K. Cobb, et al., "Novel Nicotine Delivery Systems and Public Health: The Rise of the 'E-Cigarette'", *American Journal of Public Health* 100 (2010), 2340-2342, doi: 10.2105/AJPH.2010.199281; U.S. Food and Drug

presence of various irritants, solvents, genotoxins, and carcinogens.<sup>12</sup> The report noted that the presence of these substances was "of unclear significance but needs further consideration".

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill is needed to prevent minors from purchasing vapor products, such as e-cigarettes, and alternative nicotine products. As of May 2015, at least 42 other states, and one territory, have passed laws preventing the sale of e-cigarettes and like products to minors.<sup>13</sup> E-cigarette manufacturers develop fruit and other sweet flavorings that appeal to youths. Some retailers use cartoon characters in their marketing, or have developed "skins" for their e-cigarettes with designs featuring bright colors or games that are usually marketed to minors, such as Angry Birds.<sup>14</sup>

Additionally, surveys by the Centers for Disease Control and Prevention show that e-cigarette use among students in middle and high school is increasing. In 2011, the National Youth Tobacco Survey indicated that 4.7% of school students reported trying an e-cigarette in the past year.<sup>15</sup> By 2012, that percentage had increased to 10%, and an estimated 1.78 million students in middle and high school reported using e-cigarettes.<sup>16</sup> This is concerning because the effects of nicotine, and e-cigarette, use on adolescent development are not well understood and could have lasting implications for youths who use these products. Adult use of the products also is increasing and may continue to increase if minors continue to have access to these products and are able to develop an addiction to them when they are young. Young e-cigarette smokers also may shift to tobacco product use.

### **Opposing Argument**

The bill would not go far enough, in that it would categorize vapor products and alternative nicotine products separately from tobacco products. The differing categorization of these products could cause youths and other consumers to view vapor products and alternative nicotine products as being fundamentally different from tobacco products. Any attempt to define these products separately from tobacco products also could conflict with the FDA's proposed regulations. The State should include e-cigarettes and other nicotine-containing vapor products in the existing definition of tobacco products, making it clear that they would be subject to the same restrictions. Furthermore, this designation would allow the State to tax those products as tobacco products.

**Response:** Michigan is one of the few states that has not passed legislation to prevent minors from accessing e-cigarettes and similar devices. The bills would prevent retailers from selling vapor products and alternative nicotine devices to minors, and prevent minors from buying or possessing these products. The legislation would be a good first step, and could be amended or supplemented once the FDA provides more guidance.

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

The bill could result in a marginal increase in misdemeanor penalties associated with violations of the Youth Tobacco Act. These misdemeanors are punishable by a fine of up to \$50, the revenue

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Administration, "Evaluation of e-cigarettes", 2009, retrieved 2-20-14 at: <http://www.fda.gov/downloads/Drugs/ScienceResearch/UCM173250.pdf>.

<sup>12</sup> Cobb, et al., 2341.

<sup>13</sup> See n.3.

<sup>14</sup> See <http://www.whitecloudellectroniccigarettes.com/accessories/vapor-jackets>.

<sup>15</sup> Catherine Corey, et al., "Notes from the Field: Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012", *Morbidity and Mortality Weekly Report* 62 (9-6-13), 729. Actual survey data and other information are available at: [http://www.cdc.gov/tobacco/data\\_statistics/surveys/nyts](http://www.cdc.gov/tobacco/data_statistics/surveys/nyts).

<sup>16</sup> Corey, et al., 729.

# SENATE BILL No. 231

March 24, 2015, Introduced by Senators JONES, SCHUITMAKER, PROOS, MARLEAU, BOOHER, SMITH, ROCCA, EMMONS, ZORN and KNOLLENBERG and referred to the Committee on Judiciary.

A bill to amend 1915 PA 31, entitled  
"Youth tobacco act,"  
by amending the title and sections 1, 2, and 4 (MCL 722.641,  
722.642, and 722.644), as amended by 2006 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

## TITLE

1  
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An act to prohibit the selling, giving, or furnishing of  
tobacco products, VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS  
to minors; to prohibit the purchase, possession, or use of tobacco  
products, VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS by  
minors; to regulate the retail sale of tobacco products, VAPOR  
PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS; to prescribe  
penalties; and to prescribe the powers and duties of certain state  
agencies and departments.

Sec. 1. (1) A person shall not sell, give, or furnish a

SENATE BILL No. 231

1 tobacco product, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT to  
2 a minor, INCLUDING, BUT NOT LIMITED TO, THROUGH A VENDING MACHINE.  
3 A person who violates this subsection OR SUBSECTION (8) is guilty  
4 of a misdemeanor punishable by a fine of not more than \$50.00 for  
5 each violation.

6 (2) A person who sells tobacco products, VAPOR PRODUCTS, OR  
7 ALTERNATIVE NICOTINE PRODUCTS at retail shall post, in a place  
8 close to the point of sale and conspicuous to both employees and  
9 customers, a sign produced by the department of ~~community health~~  
10 AND HUMAN SERVICES that includes the following statement:

11 "The purchase of A tobacco ~~products-PRODUCT~~, VAPOR PRODUCT, OR  
12 ALTERNATIVE NICOTINE PRODUCT by a minor under 18 years of age and  
13 the provision of A tobacco ~~products-PRODUCT~~, VAPOR PRODUCT, OR  
14 ALTERNATIVE NICOTINE PRODUCT to a minor are prohibited by law. A  
15 minor WHO unlawfully ~~purchasing-PURCHASES~~ or ~~using-USES~~ A tobacco  
16 ~~products-PRODUCT~~, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT is  
17 subject to criminal penalties."

18 (3) If the sign required under subsection (2) is more than 6  
19 feet from the point of sale, it ~~shall-MUST~~ be 5-1/2 inches by 8-1/2  
20 inches and the statement required under subsection (2) ~~shall-MUST~~  
21 be printed in 36-point boldfaced type. If the sign required under  
22 subsection (2) is 6 feet or less from the point of sale, it ~~shall~~  
23 MUST be 2 inches by 4 inches and the statement required under  
24 subsection (2) ~~shall-MUST~~ be printed in 20-point boldfaced type.

25 (4) The department of ~~community health-HEALTH AND HUMAN~~  
26 SERVICES shall produce the sign required under subsection (2) and  
27 have adequate copies of the sign ready for distribution to licensed

1 wholesalers, secondary wholesalers, and unclassified acquirers of  
 2 tobacco products **AND TO PERSONS WHO SELL VAPOR PRODUCTS OR**  
 3 **ALTERNATIVE NICOTINE PRODUCTS AT RETAIL** free of charge. Licensed  
 4 wholesalers, secondary wholesalers, and unclassified acquirers of  
 5 tobacco products shall obtain copies of the sign from the  
 6 department of ~~community health~~ **AND HUMAN SERVICES** and distribute  
 7 them free of charge, upon request, to persons who **SELL TOBACCO**  
 8 **PRODUCTS AND WHO** are subject to subsection (2). The department of  
 9 ~~community health~~ **AND HUMAN SERVICES** shall provide copies of the  
 10 sign free of charge, upon request, to persons subject to subsection  
 11 (2) who do not purchase their supply of tobacco products from  
 12 wholesalers, secondary wholesalers, and unclassified acquirers of  
 13 tobacco products licensed under the tobacco products tax act, 1993  
 14 PA 327, MCL 205.421 to 205.436, **AND TO PERSONS WHO SELL VAPOR**  
 15 **PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS AT RETAIL.**

16 (5) It is an affirmative defense to a charge under subsection  
 17 (1) that the defendant had in force at the time of arrest and  
 18 continues to have in force a written policy to prevent the sale of  
 19 tobacco products, **VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS,**  
 20 **AS APPLICABLE,** to persons under 18 years of age and that the  
 21 defendant enforced and continues to enforce the policy. A defendant  
 22 who proposes to offer evidence of the affirmative defense described  
 23 in this subsection shall file ~~and serve~~ notice of the defense, in  
 24 writing, ~~upon~~ **WITH** the court and **SERVE A COPY OF THE NOTICE ON** the  
 25 prosecuting attorney. The **DEFENDANT SHALL SERVE THE** notice ~~shall be~~  
 26 ~~served~~ not less than 14 days before the date set for trial.

27 (6) A prosecuting attorney who proposes to offer testimony to



1 rebut the affirmative defense described in subsection (5) shall  
2 file ~~and serve a~~ notice of rebuttal, in writing, ~~upon~~ WITH the  
3 court and **SERVE A COPY OF THE NOTICE ON** the defendant. The  
4 **PROSECUTING ATTORNEY SHALL SERVE THE** notice ~~shall be served not~~  
5 less than 7 days before the date set for trial and shall ~~contain~~  
6 **INCLUDE IN THE NOTICE** the name and address of each rebuttal  
7 witness.

8 (7) Subsection (1) does not apply to the handling or  
9 transportation of a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**  
10 **NICOTINE PRODUCT** by a minor under the terms of ~~that~~ THE minor's  
11 employment.

12 (8) **BEFORE SELLING, OFFERING FOR SALE, GIVING, OR FURNISHING A**  
13 **VAPOR PRODUCT OR ALTERNATIVE NICOTINE PRODUCT TO AN INDIVIDUAL, A**  
14 **PERSON SHALL VERIFY THAT THE INDIVIDUAL IS AT LEAST 18 YEARS OF AGE**  
15 **BY DOING 1 OF THE FOLLOWING:**

16 (A) IF THE INDIVIDUAL APPEARS TO BE UNDER 27 YEARS OF AGE,  
17 **EXAMINING A GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION THAT**  
18 **ESTABLISHES THAT THE INDIVIDUAL IS AT LEAST 18 YEARS OF AGE.**

19 (B) **FOR SALES MADE BY THE INTERNET OR OTHER REMOTE SALES**  
20 **METHOD, PERFORMING AN AGE VERIFICATION THROUGH AN INDEPENDENT,**  
21 **THIRD-PARTY AGE VERIFICATION SERVICE THAT COMPARES INFORMATION**  
22 **AVAILABLE FROM A COMMERCIALY AVAILABLE DATABASE, OR AGGREGATE OF**  
23 **DATABASES, THAT ARE REGULARLY USED BY GOVERNMENT AGENCIES AND**  
24 **BUSINESSES FOR THE PURPOSE OF AGE AND IDENTITY VERIFICATION TO THE**  
25 **PERSONAL INFORMATION ENTERED BY THE INDIVIDUAL DURING THE ORDERING**  
26 **PROCESS THAT ESTABLISHES THAT THE INDIVIDUAL IS 18 YEARS OF AGE OR**  
27 **OLDER.**

1       Sec. 2. (1) Subject to subsection (3), a minor shall not do  
2 any of the following:

3       (a) Purchase or attempt to purchase a tobacco product, VAPOR  
4 PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT.

5       (b) Possess or attempt to possess a tobacco product, VAPOR  
6 PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT.

7       (c) Use a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE  
8 NICOTINE PRODUCT in a public place.

9       (d) Present or offer to an individual a purported proof of age  
10 that is false, fraudulent, or not actually his or her own proof of  
11 age for the purpose of purchasing, attempting to purchase,  
12 possessing, or attempting to possess a tobacco product, VAPOR  
13 PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT.

14       (2) An individual who violates subsection (1) is guilty of a  
15 misdemeanor punishable by a fine of not more than \$50.00 for each  
16 violation. Pursuant to a probation order, the court may also  
17 require an individual who violates subsection (1) to participate in  
18 a health promotion and risk reduction assessment program, if  
19 available. An individual who is ordered to participate in a health  
20 promotion and risk reduction assessment program under this  
21 subsection is responsible for the costs of participating in the  
22 program. In addition, an individual who violates subsection (1) is  
23 subject to the following:

24       (a) For the first violation, the court may order the  
25 individual to do 1 of the following:

26       (i) Perform not more than 16 hours of community service in a  
27 hospice, nursing home, or long-term care facility.

1       (ii) Participate in a health promotion and risk reduction  
2 program, as described in this subsection.

3       (b) For a second violation, in addition to participation in a  
4 health promotion and risk reduction program, the court may order  
5 the individual to perform not more than 32 hours of community  
6 service in a hospice, nursing home, or long-term care facility.

7       (c) For a third or subsequent violation, in addition to  
8 participation in a health promotion and risk reduction program, the  
9 court may order the individual to perform not more than 48 hours of  
10 community service in a hospice, nursing home, or long-term care  
11 facility.

12       (3) Subsection (1) does not apply to a minor participating in  
13 any of the following:

14       (a) An undercover operation in which the minor purchases or  
15 receives a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE**  
16 **PRODUCT** under the direction of the minor's employer and with the  
17 prior approval of the local prosecutor's office as part of an  
18 employer-sponsored internal enforcement action.

19       (b) An undercover operation in which the minor purchases or  
20 receives a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE**  
21 **PRODUCT** under the direction of the state police or a local police  
22 agency as part of an enforcement action, unless the initial or  
23 contemporaneous purchase or receipt of the tobacco product, **VAPOR**  
24 **PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT** by the minor was not under  
25 the direction of the state police or the local police agency and  
26 was not part of the undercover operation.

27       (c) Compliance checks in which the minor attempts to purchase

1 tobacco products for the purpose of satisfying federal substance  
 2 abuse block grant youth tobacco access requirements, if the  
 3 compliance checks are conducted under the direction of a substance  
 4 ~~abuse~~ **USE DISORDER** coordinating agency ~~as defined in section 6103~~  
 5 ~~of the public health code, 1978 PA 368, MCL 333.6103,~~ and with the  
 6 prior approval of the state police or a local police agency.

7 (4) Subsection (1) does not apply to the handling or  
 8 transportation of a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**  
 9 **NICOTINE PRODUCT** by a minor under the terms of ~~that~~ **THE** minor's  
 10 employment.

11 (5) This section does not prohibit ~~the~~ **AN** individual from  
 12 being charged with, convicted of, or sentenced for any other  
 13 violation of law ~~arising~~ **THAT ARISES** out of the violation of  
 14 subsection (1).

15 Sec. 4. As used in this act:

16 (A) **"ALTERNATIVE NICOTINE PRODUCT"** MEANS A NONCOMBUSTIBLE  
 17 PRODUCT CONTAINING NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION,  
 18 WHETHER CHEWED, ABSORBED, DISSOLVED, OR INGESTED BY ANY OTHER  
 19 MEANS. ALTERNATIVE NICOTINE PRODUCT DOES NOT INCLUDE A TOBACCO  
 20 PRODUCT, A VAPOR PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR  
 21 DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER  
 22 SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC  
 23 351 TO 360EEE-4.

24 (B) ~~(a)~~ **"Minor"** means an individual ~~under~~ **WHO IS LESS THAN 18**  
 25 years of age.

26 (C) **"PERSON WHO SELLS VAPOR PRODUCTS OR ALTERNATIVE NICOTINE**  
 27 **PRODUCTS AT RETAIL"** MEANS A PERSON WHOSE ORDINARY COURSE OF

1 BUSINESS CONSISTS, IN WHOLE OR IN PART, OF THE RETAIL SALE OF VAPOR  
2 PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS.

3 (D) ~~(b)~~—"Person who sells tobacco products at retail" means a  
4 person whose ordinary course of business consists, in whole or in  
5 part, of the retail sale of tobacco products subject to state sales  
6 tax.

7 (E) ~~(e)~~—"Public place" means a public street, sidewalk, or  
8 park or any area open to the general public in a publicly owned or  
9 operated building or public place of business.

10 (F) ~~(d)~~—"Tobacco product" means a product that contains  
11 tobacco and is intended for human consumption, including, but not  
12 limited to, cigarettes, noncigarette smoking tobacco, or smokeless  
13 tobacco, as those terms are defined in section 2 of the tobacco  
14 products tax act, 1993 PA 327, MCL 205.422, and cigars. TOBACCO  
15 PRODUCT DOES NOT INCLUDE A VAPOR PRODUCT, AN ALTERNATIVE NICOTINE  
16 PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR DEVICE BY THE UNITED  
17 STATES FOOD AND DRUG ADMINISTRATION UNDER SUBCHAPTER V OF THE  
18 FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC 351 TO 360EEE-4.

19 (G) ~~(e)~~—"Use a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE  
20 NICOTINE PRODUCT" means to smoke, chew, suck, inhale, or otherwise  
21 consume a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE  
22 PRODUCT.

23 (H) "VAPOR PRODUCT" MEANS A NONCOMBUSTIBLE PRODUCT CONTAINING  
24 NICOTINE THAT EMPLOYS A HEATING ELEMENT, POWER SOURCE, ELECTRONIC  
25 CIRCUIT, OR OTHER ELECTRONIC, CHEMICAL, OR MECHANICAL MEANS,  
26 REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO PRODUCE VAPOR FROM  
27 NICOTINE IN A SOLUTION OR OTHER FORM. VAPOR PRODUCT INCLUDES AN

1 ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO,  
2 ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE AND A VAPOR CARTRIDGE  
3 OR OTHER CONTAINER OF NICOTINE IN A SOLUTION OR OTHER FORM THAT IS  
4 INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC  
5 CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR  
6 DEVICE. VAPOR PRODUCT DOES NOT INCLUDE A PRODUCT REGULATED AS A  
7 DRUG OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
8 UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21  
9 USC 351 TO 360EEE-4.

10 Enacting section 1. This amendatory act takes effect 90 days  
11 after the date it is enacted into law.

## What You Should Know About Electronic Cigarettes (E-Cigarettes)

### Key Points to Remember:

- E-cigarettes are NOT an approved U.S. Food and Drug Administration (FDA) quit tobacco device and should NOT be marketed as such.
- E-cigarettes are NOT a safe alternative to other forms of tobacco.
- The FDA considers e-cigarettes to be a tobacco product and will be regulating them as such.
- E-cigarettes are not currently regulated by the FDA and thus there is no oversight of e-cigarettes, e-hookah, or their associated components or refills to ensure they are safe.
- E-cigarettes may be particularly attractive to youth due to their novelty, the fact that they are sold in places easily accessible to youth, such as mall kiosks and gas stations, and their availability in flavors appealing to youth, including chocolate, strawberry, peach, and mango.
- There is currently no regulation at the federal or State of Michigan level prohibiting the sale of e-cigarettes to minors.

### What is an Electronic Cigarette?

E-cigarettes are products that allow a user to inhale aerosol containing nicotine and other substances. Unlike conventional cigarettes, e-cigarettes are typically composed of a rechargeable, battery-operated heating element, a cartridge that may contain nicotine or other chemicals, and an atomizer that, when heated, converts the contents of the cartridge into an aerosol.<sup>1</sup>

### Electronic Cigarettes are not an FDA-approved quit tobacco device

There are seven FDA-approved medications to treat tobacco dependence.<sup>2</sup> E-cigarettes are not FDA-approved for quitting tobacco.<sup>3</sup> Tobacco users who want to quit are encouraged to see their health care provider or to call 1-800-QUIT-NOW (1-800-784-8669) to receive evidence-based support in this process.

### Safety, Regulation and Quality Concerns

The FDA intends to regulate e-cigarettes as "tobacco products." In 2009, the FDA tested the ingredients of cartridges from two leading brands of e-cigarettes and found levels of cancer-causing and toxic chemicals, including diethylene glycol, an ingredient in antifreeze.<sup>4</sup> The FDA also found inconsistencies in manufacturing, raising concerns for consumers. In some cases cartridges labeled as containing no nicotine had nicotine.<sup>5,6</sup> Studies suggest adverse health impacts for both the user and bystanders ("secondhand vaping") associated with e-cigarettes, but additional studies are needed to understand the full impact of their use.<sup>7,8,9</sup>

The World Health Organization warns that nicotine exposure, whether through inhalation, ingestion, or skin contact, can be hazardous to the health and safety of children, young people, pregnant women, nursing mothers, people with heart conditions, and the elderly.<sup>10</sup> E-cigarette users refilling their own cartridges handle potentially dangerous concentrations of nicotine.<sup>11</sup> The American Association of Poison Control Centers has been tracking adult and child poisonings from e-cigarette components and refill fluids.<sup>12</sup> E-cigarettes also pose consumer safety concerns, having caused fires and injury to users.<sup>13,14,15</sup>

### Concerns for Youth

There is no federal age requirement to purchase e-cigarettes, and few states or local jurisdictions have laws prohibiting their sale to minors. In Michigan there is no state law that bars e-cigarette purchases by minors, though retailers as a matter of store policy are free to prohibit sales to minors.

E-cigarette companies aggressively market their product to youth as glamorous, healthy, and rebellious in both traditional and social media, using methods long-prohibited to conventional tobacco companies, such as celebrity endorsements.<sup>16,17,18</sup> Public health authorities are concerned that youth will be attracted to the novelty and flavors in e-cigarettes, and that e-cigarette use will lead to conventional tobacco use. Youth often believe e-cigarettes are safer than conventional tobacco use, and find e-cigarettes easy to conceal around adults.<sup>19,20</sup>

### About This Resource

This fact sheet was produced by the Michigan Department of Health and Human Services, Division of Chronic Disease and Injury Control, Tobacco Section. For more information about our work to change the negative health and economic impacts of tobacco in Michigan, visit [www.michigan.gov/tobacco](http://www.michigan.gov/tobacco).

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## ARTICLE VI. - OFFENSES INVOLVING DRUGS

### Sec. 58-261. - Possession and use of marihuana.

- (a) *Definition.* *Marihuana* means all parts of the plant *Cannabis sativa* L., growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.
- (b) *Possession.* No person shall possess or control marihuana within the City of South Lyon unless such possession or control is pursuant to a license or prescription, or otherwise allowed under the provisions of Public Act No. 368 of 1978 as amended. A violation of this subsection is a misdemeanor punishable as provided in section 1-14
- (c) *Use.* No person shall use marihuana within the City of South Lyon unless said use is pursuant to a license, prescription or otherwise allowed as provided by Public Act No. 368 of 1978 as amended. A violation of this subsection is a misdemeanor punishable by a fine of not more than \$100.00 plus costs of prosecution and/or imprisonment for not more than 90 days.

(Code 1988, § 9.251)

### Sec. 58-262. - Drug paraphernalia.

- (a) *Definitions.* The following words and phrases, when used in this section shall, for the purpose of this section, have the meaning respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

*Controlled substance* means any drug, substance or immediate precursor enumerated in schedule 1-5 of section 7201 to 7231 of the Public Health Code, being sections 333.7201 to 333.7231 of the Michigan Compiled Laws, as amended.

#### *Drug paraphernalia.*

- (1) *Drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:
  - a. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance, or from which a controlled substance can be derived.
  - b. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing a controlled substance.
  - c. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance.
  - d. Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.
  - e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.

- f. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose used, intended for use or designed for use in mixing with, diluting or cutting controlled substances.
- g. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana.
- h. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
- i. Capsules, balloons, envelopes or other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
- j. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
- k. Hypodermic syringes, needles or other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.
- l. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
  - 1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
  - 2. Water pipes.
  - 3. Carburetion tubes and devices.
  - 4. Smoking and carburetion masks.
  - 5. Roach clips, meaning objects used to hold burning material, such as marijuana cigarettes, that has become too small or too short to be held in the hand.
  - 6. Miniature cocaine spoons and cocaine vials.
  - 7. Chamber pipes.
  - 8. Carburetor pipes.
  - 9. Electric pipes.
  - 10. Air-driven pipes.
  - 11. Chillums.
  - 12. Bongs.
  - 13. Ice pipes or chillers.

(2) *Inclusions or exclusions from definition.* The following are either included in or excluded from, the definition, as indicated:

- a. Paper with colorful design or name design, or marketed for use with controlled substances is included in the definition. White paper or tobacco-oriented paper not designed or marketed for use with controlled substances and not displayed in proximity with other items within the definition is not included.
- b. Roach clips or other pincer-type devices designed or marketed for use with controlled substances are included in the definition. Common paper clips, tie clips, hair pins or alligator clips not designed or marketed for use with controlled substances and not displayed in proximity of other items within the definition are not included.
- c. Pipes, bongs and similar inhalers designed or marketed for use with controlled substances are included in the definition. Pipes and inhalers not designed or marketed for use with controlled substances and not displayed in proximity of other items within the definition are not included.

- d. Common household or retail items not designed or marketed for use with controlled substances and not displayed in proximity of other items within the definition are not included.
- (3) *Additional considerations.* In determining whether an object is "drug paraphernalia," a court or other authority should consider, in addition to all other logically relevant factors, the following:
- a. Statements by an owner or by anyone in control of the object concerning its use.
  - b. Prior convictions, if any, of an owner, or of anyone in control of the object, under any local ordinance or state or federal law relating to any controlled substance.
  - c. The proximity of the object, in time and space, to a direct violation of this section.
  - d. The proximity of the object to controlled substances.
  - e. The existence of any residue of controlled substances on the object.
  - f. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver the object to a person or persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this section, shall not prevent a finding that the object is intended for use, or designed for use, as "drug paraphernalia."
  - g. Instructions, oral or written, provided with the object concerning its use.
  - h. Descriptive materials accompanying the object which explain or depict its use.
  - i. National or local advertising concerning the object's use.
  - j. The manner in which the object is displayed for sale.
  - k. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.
  - l. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.
  - m. The existence and scope of legitimate uses for the object in the community.
  - n. Expert testimony concerning the object's use.

*Market* means the act of marketing a product.

*Persons* means an individual, corporation, business trust, estate, trust, partnership or association.

(b) *Prohibitions.*

- (1) *Delivery, sale or marketing.* It is unlawful for any person to deliver, sell, market or possess with intent to deliver, sell or market drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.
- (2) *Possession.* It is unlawful for any person to use, or to possess with the intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.
- (3) *Advertisements.* It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(4) *Special offenses: delivery to minors.* Any person, 18 years of age or over who violates subsection (b)(1) of this section, by delivering drug paraphernalia to a person or persons under 18 years of age who is at least three years his or her junior is guilty of a special offense, which shall be punished as a misdemeanor of the first degree.

(5) *Exceptions.* The prohibition contained in subsection (b) of this section shall not apply to the following:

- a. To manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropodists, veterinarians, pharmacists or embalmers in the normal course of their respective businesses or professions.
- b. To common carriers or wholesalers of their employees engaged in the lawful transportation of such paraphernalia.
- c. To public officers or employees while engaged in the performance of their official duties.
- d. To persons suffering from diabetes, asthma or any other medical condition requiring self-injection.

(c) *Penalties for violations.*

(1) *Misdemeanor of the second degree.* Whoever violates any of the provisions of subsection (b) of this section shall be guilty of a misdemeanor of the second degree. A misdemeanor of the second degree shall be punished by a fine of not more than \$100.00 or by sentence of not more than 30 days of confinement in jail, or both, in the discretion of the court.

(2) *Misdemeanor of the first degree.* If the offender has previously been convicted of a violation of subsection (b) of this section, any subsequent violation of the same section shall be a misdemeanor of the first degree. A misdemeanor of the first degree shall be punished by a fine of not less than \$100.00 nor more than \$500.00 or by a sentence of not more than 90 days of confinement in jail, or both, in the discretion of the court.

(3) *Civil forfeiture.* Any drug paraphernalia used or possessed in violation of this section shall be seized and forfeited to the City of South Lyon or the seizing agency.

(4) *Separate offenses.* Each day that a violation of this section shall continue shall be deemed a separate and distinct offense.

(d) *Enforcement.*

(1) This section shall be enforced by the City of South Lyon Police Department, the Oakland County Sheriff's Department, the Michigan State Police and/or other law enforcement officers as may be designated by the city council.

(2) In the event any subsection, sentence, word, phrase or part of this section shall be held invalid, such holdings shall not affect the balance of the provisions hereof.

(Code 1988, § 9.252; Ord. of 12-8-97(1), §§ 1—5)

Sec. 58-263. - Fraud and deceit in obtaining drugs, syringes.

Any fraud, deceit, misrepresentation, subterfuge, concealment of a material fact, or the use of a false name or the giving of a false address for the purpose of obtaining any narcotic drug or barbituric acid or any derivative, compound, preparation or mixture thereof or hypodermic syringe or needle or other instrument or implement or empty gelatin capsules or false statement on any prescription blank shall be deemed a violation of this article. No person who shall have obtained the possession of any narcotic drugs, hypodermic syringes, needles or other instruments or implements adapted for the use of such drugs or empty gelatin capsules pursuant to the terms of this article shall use the same or permit or authorize their use for any purpose other than that specifically authorized in the prescription or order by means of which such possession was obtained.

(Code 1988, § 9.254)

**Sec. 58-264. - Inhalation prohibited.**

No person shall inhale, drink, eat or otherwise introduce into his respiratory or circulatory system, any compound, liquid, chemical, or any substance known as glue, adhesive, cement, mucilage, dope, plastic solvent or any other material or substance or combination thereof with the intent of becoming intoxicated, elated, dazed, paralyzed, irrational, or in any manner changing, distorting or disturbing the eyesight, thinking process, judgment, balance or coordination of such person. For the purpose of this section, any such condition so induced shall be deemed to be an intoxicated condition.

(Code 1988, § 9.255)

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:** Per Council comments, City Attorney

**AGENDA TOPIC:** Second reading of Ordinance to amend the South Lyon Code of Ordinances to amend and add provisions prohibiting the use of vapor products and alternative nicotine delivery products on school property.

**EXPLANATION OF TOPIC:**

- Definitions for vapor products and alternative nicotine delivery products were added, and definition of tobacco product was revised.

This ordinance will amend Section 58-221 to prohibit the use of vapor products and alternative nicotine delivery products on school property except as provided for in the listed exemptions.

**MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed Ordinance Amendment amending Section 58-221
- Current South Lyon Section 58-221

**POSSIBLE COURSES OF ACTION:** approve/deny/postpone/table second reading of proposed ordinance amendment

**RECOMMENDATION:** Approve the second reading of the ordinance amendment

**SUGGESTED MOTION:** Motion to approve the second reading of the ordinance amending Section 58-221 to prohibit the use of tobacco products, vapor products and alternative nicotine delivery products on school property.

ORDINANCE NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CITY OF SOUTH LYON CODE OF ORDINANCES, CHAPTER 58 - OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE V - OFFENSES INVOLVING MINORS, DIVISION 1 - GENERALLY, TO AMEND SECTION 58-221 - USE OF TOBACCO PRODUCTS ON SCHOOL PROPERTY TO ADD PROVISIONS PROHIBITING THE USE VAPOR PRODUCTS AND ALTERNATIVE NICOTINE DELIVERY PRODUCTS ON SCHOOL PROPERTY.

**THE CITY OF SOUTH LYON ORDAINS:**

**PART I. Amendment to Section 58-221 - Use of Tobacco Products on School Property.** Chapter 58 – Offenses and Miscellaneous Provisions, Article V - Offense Involving Minors, Division 1 - Generally, Section 58-221 - Use of Tobacco Products on School Property, of the City of South Lyon Code of Ordinances is hereby amended to read as follows:

**ARTICLE V. - OFFENSES INVOLVING MINORS**

**DIVISION 1 - GENERALLY**

**Sec. 58-221. - Use of tobacco products, vapor products and alternative nicotine delivery products on school property.**

(a) *Prohibition.* Except as otherwise provided in subsection (d) of this section, a person shall not use a tobacco product, vapor product or alternative nicotine delivery product on school property.

(b) *Violation.* A person who violates subsection (a) of this section is guilty of a misdemeanor, punishable by a fine of not more than \$50.00.

(c) *Definitions.* As used in this section:

(1) *Alternative nicotine product* means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

(2) *School district* means a school district, local act school district, or intermediate school district, as those terms are defined in the School Code of 1976, Act Number 451 of the Public Act of 1976, being MCL 380.1—380.1852; a joint high school district formed under part 3A of Act Number 451 of the Public Acts of 1976, being MCL 380.171—380.187; or a consortium of cooperative arrangement consisting of any combination of these.

(3) *School property* means a building, facility, or structure and other real estate owned, leased, or otherwise controlled by a school district.

(4) *Tobacco product* means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, and cigars. Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.

(5) *Use a tobacco product, vapor product or alternative nicotine delivery product* means to smoke, chew, suck, inhale, or otherwise consume a tobacco product, vapor product or alternative nicotine delivery product.

(6) *Vapor product* means a noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration.

(d) *Exceptions.* Subsection (a) of this section does not apply to that part of school property consisting of outdoor areas including, but not limited to, an open-air stadium, during either of the following time periods:

(1) Saturdays, Sundays, and other days on which there are no regularly scheduled school hours.

(2) After 6:00 p.m. on days during which there are regularly scheduled school hours.

**PART II. Severability.** Should any division, section, subsection, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART III. Savings Clause.** The amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance.

**PART IV. Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**PART V. Effective Date; Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date



of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the South Lyon City Council this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John Galeas, Jr., Mayor

\_\_\_\_\_  
Lisa Deaton, City Clerk

#### Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the South Lyon City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Lisa Deaton, City Clerk

Adopted:  
Published:  
Effective:

Sec. 58-221. - Use of tobacco products on school property.

(a) *Prohibition.* Except as otherwise provided in subsection (d) of this section, a person shall not use a tobacco product on school property.

(b) *Violation.* A person who violates subsection (a) of this section is guilty of a misdemeanor, punishable by a fine of not more than \$50.00.

(c) *Definitions.* As used in this section:

(1) *School district* means a school district, local act school district, or intermediate school district, as those terms are defined in the School Code of 1976, Act Number 451 of the Public Act of 1976, being MCL 380.1—380.1852; a joint high school district formed under part 3A of Act Number 451 of the Public Acts of 1976, being MCL 380.171—380.187; or a consortium of cooperative arrangement consisting of any combination of these.

(2) *School property* means a building, facility, or structure and other real estate owned,

leased, or otherwise controlled by a school district.

(3) *Tobacco product* means a preparation of tobacco to be inhaled, chewed, or placed in a person's mouth.

(4) *Use a tobacco product* means any of the following:

- a. The carrying by a person of a lighted cigar, cigarette, pipe, or other lighted, smoking devise.
- b. The inhaling or chewing of a tobacco product.
- c. The placing of a tobacco product within a person's mouth.

(d) *Exceptions.* Subsection (a) of this section does not apply to that part of school property consisting of outdoor areas including, but not limited to, an open-air stadium, during either of the following time periods:

- (1) Saturdays, Sundays, and other days on which there are no regularly scheduled school hours.

(2) After 6:00 p.m. on days during which there are regularly scheduled school hours.

*(Ord. of 7-28-97(2), § 1(9.217))*

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:** Pursuant to Council direction, Planning Commission recommendation and City Attorney

**AGENDA TOPIC:** Second reading of Mobile Food Vending Ordinance

**EXPLANATION OF TOPIC:**

- No changes from first reading

In late 2015, the Council directed that the City administration prepare and submit to the Planning Commission for review and recommendation a proposed ordinance to allow food trucks within the City South Lyon. The attached Mobile Food Vending Ordinance is the result of that process. The Planning Commission recommended approval of the proposed ordinance on February 11, 2016 subject to several text revisions and changes to the documents identifying locations on city-owned and public property where mobile food vending will be permitted. The Planning Commission directed that the areas of parking lots and street spaces adjacent or across from residential areas on Chief Kennedy's four pages of spaces/areas be eliminated and that the McHattie and Volunteer Park parking lots be open to mobile food vending. Concerns have been raised about allowing mobile food vending in the McHattie Park parking lot due limit spaces and high demand during events. Council should consider that issue.

A brief summary of the ordinance is as follows:

Division 1

Section 22-231 – Intent  
Section 22-232 – Definitions  
Section 22-233 – Permit required  
Section 22-234 – Exemptions

Division 2 – Mobile food vendor license (applies to vendors only)

Section 22-241 – Application (mobile food vendor)  
Section 22-242 – Investigation  
Section 22-243 – Fees  
Section 22-244 – License duration – there are two 6-month periods for licenses April through October and November through March. This allows for renewal periodically without being overly burdensome on the City administration. The April to October period will likely be more popular due to the summer months.  
Section 22-245 – Licenses not transferable or assignable  
Section 22-246 – License display  
Section 22-247 – License denial – this lists the bases for a denial of a license, application or renewal and related procedures including an appeal to Council (this could be changed to an appeal to City Manager)

Section 22-248 – License revocation or suspension – this sets out reasons for suspension or revocation and other procedures relating to violations, etc.

Section 22-249 – Requirements and operational regulations – this section contains all the regulations on mobile food vendors and operations. This applies to both public and private property. Please review these carefully in particular subsections 8 (distance from special events), 9 (hours of operation), 10, 17, 22, 23.

Section 22-250 – Impoundment.

Section 22-251 – Other permits and licenses.

Division 3 – Mobile Food Vending Sponsor Licenses – this division applies to private property owners who want to invite and allow a licensed mobile food vendor to locate and operate on their property in the B-2 or B-3 zoning districts.

Section 22-261 – Application – basically the city needs enough information to review the site and the proposed location for a mobile food vendor unit so it can be reviewed and any problems, restrictions, or appropriate conditions can be included – or a denial if necessary.

Section 22-262 – Fees – the application should be the same as for a vendor to cover administrative costs, the license fee should be low because these applicants own property in the City.

Section 22-263 – license duration – one year

Section 22-264 – license not transferable or assignable

Section 22-265 – license denial

Section 22-266 – license revocation and suspension

Section 22-267 – Requirements and operational regulations – written permission from the land owner to mobile food vendor for specific dates and times must be provided. Both the vendor and the sponsor must have licenses. Only one mobile food vending unit per site at a time. Unit cannot occupy a parking space needed to meet minimum parking requirements, sponsor is responsible for making sure vendor operates in compliance with its license and the ordinance

Division 4 – Enforcement

Section 22-271 – violation is a municipal civil infraction

If this ordinance proceeds through first reading, resolutions will be needed to address application and license fees, eligible and designated public spaces and areas where mobile food vending will be allowed, and to establish applicable fire department requirements.

The City Administration will also need to create an application and a procedural review routing sheet/checklist

#### **MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed mobile food vending ordinance
- Resolution to establish and set mobile food vending application and license fees
- Resolution to establish and designate permissible locations for mobile food vending on city-owned and public property within the City of South Lyon
- Resolution to establish Fire Department regulations and requirements pertaining too mobile food vending units and operations within the City of South Lyon

**POSSIBLE COURSES OF ACTION:**                      approve/deny/postpone/table

**RECOMMENDATION:** Approve second reading of Mobile Food Vending Ordinance

- Council may want to consider setting a specific effective to allow the City Administration to prepare and finalize applications, fees, and other administrative processes.

**SUGGESTED MOTION:** Motion to approve the second reading of the Mobile Food Vending Ordinance.



# SOUTH LYON FIRE DEPARTMENT

217 Whipple Street, South Lyon, MI 48178  
Phone: 248-437-2616 Fax: 248-437-3025  
southlyonfire.com

## MEMORANDUM

TO: City Attorney Tim Wilhelm

FROM: Fire Chief Mike Kennedy

DATE: February 17, 2016

RE: Food Truck Location Recommendations

CC: City Manager Lynne Ladner, Police Chief Lloyd Collins

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As requested, below are the recommended locations for transient food trucks. These locations would apply for trucks, trailers, or portable grills. The restrictions as outlined in the October 7, 2015 memorandum would also apply at these locations. Additionally, this activity would only be allowed in designated parking spots in the areas defined below. This document is designed to provide an approximate idea of acceptable locations. It is recommended that Oakland County GIS be used to generate more accurate maps.

- City-owned Whipple Street parking lot – entire lot
- City-owned parking lot on northwest corner of Liberty and Lafayette – entire lot
- City-owned Volunteer Park parking lot – entire lot
- City-owner McHattie Park north and south parking lots – entire lot
- Portions of city-owned “Veterans” lot on the southwest corner of Liberty and Lafayette (see attached map)
- Portions of city-owned Wells Street lot (see attached map)
- On street parking in the area of South Wells and East Liberty (see attached map)





# SOUTH LYON FIRE DEPARTMENT

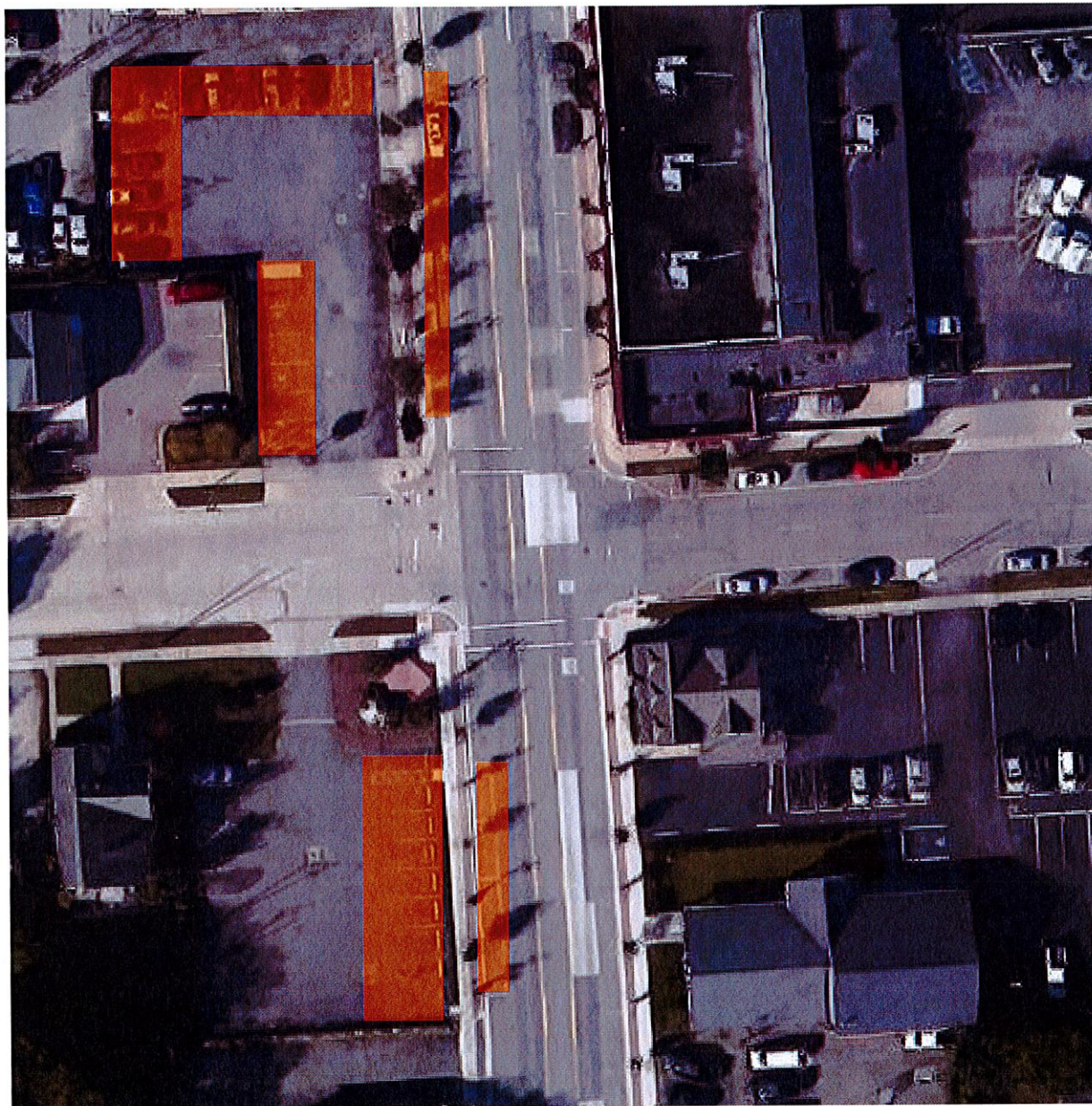
217 Whipple Street, South Lyon, MI 48178

Phone: 248-437-2616 Fax: 248-437-3025

[southlyonfire.com](http://southlyonfire.com)

## CITY-OWNED LOTS (LAFAYETTE and LIBERTY)

Orange shading indicates approved areas







# SOUTH LYON FIRE DEPARTMENT

217 Whipple Street, South Lyon, MI 48178

Phone: 248-437-2616 Fax: 248-437-3025

[southlyonfire.com](http://southlyonfire.com)

## CITY-OWNED WELLS STREET LOT

Orange shading indicates approved areas







## SOUTH LYON FIRE DEPARTMENT

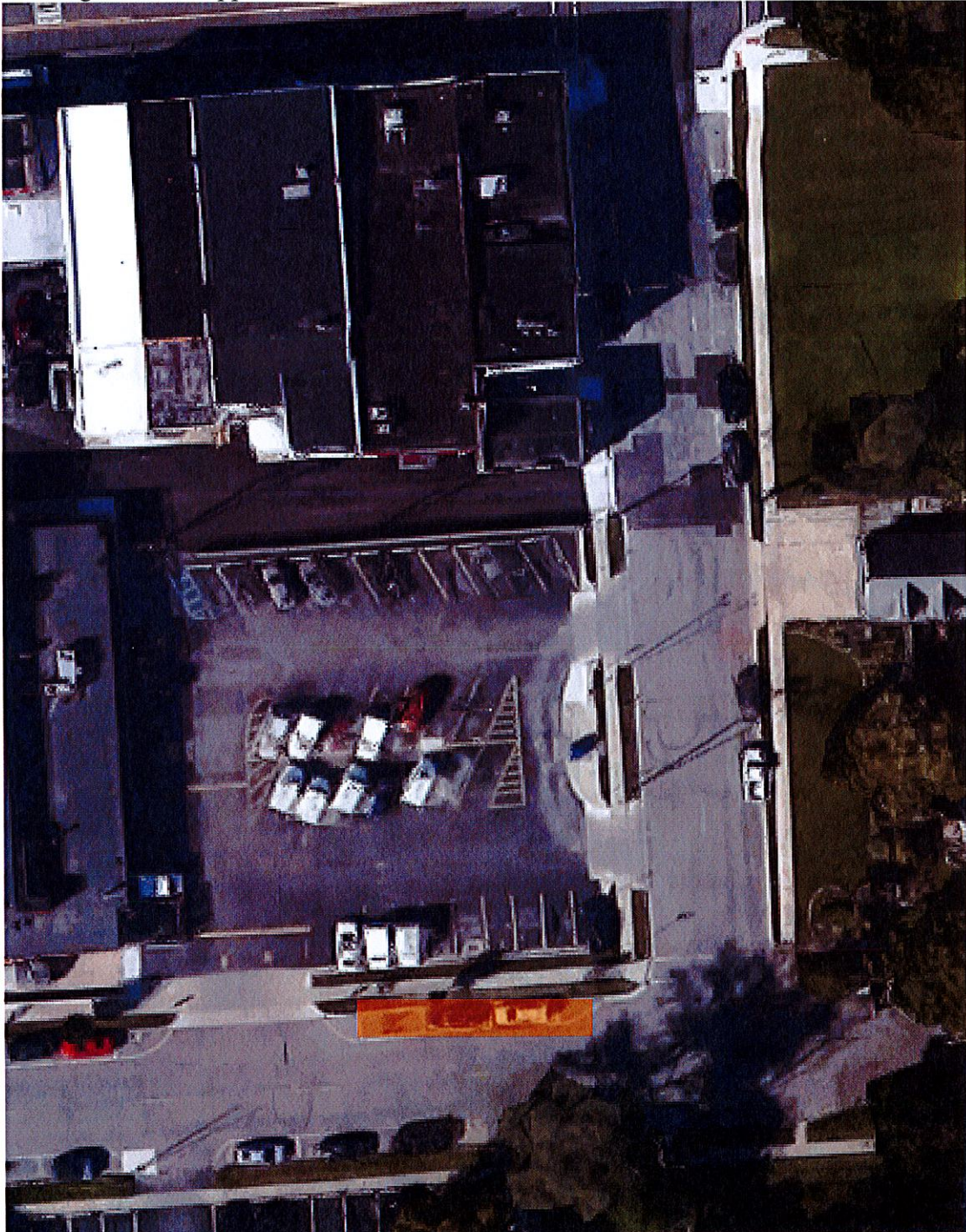
217 Whipple Street, South Lyon, MI 48178

Phone: 248-437-2616 Fax: 248-437-3025

[southlyonfire.com](http://southlyonfire.com)

### STREET LOCATIONS ON EAST LIBERTY and SOUTH WELLS

Orange shading indicates approved areas



ORDINANCE NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CITY OF SOUTH LYON CODE OF ORDINANCES, CHAPTER 22 – BUSINESSES, TO ADD ARTICLE IX - MOBILE FOOD VENDING, SECTIONS 22-231 THROUGH 22-279, SETTING FORTH REGULATIONS CONCERNING THE LICENSING AND OPERATIONS OF MOBILE FOOD VENDING UNITS AND MOBILE FOOD VENDORS

THE CITY OF SOUTH LYON ORDAINS:

**PART I. Amendment to Chapter 22.** Chapter 22– Businesses, is amended to add the following Article IX - Mobile Food Vending, Sections 22-231 through 22-279 as follows:

ARTICLE IX. - MOBILE FOOD VENDING.

DIVISION 1 - Generally.

Sec. 22-231. – Intent.

- (a) To provide for the regulation of mobile food vendors and mobile food vending operations and activities.
- (b) To allow mobile food vendors an opportunity to operate in the City of South Lyon on designated public property and on private property in the B-2 and B-3 districts subject to these regulations.
- (c) To offer a variety of food for sale through mobile food vendors for consumption by the public.
- (d) To ensure the highest quality offerings of food for sale to the public.
- (e) To ensure that mobile food vendors add to the vibrancy, vitality, desirability, and aesthetic appeal of the City.
- (f) To balance the interests of existing food establishments and other businesses in the City, residents, and mobile food vendors, and the public desiring additional options for food service in the City of South Lyon.
- (g) To ensure mobile food vendors meet all applicable federal, state, county and local laws, ordinances, and health codes.
- (h) To protect the public health safety and welfare.

Sec. 22-232. – Definitions.

- (a) Mobile Food Vending shall mean vending, serving, or offering for sale food and/or beverages from a mobile food vending unit which meets the definition of a Food Service Establishment under Public Act 92 of 2000, including a mobile food establishment.
- (b) Mobile Food Vending Unit shall mean any motorized or non-motorized vehicle, trailer, cart, stand, or other device designed to be portable and not permanently attached to the ground from which food is vended, served, or offered for sale.
- (c) Vendor shall mean any individual engaged in mobile food vending; if more than one individual is operating a single stand, cart or other means of conveyance, then vendor shall mean all individuals operating such single stand, cart or other means of conveyance.
- (d) Operate shall mean all activities associated with the conduct of business of a mobile food vending unit, including set up and take down and/or actual hours where the mobile food vending unit is open for business.
- (e) City shall mean the City of South Lyon.

Sec. 22-233. – Permit required.

No person shall engage in mobile food vending without first obtaining a license from the City authorizing mobile food vending and obtaining required licenses or permits required by state or local laws and codes. A private property owner shall not allow mobile food vending on its site without first obtaining a mobile food vending sponsor license from the City Clerk. The City Clerk shall prescribe the forms of such licenses and applications for such licenses.

Sec. 22-234. – Exemptions.

- (a) A person exempt from the licensing requirements of this ordinance under state or federal law.
- (b) A person engaging in mobile food vending at a farmers market, special event, festival, block party, or other event approved and permitted by the City of South Lyon.

Sec. 22-235 through 22-240 - Reserved.

DIVISION 2 - Mobile Food Vendor License

Sec. 22-241. – Application.

- (a) A person desiring to engage in mobile food vending in the City must submit to the City Clerk the required non-refundable application fee along with a written, sworn application, signed by the applicant, if an individual, or if a business entity, by a person with authority on behalf of a business entity, on a form to be furnished by the City Clerk, which shall contain the following information:

- (1) The applicant's full legal name, date of birth, current address, telephone number and email address, and a copy of the individual's driver's license, operator's license or state identification card with photograph, or other photograph identification acceptable to the City.
- (2) If the applicant is not an individual person, the applicant shall provide a list of all individuals who will be vending on its behalf, including each individual's full legal name, date of birth, current address, telephone number, and a copy of the individual's driver's license, operator's license or state identification card with photograph, or other photograph identification acceptable to the City, and relationship to the applicant.
- (3) The name under which the mobile food vendor will be doing business.
- (4) A description of food and beverages to be offered for sale from the mobile food vending unit.
- (5) A description and photograph of the mobile food vending unit, including height, width and length dimensions.
- (6) The proposed location(s) at which the applicant proposes and intends to engage in mobile food vending.
- (7) Proposed hours of operation, by date as applicable.
- (8) Copies of county health department mobile food establishment permit/license, and/or other permits/licenses.
- (9) A description of the heating sources and cooking equipment contained in the mobile food vending unit.
- (10) A description of the sanitation and hand-washing equipment in the mobile food vending unit.
- (11) A description of how and where waste water or grey water utilized or generated in the operation of the mobile food vending unit will be disposed.
- (12) A description of how and where waste, garbage, trash, refuse, litter, and debris generated in the operation of the mobile food vending unit will be disposed.
- (13) A description of any sources of electricity, water, or other utilities and whether such are self-contained in the mobile food vending unit.
- (14) A statement whether external electrical power or other utilities are needed, and if so, a description of such utilities and how they will be provided and written consent from the property owner from whom the utilities will be obtained.
- (15) If the mobile food vending unit is a licensed motor vehicle, proof of vehicle registration with the State of Michigan and proof of motor vehicle or other



applicable insurance for the unit in an amount meeting State of Michigan minimum requirements.

- (16) Proof of a comprehensive general liability policy written on an occurrence basis having policy limits of no less than \$1,000,000 per occurrence. A certificate of insurance naming the City as an additional insured shall be filed by the licensee with the approved application. The certificate shall provide that the City will receive 30 days written notice of cancellation or non-renewal.
  - (17) Signed indemnity and hold harmless agreement.
  - (18) A statement whether the applicant has ever had a mobile food vendor or similar food vending license or permit denied, revoked or suspended, and if so, the date, the jurisdiction and a statement of the reasons for the action.
  - (19) A statement as to whether or not the applicant, or any person listed on the application who may be vending on applicant's behalf, has been convicted of a crime, and, if so, the nature of the offense.
  - (20) Any other information or documentation requested by the City Clerk.
- (b) Any change in the information provided in the application shall be provided to the City Clerk within ten (10) calendar days of any such change.

#### Sec. 22-242 - Investigation.

Upon receipt of an application for a mobile food vendor license, an investigation of the applicant shall be conducted for the protection of the public good which may include, but is not limited to, a review of the applicant's background (including other listed individuals), an inspection of the mobile food vending unit and proposed operation locations, a review of the completeness of the application and its compliance with applicable laws, regulations and requirements.

#### Sec. 22-243. – Fees.

- (a) Application Fee. An application for a mobile food vending license shall be accompanied by the required application fee in an amount established by City Council resolution which shall be non-refundable.
- (b) License Fee. Each applicant to whom a license is granted shall pay a nonrefundable license fee in an amount established by City Council resolution.
- (c) There shall be no proration of fees.
- (d) No license fee shall be charged to any honorably discharged veteran of the United States military who is a resident of the State of Michigan and submits official documentation evidencing such to the City Clerk.

#### Sec. 22-244. – License duration.

Mobile food vendor licenses issued by the City Clerk shall be valid for six (6) calendar months and shall be issued and valid for either the period April 1 to October 31 or November 1 to March 31 unless otherwise revoked or suspended.

Sec. 22-245. – License non-transferable; non-assignable.

Mobile food vendor licenses are not transferable or assignable.

Sec. 22-246. – License display.

A mobile food vendor license issued to a mobile food vendor shall be displayed on the mobile vending unit so licensed and shall be produced upon request of any law enforcement officer, City code inspector, county health inspector, or authorized individual or entity. Any required health code permits, licenses, or certificates, including health inspection certificates, shall also be displayed on the mobile vending unit.

Sec. 22-247. – License denial.

(a) Any application may be denied for any of the following reasons:

- (1) Incomplete application.
- (2) Failure to pay the required fees.
- (3) Fraud, misrepresentation, or false statement contained in the application.
- (4) Failure to comply with or a violation of applicable federal, state and local laws, ordinances and health codes.
- (5) Failure to comply with or a violation of the provisions of this ordinance.
- (6) Operating a mobile food vending unit or engaging in mobile food vending contrary to or in violation of conditions of the mobile food vendor license.
- (7) Operating a mobile food vending unit or engaging in mobile food vending in a manner which creates a public nuisance or constitutes a danger to the public health, safety and welfare.
- (8) Having a mobile food vendor license revoked or suspended within the previous year.
- (9) Recommendation for denial from City department heads or staff, including Police Chief, Fire Chief, and Building Official or their designees.
- (10) Failure to comply with or a violation of applicable fire department and fire code requirements.
- (11) Conviction of an offense that may jeopardize the public health, safety and welfare.



- (12) Prior conduct or a history of conduct which may be detrimental to the public health, safety and welfare.
  - (13) Other reasons necessary to protect the public health, safety and welfare consistent with the purposes of this ordinance.
- (b) If an application is denied, the City Clerk shall provide the applicant written notice by personal service or by first class mail at the address listed in the application stating the reasons for the denial.
- (c) An applicant who is denied a mobile food vending license may appeal to the City Council by filing a written notice of appeal with the City Clerk within 14 days after the date of the written notice of the denial was issued. The City Council shall hear and determine the appeal and its decision shall be final.

Sec. 22-248. - License suspension or revocation.

- (a) A license may be suspended or revoked for a period up to one (1) year any of the following reasons:
- (1) Fraud, misrepresentation, or false statement contained in the application.
  - (2) Failure to comply with or a violation of applicable federal, state and local laws, ordinances and health codes.
  - (3) Failure to comply with or a violation of the provisions of this ordinance.
  - (4) Operating a mobile food vending unit or engaging in mobile food vending contrary to or in violation of conditions of the mobile food vending license.
  - (5) Operating a mobile food vending unit or engaging in mobile food vending in a manner which creates a public nuisance or constitutes a danger to the public health, safety and welfare.
  - (6) Having a mobile food vendor license issued revoked or suspended within the previous year.
  - (7) Failure to comply with or a violation of applicable fire department and fire code requirements.
  - (8) Conviction of an offense that may jeopardize the public health, safety and welfare.
  - (9) Prior conduct or history of conduct which may be detrimental to the public health, safety and welfare.
  - (10) Other reasons necessary to protect the public health, safety and welfare consistent with the purposes of this ordinance.

- (b) In determining an appropriate administrative sanction, the City Manager or his or her designee may consider the following factors: nature and timing of prior warnings; date(s) of violation; previous violations; duration of license; complaints; investment in business; circumstances of the violation; punishment imposed for previous violations; cooperation with City officials; and other aggravating or mitigating circumstances directly relating to any violation. If the City Manager or his or her designee determines that a license should be revoked or suspended, the City Manager or his or her designee shall provide the licensee written notice by personal service or by first class mail at the address listed in the application stating the action taken and the reasons for the action.
- (c) A licensee whose mobile food vending license is suspended or revoked may appeal to the City Council by filing a written notice of appeal with the City Clerk within 14 days after the date of the written notice of action was issued. The City Council shall hear and determine the appeal and its decision shall be final.
- (d) It shall be unlawful for any person to engage in mobile food vending or operate a mobile food vending unit while the mobile food vendor license is suspended or revoked. No license which has been suspended or revoked shall be reinstated until the required reinstatement fee has been paid.

Sec. 22-249. – Requirements and operational regulations.

Mobile food vendors, mobile food vending units, and mobile food vending shall comply with the following requirements and regulations:

- (a) If on public or City-owned or controlled property, the mobile food vendor may only locate and operate on such property as designated in a resolution adopted by City Council for mobile food vending operations.
- (b) If located on a public street in designated areas and spaces, vendors shall conform to and comply with all applicable parking regulations.
- (c) If located on a public street, food service shall be provided on the non-driving lane side of the mobile food vending unit.
- (d) If on private property zoned B-2 Central Business District or B-3 General Business District, the mobile food vendor may only locate the mobile food vending unit and operate at the location on the site designated and approved in the sponsor's license.
- (e) If operating on private property zoned B-2 Central Business District or B-3 General Business District, ensure that the private property owner has provided the vendor with written permission to operate on the private property on the applicable date(s) including hours of operation, and ensure that the private property owner has also obtained a mobile food vending sponsor license from the City, and the vendor may operate only at and on the locations designated and approved in the sponsor's license.
- (f) A mobile food vending unit and its operations shall not block or impair vehicular or pedestrian travel.

- (g) Mobile food vending is prohibited in residential zones, except pursuant to a special event permit or other City approval.
- (h) A mobile food vending unit shall not operate within 500 feet of a farmers market, block party, street fair, public festival, or special event approved by the City without the written consent of the event permit holder or sponsor.
- (i) Mobile food vending operations shall be permitted during the hours of 7 a.m. and 11 p.m. unless other hours are designated in a mobile food vendor license, as permitted for mobile food vending operations on a sponsor site consistent with the sponsor's hours of business and applicable licenses, or as otherwise provided for in writing by the City Manager.
- (j) No mobile food vending unit may be left unattended for more than two (2) hours; and any mobile food vending unit not in operation shall be removed between the hours of 11 p.m. and 7 a.m.
- (k) No food shall be prepared, sold, or displayed outside of the mobile food vending unit except as permitted pursuant to a County Health Department permit, license or approval.
- (l) No outdoor cooking facilities, including grills, not contained in the mobile food vending unit are permitted.
- (m) Waste receptacles must be provided and all trash, garbage, refuse, litter, debris and all other waste attributable to the mobile food vending operations must be removed and properly disposed of at the end of the hours of operation each day. Trash and waste from mobile food vending operations may not be disposed of in public and City-owned waste receptacles.
- (n) Tables, chairs, benches, umbrellas or other seating or dining equipment or items are prohibited.
- (o) All power sources must be self-contained and no electric or power cables or utilities equipment shall be extended to cross any public street, alley or sidewalk unless approved in the permit.
- (p) All materials and supplies related to the mobile food vending operation must be stored in the mobile food vending unit.
- (q) A mobile food vendor may have one portable sign that is no more than six square feet in area or a sandwich board sign with two faces that are no more than six square feet in area. The portable sign must be located within five feet of the unit. Under no circumstances shall such sign be placed upon the sidewalk or impede pedestrian and/or vehicle traffic and/or safety.
- (r) Flashing, blinking or strobe lights are prohibited. All exterior lights over 60 watts shall contain opaque, hood shields to direct the illumination downward.

- (s) Loud music, amplification devices and other audible methods to gain attention which causes a disruption or safety hazard as determined by the City are prohibited. All noises and sounds from and created by the mobile food vending unit must comply with the City noise ordinance. Unreasonable or excessive noise is prohibited.
- (t) Mobile food vending units and operations must comply with the City's noise ordinance, sign ordinance, and all other City ordinances.
- (u) Mobile food vending units and operations must comply with all applicable federal, state and county laws, regulations and codes.
- (v) A licensed mobile food vendor, shall, to the fullest extent permitted by law, indemnify, hold harmless and defend the City, its elected officials, officers, employees, agents and insurers from and against any liability, claims, losses, costs, and expenses and attorneys fees arising from the vendor's use of public or city-owned or city-controlled property and its mobile food vending unit and operations.
- (w) A licensed mobile food vendor shall obtain and maintain during the term of the license a comprehensive general liability policy written on an occurrence basis having policy limits of no less than \$1,000,000 per occurrence. A certificate of insurance naming the City as an additional insured shall be filed by the licensee with the approved application. The certificate shall provide that the City will receive 30 days written notice of cancellation or non-renewal.

#### Sec. 22-250. – Impoundment.

Any mobile food vending unit and/or equipment not in compliance with this ordinance or left unattended on public, city-owned or city-controlled property may be ticketed and impounded at the owner's and/or vendor's expense.

#### Sec. 22-251. – Other permits and licenses.

A license obtained under this ordinance shall not relieve a person of the responsibility for obtaining any other licenses, approvals, or authorizations required by any other ordinance, statute, code or regulation.

#### Sec. 22-252 through 22-260. Reserved.

### DIVISION 3 - Mobile Food Vending Sponsor License.

#### Sec. 22-261. - Application.

An owner of private property in the B-2 Central Business district or B-3 General Business district desiring to obtain a license to allow a licensed mobile food vendor to operate on its site must submit to the City Clerk the required non-refundable application fee along with a written, sworn application, signed by the owner, if an individual, or if a business entity, by a person with authority on behalf of a business entity, on a form to be furnished by the City Clerk, which shall contain the following information:

- (a) The applicant's name, current address and date of birth.
- (b) Property address.
- (c) Zoning district.
- (d) Sketch plan of proposed location for a licensed mobile food vending unit.
- (e) Proposed hours of operation, including days and frequency of operations.
- (f) A description of how and where waste, garbage, refuse, litter, and other debris from the mobile food vending operation will be disposed of and whether it will be disposed of on the sponsor's site.
- (g) A description of how and where grey or waste water from the mobile food vending operation and unit will be disposed of and whether it will be disposed of on the sponsor's site.
- (h) A description of any electric, water or sanitary sewer utilities or services that will be provided to the unit by the property owner.
- (i) Proof of a comprehensive general liability policy written on an occurrence basis having policy limits of no less than \$1,000,000 per occurrence. A certificate of insurance naming the City as an additional insured shall be filed by the licensee with the approved application. The certificate shall provide that the City will receive 30 days written notice of cancellation or non-renewal.
- (j) Signed indemnity and hold harmless agreement.
- (k) Any other information or documentation requested by the City Clerk.
- (l) Any change in the information provided in the application shall be provided to the City Clerk within ten (10) calendar days of any such change.

**Sec. 22-262. – Fees.**

- (a) **Application Fee.** An application for a mobile food vending sponsor license shall be accompanied by the required application fee in an amount established by City Council resolution which shall be non-refundable.
- (b) **License Fee.** Each applicant to whom a license is granted shall pay a nonrefundable license fee in an amount established by City Council resolution.
- (c) There shall be no proration of fees.

**Sec. 22-263. – License duration.**

Mobile food vending sponsor licenses issued by the City Clerk shall be valid for twelve (12) calendar months from April 1 to March 31, unless otherwise revoked or suspended.

Sec. 22-264. – License non-transferable; non-assignable.

Mobile food vending sponsor licenses are not transferable or assignable.

Sec. 22-265. – License denial.

(a) Any application may be denied for any of the following reasons:

- (1) Incomplete application.
- (2) Failure to pay the required fees.
- (3) Fraud, misrepresentation, or false statement contained in the application.
- (4) Failure to comply with or a violation of applicable federal, state and local laws, ordinances and health codes.
- (5) Failure to comply with or a violation of the provisions of this ordinance.
- (6) Allowing mobile food vending on the site contrary to or in violation of this ordinance or the conditions of the mobile food vendor license or the mobile food vending sponsor license.
- (7) Allowing mobile food vending on the site in a manner which creates a public nuisance or constitutes a danger to the public health, safety and welfare.
- (8) Having a mobile food vending sponsor license revoked or suspended within the previous year.
- (9) Recommendation for denial from City department heads or staff, including Police Chief, Fire Chief, and Building Official or their designees.
- (10) Failure to comply with applicable fire department and fire code requirements.
- (11) Failure to meet minimum parking requirements.
- (12) Failure to meet applicable zoning requirements.
- (13) Conviction of an offense that may jeopardize the public health, safety and welfare.
- (14) Prior conduct or history of conduct which may be detrimental to the public health, safety and welfare.
- (15) Other reasons necessary to protect the public health, safety and welfare consistent with the purposes of this ordinance.

(b) If an application is denied, the City shall provide the applicant written notice by personal service or by first class mail at the address listed in the application stating the reasons for the denial.

- (c) Applicants who are denied mobile food vending sponsor licenses may appeal to the City Council by filing a written notice of appeal with the City Clerk within 14 days after the date of the written notice of denial. The City Council shall hear and determine the appeal and its decision shall be final.

Sec. 22-266. - License suspension or revocation.

- (a) Any license may be suspended or revoked for a period up to one (1) year any of the following reasons:
  - (1) Fraud, misrepresentation, or false statement contained in the application.
  - (2) Failure to comply with or a violation of applicable federal, state and local laws, ordinances and health codes.
  - (3) Failure to comply with or a violation of the provisions of this ordinance.
  - (4) Allowing the operation of a mobile food vending unit on the sponsor's property contrary to or in violation of this ordinance or the conditions of the mobile food vendor license or the sponsor license.
  - (5) Allowing the operation of a mobile food vending unit on the sponsor's property in a manner which creates a public nuisance or constitutes a danger to the public health, safety and welfare.
  - (6) Allowing a mobile food vendor or person to engage in mobile food vending or to operate a mobile food vending unit without a license from the City.
  - (7) Failure to comply with applicable fire department and fire code requirements.
  - (8) Other reasons necessary to protect the public health, safety and welfare consistent with the purposes of this ordinance.
- (b) In determining an appropriate administrative sanction, the City manager or his or her designee may consider the following factors: nature and timing of prior warnings; date(s) of violation; previous violations; duration of license; investment in business; circumstances of the violation; punishment imposed for previous violations; cooperation with City officials; and other aggravating or mitigating circumstances directly relating to any violation. If the City Manager or his or her designee determines that a license should be revoked or suspended, the City Manager or his or her designee shall provide the licensee written notice by personal service or by first class mail at the address listed in the application stating the action taken and stating the reasons for the action.
- (c) A sponsor whose mobile food vending sponsor license is suspended or revoked may appeal to the City Council by filing a written notice of appeal with the City Clerk within 14 days after the date of the written notice of action was issued. The City Council shall hear and determine the appeal and its decision shall be final.

- (d) It shall be unlawful for a sponsor to allow mobile food vending on its property while the mobile food vending sponsor license is suspended or revoked. No sponsor license which has been suspended or revoked shall be reinstated until the required reinstatement fee has been paid.

Sec. 22-267. – Requirements and operational regulations.

Mobile food vending sponsors shall comply with the following requirements and regulations:

- (a) A sponsor must provide a licensed mobile food vendor with written permission to operate on the sponsor's property specifying the dates and hours of operation permitted by the sponsor.
- (b) If operating on a sponsor's property within a B-2 or B-3 zoning district, a mobile food vending unit may only locate and operate at the approved location(s) designated in the mobile food vending sponsor license.
- (c) Only one mobile food vending unit may operate on a sponsor property at a time unless approved through a special event permit.
- (d) A mobile food vending unit shall not be located in or operate in a parking space required to meet the property's minimum parking requirement.
- (e) Comply with applicable fire department and fire code requirements.
- (f) A mobile food vending unit shall not block or impede vehicular or pedestrian traffic or movement on the sponsor property.
- (g) A mobile food vending unit may not operate beyond the business hours of operation on the sponsor property unless approved by the City.
- (h) Comply with the City's noise ordinance, sign ordinance, and all other City ordinances.
- (i) Comply with all applicable federal, state and county laws, regulations and codes.
- (j) A licensed mobile food vendor, shall, to the fullest extent permitted by law, indemnify, hold harmless and defend the City, its elected officials, officers, employees, agents and insurers from and against any liability, claims, losses, costs, and expenses and attorneys fees arising from the vendor's use of public or city-owned or city-controlled property and its mobile food vending operations.
- (k) A licensed mobile food vendor shall obtain and maintain during the term of the license a comprehensive general liability policy written on an occurrence basis having policy limits of no less than \$1,000,000 per occurrence. A certificate of insurance naming the City as an additional insured shall be filed by the licensee with the approved application. The certificate shall provide that the City will receive 30 days written notice of cancellation or non-renewal.



- (l) A mobile food vending sponsor shall be responsible for and ensure that a mobile food vendor and/or mobile food vending unit operating on its property complies with all requirements of this ordinance and the vendor's license while located or operating on sponsor's property.

Sec. 22-268 through 22-270. Reserved.

DIVISION 4 - Enforcement.

Sec. 22-271. – Municipal civil infractions.

A person who violates any provision of this ordinance is responsible for a municipal civil infraction and upon a determination of responsibility thereto shall be punished as provided for in Section 1-14 of this Code. Each day a violation exists and continues shall constitute a separate offense.

Sec. 22-272 through 22-279. Reserved.

**PART IV. Severability.** Should any division, section, subsection, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART V. Savings Clause.** The amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance.

**PART VI. Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**PART VII. Effective Date; Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the South Lyon City Council this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John Galeas, Jr., Mayor

\_\_\_\_\_  
Lisa Deaton, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the South Lyon City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Lisa Deaton, City Clerk

Adopted:  
Published:  
Effective:

mobile food vending ordinance - 2016-03-08.docx

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:** City Manager and City Attorney

**AGENDA TOPIC:** Second reading of Review Fee Escrow Deposit Ordinance

**EXPLANATION OF TOPIC:**

- No revisions since first reading

When the City receives requests and applications for reviews, approvals or for other action which require the City to incur extraordinary out-of-pocket expenses (for example, engineering, planning, architecture, traffic consultant, legal or other professional reviews), it is appropriate to require the applicant to bear these extraordinary costs and to provide an advance deposit of funds from which these costs will be paid.

This ordinance does not replace or affect the City's existing fee schedule, but rather, provides for a review fee escrow deposit for applications and requests that fall outside the existing fee schedule or that involve unusual and extraordinary expenses to the City.

The minimum deposit is \$1,500 and the amount of the deposit may be increased in increments of \$500 based on a number of factors to be considered in estimating total fees to be incurred.

When the deposit drops below \$500, the City notify the applicant of the need for an additional deposit and specify the amount

No review or other action or approval occur until the deposit is made (including amounts to replenish the deposit) and all applicable fees are paid.

The City will maintain records of amounts charged to the deposit which shall be provided to the applicant/depositor on request.

Unused deposit funds shall be returned to the applicant. Unused deposits which are returned but remain unclaimed for a year shall be forfeit to the City.

The ordinance provides for an appeal process to the City Council.

**MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed Ordinance Amendment adding Sections 2-301 and 2-302

**POSSIBLE COURSES OF ACTION:** approve/deny/postpone/table second reading of proposed ordinance amendment

**RECOMMENDATION:** Approve the second reading of the ordinance amendment

**SUGGESTED MOTION:** Motion to approve the second reading of the Review Fee Escrow Deposit ordinance adding Sections 2-301 and 2-302 to the City of South Lyon Code of Ordinances

ORDINANCE NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE CITY OF SOUTH LYON CODE OF ORDINANCES, CHAPTER 2 - ADMINISTRATION, BY ADDING ARTICLE VIII - REVIEW FEE ESCROW DEPOSITS, SECTIONS 2-301 THROUGH 2-310 TO ESTABLISH REVIEW FEE ESCROW DEPOSIT AND REIMBURSEMENT REQUIREMENTS AND GUIDELINES

THE CITY OF SOUTH LYON ORDAINS:

**PART I. Amendment to Chapter 2.** Chapter 2– Administration of the City of South Lyon Code of Ordinances, is amended to add the following Article VIII - Review Fee Escrow Deposits, Sections 2-301 through 2-310 as follows:

ARTICLE VIII. - REVIEW FEE ESCROW DEPOSITS.

Sec. 2-301. – Intent.

- (a) WHEREAS, the cost to the City in reviewing and processing applications and requests for various actions and approvals may differ greatly between different applications and requests, can be significant especially when the City would incur additional and extraordinary out-of-pocket expenses (e.g., for engineering, planning, legal and/or other professional reviews) above and beyond what is associated with the typical review of minor projects. These costs and expenses cannot always be accurately predicted at the time an application or request is made; and
- (b) WHEREAS, the City Council believes that it is reasonable and appropriate that the actual costs and expenses associated with reviewing such applications, except for routine expenses, should be properly borne by the applicant or requestor rather than by the taxpayers of the City; and
- (c) WHEREAS, the City Council desires to set review fees for applications and requests for typical actions and approvals where the costs and expenses are more predictable and more easily estimated and to provide for procedures for requiring applicants and requestors to deposit amounts in escrow and guidelines for setting initial escrow deposit amounts where the action or approval is not typical and the costs and expenses of processing and reviewing it are not easily determined and may be extraordinary; and
- (d) WHEREAS, the City Council intends that review fees and escrow deposit amounts be reasonably proportionate to the costs and expenses incurred by the City for the particular application or request, and that such review fees and escrow amounts be used to defray the costs and expenses of processing and reviewing the application or request and of administering the review process and the City's Code of Ordinances and carrying out the City's business; and

- (e) WHEREAS, the City Council intends to set forth requirements and guidelines for review fee escrow deposits and reimbursement of costs and expenses incurred by the City from such escrow funds.

Sec. 2-302. – Requirements and guidelines.

- (a) In addition to the other applicable zoning and review fees established and set by other City Council resolutions, when the City Manager, or his or her designee, determines that an application or request for City approval or action will require reviews, analysis, input and other information from consultants (engineers, planners, traffic engineers, environmental consultants, architects, attorneys, etc.) which have the potential to cause the City to incur unusual, exceptional, or extraordinary costs and expenses directly associated with the application or request, the City Manager, or his or her designee, may require that the applicant or requester deposit funds to establish an escrow account against which such costs and expenses will be charged.
- (b) The City may require that an escrow deposit be established for all applications and requests for which the City will incur expenses as determined by the City Manager or his or her designee.
- (c) The City Manager, or his or her designee, shall determine the amount of the initial review fee escrow deposit estimated to be sufficient to cover the expected costs and expenses likely to be incurred by the City as a result of the application or request. The initial deposit shall not be less than \$1,500, and the amount to be deposited shall be increased in increments of \$500. Factors for determining the initial escrow deposit amount shall include, but not be limited to, such variables as the size of the project, the characteristics and complexity of the project, the types of consultants needed to evaluate the application or request, time constraints, the need for specialized knowledge or expertise, and other relevant factors. If it is determined that a review fee escrow deposit is required, no application or request shall be processed until the initial escrow deposit is submitted to the City and all other applicable fees are paid.
- (d) At no time prior to the City's completion of its review and processing of the application or request shall the escrow balance be allowed to drop below \$500. If an escrow balance drops below \$500, the City Manager, or his or her designee, shall notify the applicant or requestor of the need to deposit additional escrow funds and the specific amount to be deposited. The applicant or requestor must deposit an additional amount of at least \$500.00 or greater amount as determined by the City Manager, or his or her designee, to be reasonably necessary to cover the anticipated remaining and/or future costs and expenses to be incurred by the City and to be paid from the escrow. Any additional required deposits must be deposited promptly to the City in order to continue processing the application or request. All review and processing of the application or request, including being placed on meeting agendas, will be suspended until the additional escrow deposit is received by the City or an appeal of the matter has been decided in favor of the applicant or requestor.
- (e) The City may draw funds from the applicant's escrow deposit to reimburse the City for costs and expenses incurred by the City directly related to the review and processing of

the application, or to redistribute the funds to pay its consultants and agents upon verification of the costs and expenses incurred. The City shall maintain records regarding escrow deposits and balances and shall authorize the disbursement of escrow funds in writing. Such escrow funds shall be accounted for separately. Any remaining or excess escrow funds will be refunded by the City to the applicant without interest. If remaining or excess escrow funds are returned to the applicant or requestor by mail to the address specified on the escrow receipt or application, and is returned undelivered, the City shall hold such amount and return it to applicant or requestor on demand; however, if such demand is not made within one (1) year after the remaining or excess escrow funds were returned undeliverable, such funds shall be deemed forfeited and shall be deposited in the general fund of the City.

- (f) No approval, building permit, certificate of use or occupancy permit, or other similar approval will be granted or issued by the City unless all required escrow fees have been deposited except as otherwise determined by the City for good cause.
- (g) In the event an applicant or requestor objects to the reasonableness or amount of a required escrow deposit, including but not limited to the amount of the initial required escrow deposit, the amount of additional deposits required, or how the City has applied the escrow funds, an applicant or requestor may appeal the matter to the City Council. All such appeals shall be in writing and shall be made not later than thirty (30) days after the disputed action or billing. The City Council shall establish a date and time to hear the appeal and shall permit the applicant or requestor, or its agent, to appear before the City Council to object to and appeal the decision of the City Manager, or his or her designee. The City Council may affirm, modify, or reverse the decision of the City Manager, or his or her designee.

Secs. 22-303 through 22-310. Reserved.

**PART IV. Severability.** Should any division, section, subsection, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART V. Savings Clause.** The amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the City of South Lyon Code of Ordinances set forth in this Ordinance.

**PART VI. Repealer.** All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**PART VII. Effective Date; Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Made, Passed and Adopted by the South Lyon City Council this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John Galeas, Jr., Mayor

\_\_\_\_\_  
Lisa Deaton, City Clerk

#### Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the South Lyon City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Lisa Deaton, City Clerk

Adopted:  
Published:  
Effective:

At a regular meeting of the City of South Lyon City Council, a motion was made by Council Member \_\_\_\_\_, supported by Council Member \_\_\_\_\_, to adopt the above resolution.

Ayes:  
Nays:  
Absent:

RESOLUTION DECLARED [ADOPTED/FAILED] on this \_\_\_\_ day of \_\_\_\_\_, 2015.

CERTIFICATION

I certify that this resolution was duly adopted by the City Council of the City of South Lyon on \_\_\_\_\_, \_\_\_\_, 2015.

Lisa Deaton  
City Clerk  
South Lyon



## Lynne Ladner

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**From:** Cheryl A. Moreno <cheryl.a.m.smith@gmail.com>  
**Sent:** Sunday, March 20, 2016 7:06 PM  
**To:** Lynne Ladner; Kelly Smith  
**Subject:** Resignation Letter CAC  
**Attachments:** Resignation.docx

Good afternoon ladies,

I am rather sad, but it is time for me to focus more on developing several art projects that I have been putting off, and of course my Grand Children at this point in my life. After retirement, I will have more availability, but for now my time is limited, which always makes me feel badly.

If you have a problem opening this, please let me know.

You have both been a joy to work with.

Cheryl A. Moreno

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:**

**AGENDA TOPIC:** Resolution To Establish And Designate Permissible Locations For Mobile Food Vending On City-Owned And Public Property Within The City Of South Lyon

**EXPLANATION OF TOPIC:** If the Council approves the second reading of the mobile food vending ordinance, the City will need to designate the permissible locations on public / city-owned property for mobile food vending

**MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed resolution

**POSSIBLE COURSES OF ACTION:** Approve/deny/postpone/table

**RECOMMENDATION:** Approve Resolution To Establish And Designate Permissible Locations For Mobile Food Vending On City-Owned And Public Property Within The City Of South Lyon

**SUGGESTED MOTION:** Motion to Resolution To Establish And Designate Permissible Locations For Mobile Food Vending On City-Owned And Public Property Within The City Of South Lyon as designated in Exhibit A to the resolution.

RESOLUTION NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

RESOLUTION TO ESTABLISH AND DESIGNATE PERMISSIBLE LOCATIONS FOR  
MOBILE FOOD VENDING ON CITY-OWNED AND PUBLIC PROPERTY WITHIN THE  
CITY OF SOUTH LYON.

WHEREAS, the City of South Lyon has adopted an ordinance amending the City of South Lyon Code of Ordinances setting forth regulations concerning mobile food vending and the licensing and operations of mobile food vendors and mobile food vending units;

WHEREAS, the City desires to establish the permissible locations for mobile food vending, mobile food vendors, operations and units on City-owned and public property within the City of South Lyon;

NOW, THEREFORE, BE IT RESOLVED, that the City of South Lyon hereby establishes the permissible locations for mobile food vending, mobile food vendors, operations and units on City-owned and public property within the City of South Lyon listed on the attached Exhibit A.

At a regular meeting of the City of South Lyon City Council, a motion was made by Council Member \_\_\_\_\_, supported by Council Member \_\_\_\_\_, to adopt the above resolution.

Ayes:  
Nays:  
Absent:

RESOLUTION DECLARED [ADOPTED/FAILED] on this \_\_\_\_ day of \_\_\_\_\_, 2016.

CERTIFICATION

I certify that this resolution was duly adopted by the City Council of the City of South Lyon on \_\_\_\_\_, 2016.

Lisa Deaton  
City Clerk  
South Lyon

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:**

**AGENDA TOPIC:** Resolution To Establish Fire Department Regulations And Requirements Pertaining To Mobile Food Vending Units And Operations Within The City Of South Lyon.

**EXPLANATION OF TOPIC:** If Council approves the second reading of the mobile food vending ordinance, the City will need to establish applicable Fire Department regulations and requirements for mobile food vending

**MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed Resolution

**POSSIBLE COURSES OF ACTION:** Approve/deny/postpone/table

**RECOMMENDATION:** Approve Resolution To Establish Fire Department Regulations And Requirements Pertaining To Mobile Food Vending Units And Operations Within The City Of South Lyon

**SUGGESTED MOTION:** Motion to approve Resolution To Establish Fire Department Regulations And Requirements Pertaining To Mobile Food Vending Units And Operations Within The City Of South Lyon as attached in Exhibit A.

RESOLUTION NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

RESOLUTION TO ESTABLISH FIRE DEPARTMENT REGULATIONS AND  
REQUIREMENTS PERTAINING TO MOBILE FOOD VENDING UNITS AND  
OPERATIONS WITHIN THE CITY OF SOUTH LYON.

WHEREAS, the City of South Lyon has adopted an ordinance amending the City of South Lyon Code of Ordinances setting forth regulations concerning mobile food vending and the licensing and operations of mobile food vendors and mobile food vending units;

WHEREAS, the City desires to establish and set applicable Fire Department regulations and requirements pertaining to mobile food vending, mobile food vendors and mobile food vending units;

NOW, THEREFORE, BE IT RESOLVED, that the City of South Lyon hereby establishes and sets the Fire Department regulations and requirements pertaining to mobile food vending, mobile food vendors and mobile food vending units attached as Exhibit A:

At a regular meeting of the City of South Lyon City Council, a motion was made by Council Member \_\_\_\_\_, supported by Council Member \_\_\_\_\_, to adopt the above resolution.

Ayes:  
Nays:  
Absent:

RESOLUTION DECLARED [ADOPTED/FAILED] on this \_\_\_\_ day of \_\_\_\_\_, 2016.

CERTIFICATION

I certify that this resolution was duly adopted by the City Council of the City of South Lyon on \_\_\_\_\_, 2016.

Lisa Deaton  
City Clerk  
South Lyon

# AGENDA NOTE

**MEETING DATE:** March 28, 2016

**PERSON PLACING ITEM ON AGENDA:**

**AGENDA TOPIC:** Resolution to Establish and Set Mobile Food Vending Application and License Fees

**EXPLANATION OF TOPIC:** If Council approves the second reading of the mobile food vending ordinance, the City will need to establish and set mobile food vending application and license fees.

**MATERIALS ATTACHED AS SUPPORTING DOCUMENTS:**

- Proposed Resolution

**POSSIBLE COURSES OF ACTION:** Approve/deny/postpone/table

**RECOMMENDATION:** Approve Resolution to Establish and Set Mobile Food Vending Application and License Fees

**SUGGESTED MOTION:** Motion to approve Resolution to Establish and Set Mobile Food Vending Application and License Fees as follows:

- Mobile Food Vendor License Application fee - \$\_\_\_\_\_
- Mobile Food Vendor License Renewal Application fee - \$\_\_\_\_\_
- Mobile Food Vendor License fee - \$\_\_\_\_\_ per six-month license period
- Mobile Food Vending Sponsor Application fee - \$\_\_\_\_\_
- Mobile Food Vending Sponsor Renewal Application fee - \$\_\_\_\_\_
- Mobile Food Vending Sponsor License fee - \$\_\_\_\_\_ per annual license period

RESOLUTION NO. \_\_-16

CITY OF SOUTH LYON  
OAKLAND COUNTY, MICHIGAN

RESOLUTION TO ESTABLISH AND SET MOBILE FOOD VENDING APPLICATION  
AND LICENSE FEES.

WHEREAS, the City of South Lyon has adopted an ordinance amending the City of South Lyon Code of Ordinances setting forth regulations concerning mobile food vending and the licensing and operations of mobile food vendors and mobile food vending units;

WHEREAS, the City desires to establish and set applicable application and licensing fees relating to mobile food vending;

NOW, THEREFORE, BE IT RESOLVED, that the City of South Lyon hereby establishes and sets the following application and licensing fees relating to mobile food vending:

- a. Mobile Food Vendor License Application fee - \$\_\_\_\_\_
- b. Mobile Food Vendor License Renewal Application fee - \$\_\_\_\_\_
- c. Mobile Food Vendor License fee - \$\_\_\_\_\_ per six-month license period
- d. Mobile Food Vending Sponsor Application fee - \$\_\_\_\_\_
- e. Mobile Food Vending Sponsor Renewal Application fee - \$\_\_\_\_\_
- f. Mobile Food Vending Sponsor License fee - \$\_\_\_\_\_ per annual license period

At a regular meeting of the City of South Lyon City Council, a motion was made by Council Member \_\_\_\_\_, supported by Council Member \_\_\_\_\_, to adopt the above resolution.

Ayes:  
Nays:  
Absent:

RESOLUTION DECLARED [ADOPTED/FAILED] on this \_\_\_\_ day of \_\_\_\_\_, 2016.

CERTIFICATION

I certify that this resolution was duly adopted by the City Council of the City of South Lyon on \_\_\_\_\_, 2016.

Lisa Deaton  
City Clerk  
South Lyon



## **Annual Report from the South Lyon Arts and Cultural Commission**

This is our report for the 2015-2016 including plans for 2017

The economic benefit and value of the arts and cultural events are well understood by the City Council of South Lyon as shown by their formation of the South Lyon Cultural Arts Commission. Economic benefits come in the form of audiences who attend these events and contribute to local businesses as well as making South Lyon a desirable place to live. This also allows the city to attract higher quality employees and consumers. As well, the City Council is cognizant of the enhanced quality of life, as a result of this programming, that reaches our citizens and enhances learning for K-12 students. This understanding also fosters connections between and among our citizens and beyond.

Recently, the Commission has begun an extensive outreach in the form of new programming, supported by a plan to secure numerous grants, beginning with a planning grant (\$1,000) through the Michigan Humanities Council in preparation of a larger grant with them (up to \$15,000) in August. Other grants will include the Michigan Council for the Arts and Cultural Affairs in concert with humanities funds. After success and experience with these grants, plans are in place for securing national grants.

National grants are not only needed for programming but also expanding our connections with other institutions, such as our current successful collaboration with the Detroit Institute of Arts. We are also looking at programming that supports art in a public place in South Lyon. The purpose of this long-range plan is two-fold. First, as anyone in business knows, branding is a way to promote and create high revenue from a product. Some cities use branding as well, becoming known for arts and cultural events. In this way, cities promote themselves into that all important tourist market that values cultural experiences which translate into revenue for the city. By providing unique arts and cultural events and also having permanent art linked with the City of South Lyon, the aim is to "brand" the city in one of the most positive ways. For example, who cannot think of Paris without the Eiffel Tower or, closer to home, Ann Arbor's campus without its revolving cube? While these goals may seem lofty, like the famous Calder owned by the city of Grand Rapids, even smaller Michigan cities have done the same. For example, Tecumseh has its own series of public art and, in our own backyard, Brighton does as well. We believe this is an achievable goal if we begin our design now.

Understanding that the city is being developed and expanded, we are spearheading two additional initiatives. Both are part of our grant procurement approach. The first is a scientifically designed and conducted survey that asks residents about their arts and cultural needs. We have identified a volunteer at the University of Michigan's Institute for Social Research, who has agreed to design and interpret the survey for us. (This will be done on Survey Monkey at no cost. However, we would like to have paper copies of the survey available to audiences, at events, in case of no or low access to computers.) Being able to use this scientific, unbiased data will be invaluable in our planning and, we believe, the city's. Our second initiative is to investigate further and implement geo mapping. This involves an interactive program map of the area in which residents could click on a business, or an historical site, or the library, and discover the history, programs or products and services in an instant.

All of these projects connect and intersect with other entities in the community as well as larger institutions beyond. We realize we have a large job to do and that this will take time. However, we are taking the early steps of laying the groundwork for these larger endeavors. Following are more concrete examples of our works and planned programming.

## Events

Despite several changes on the board and being in existence for a mere three years, the South Lyon Cultural Arts Commission has planned, produced and made connections in a number of areas. These successful programs include procuring resources from the Detroit Institute of Arts by becoming a host city for the Inside Out Program of 2015. This program offered free tours of the DIA and free buses to ferry South Lyon citizens to the art institute. This is a great benefit to our citizens and created a conduit for future opportunities.

This will be the third year of the Arts and Education One High School Art Show, including both South Lyon High School and South Lyon East High School. During this event, April 15, a humanities professional will give a presentation linking the history of photography to the students' photographic work. This will also include the first photos (1880s) ever taken of South Lyon. In this way, we have added humanities to the arts and enhanced the learning experience of the students.

We also provide a visual timeline of these and other events at the end of this report.

# Cultural Arts Commission of South Lyon

## (2013-2016 Timeline)

Harold  
Art Commission  
Announcement



New Logo and  
Tagline Created

Helping to make our city a work of Art



Art Commission  
Bi-Law  
Development

Series of meetings  
created to develop  
Art commission  
documents

Art Commission  
Gallery  
Contract  
Development



Created our own  
CAC Website



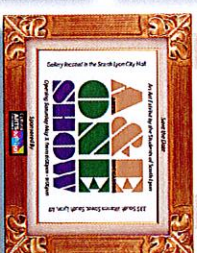
Created our own  
CAC Facebook Page



A&E One Show  
Press Kit Materials



First Combined  
High School Art Show  
in the newly created  
Artrium Gallery



Co-Sponsor Gallery Show  
with the South Lyon  
Historical Commission



Depot Perspectives

January, 2013

April 11, 2013

May, 2013

September, 2013

October, 2013

April, 2014

May 3, 2014

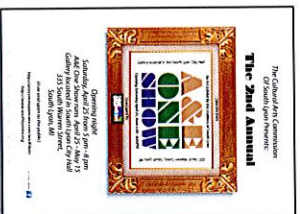
June 11, 2014

Art Commission  
Mission Statement  
Created

Children's Play  
Co-Sponsor with  
Phoenix Players



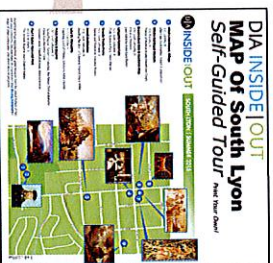
2nd Annual  
Combined High School  
Gallery Art Show



DIA INSIDE|OUT  
Installation of Art Pieces into  
the downtown area



DIA INSIDE|OUT  
Self-Guided Tour



Over 300 People came  
to this Tuesday Free  
Violin Concert



Paint with the DIA®  
at Senior Center



Senior's Bus Trip to  
the DIA Event



October 5, 2014

April 25, 2015

July 28, 2015

August 2015

August 11, 2015

April 25, 2015

October 6, 2015





Paint with the DIA  
Painting Workshop



Paint & Pour  
Painting Workshop at the  
Witches Hat Brewery



Painting with the Traveling Brushes



Painting with the  
Fine Arts Society



Plen Air Art Show  
with the South Lyon  
Fine Arts Society



Punkin'fest 2015  
Booth Participation



Community Mural  
begin creating during  
Punkin'fest 2015



Second Bus Trip to  
the DIA Event

August 22, 2015

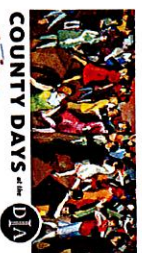
September 17, 2015

September, 2015

September 19, 2015

September, 2015

October 6, 2015

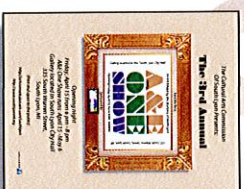


County Days bus ride  
to the DIA

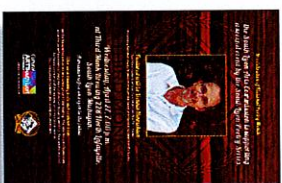
Cultural Arts Commission  
Apply to join the  
South Lyon Chamber  
of Commerce



Chamber of Commerce  
FOR THE SOUTH LYON AREA



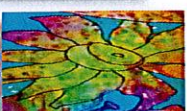
3rd Annual Combined  
High School  
Gallery Art Show



Poetry Readings  
at the Third Monk



Sisters  
of the Brush  
Art Show



Sisters  
of the Brush  
Art Show



Punkin'fest 2016  
Booth Participation



Community Mural  
finished and hung during  
Punkin'fest 2016



Art Commission  
Cool Yule  
Event

April 9, 2016

April, 2016

April 15, 2016

April 27, 2016

June 24, 2016

June, 2016

September, 2016

December, 2016

# Pros and Cons of Our Taxes Funding the Arts

December 24, 2012

As a proponent of the free market the following article is not going to yield a slam-dunk case for art subsidies. If the free market fails in its production of art, it doesn't automatically follow that the government must influence the menu of available art by funneling money through an agency such as the NEA. I am a supporter of the arts, but I am not a supporter of government funding the arts. The late Ernest van den Haag, psychoanalyst, academic and 1972 Senior Fellow for the National Endowment for the Humanities was correct that the arts give pleasure to some and employment to others. But so does whiskey, a commodity for which few advocate government support.

If the NEA did not exist, the government would still be steering vast amounts of money to the arts. Donations to arts organizations are deductible from federal income taxes. It is consequently less costly, on an after-tax basis, to write a check to the local museum or symphony than would be the case if the deduction didn't exist. By lowering the price of the psychic gratification derived from supporting the arts, the government induces people to buy more of that psychic gratification than they otherwise would.

A tax preference offers the advantage of not compelling people to finance art that they find objectionable or simply uninteresting. It also bypasses the administrative costs of a grant-making apparatus. To be sure, writing the arts into the tax code represents an intervention in the market. But it preserves the market element of leaving the choice in consumers' hands, instead of making it the object of political horse trading.

Leaving the choices to people who care deeply about art is appropriate in light of the highly subjective nature of artistic tastes. Some music lovers would rather have more chamber music concerts, even at the cost of having fewer organ recitals. Others feel exactly the opposite. The nature of the marketplace is that no individual is likely to be completely satisfied with the programming mix that emerges from audience ticket purchases and tax-benefited private donations. But neither is the government likely to raise the overall level of satisfaction by favoring certain types of musical performances over others.

for Oakland County on behalf of the City of South Lyon in the County of Oakland, Michigan for the necessary permits to conduct the Lake Street Cruise-in on May 22, June 26, July 24, August 28, and September 25, 2013 and the related road closures: Lake Street between Lafayette Street and Reese Street from 6:30 p.m. to 9:30 p.m. and that the City of South Lyon in the County of Oakland, Michigan will faithfully fulfill all permit requirements, and shall save harmless, indemnify, defend and represent the Board against any and all claims for bodily injury or property damage, or any other claim arising out of or related to operations authorized by such permits as issued.

VOTE:

MOTION APPROVED 3 OPPOSED  
Wallace, Rzyzi, Kopkowski

#### 6. Adoption of Cultural Arts By-laws

Linda Lemke of the Cultural Arts Commissions stated she is here to present the proposed by-laws of the commission. She stated the first project will be the atrium at City Hall. She stated they have completed their mission statement as well. She stated the atrium could be a unique community gallery and utilize the space for the enjoyment of the liberal arts. Ms. Lemke stated the Cultural Arts Commission will put on two shows for local artists. For the shows they would charge an entry fee, plus 20% commission on work sold at that time. The remainder of the year, they would like to rent out the space for a range of \$200 or \$300 dollars for anyone that would like to have a one or two person show. It will give the commission an income of \$1600. – \$2400. Discussion was held regarding the art shows they would like to do. She further stated eventually they will have an itemized budget. She stated they are asking for \$6500.00 budget for the commission from Council. Councilman Kramer asked if the Commission has asked the schools to donate any money because the shows will be utilizing some of the student's artwork. She stated they have not asked the schools. The City will be purchasing the entire display panel system. He further asked if the commission will be coming back every year asking for money. Ms. Lemke stated no, this is a one-time request to purchase the panel systems. Councilman Rzyzi stated he voted no on forming this Commission because he doesn't feel this is something the taxpayers should have to pay for. Councilmember Kopkowski stated she is a big supporter of the arts, but she struggled with the DWRF decision, but had to approve it, and she understands they are only asking for seed money, but she can't support the tax payers paying for it. She further stated art is a luxury, and not a necessity. She further stated the commission should possibly have a fundraiser to get the seed money. Councilman Wedell stated we can approve the by-laws and deal with the budget money at another time. Discussion was held regarding the first show being held in the fall of this year.

#### CM 5-10-13 MOTION TO APPROVE CAC BY-LAWS

Motion by Kramer, supported by Wedell

Motion to approve the revised By-Laws as presented by the Cultural Arts Commission.

VOTE:

MOTION CARRIED – 1 OPPOSED  
RZYZI



Discussion was held on the bids received. Mayor Wallace stated that he does know of a local contractor that wanted to bid, but was not able. Mr. McClorey stated that there was some miscommunication, which was very unfortunate.

Further discussion was held on the design.

Mayor Wallace asked if the contractors met the bonding needs and were references checked? Mr. Spaller indicated that it has been done. The question was asked how tall is the new backstop. Mr. Spaller stated that it is going to be 20 feet tall.

Mayor Wallace asked if any of the Townships were approached regarding funding. Discussion was held on the fact that this is a City owned park. Further discussion was held on the benefit to the entire community.

Councilman Ryzyi asked if this is in the budget for this year. City Manager Murphy stated that these funds would come from funds that were set aside specifically for Parks and Recreation.

Discussion was held on forming a contract between the City and the Junior League for the cost of the project.

#### CM 4-3-12 – MCHATTIE PARK BASEBALL DIAMOND PROJECT

Motion by Wedell, supported by Kramer

Direct the City Attorney to draft a contract between the City and the South Lyon Junior League for the addition of a baseball diamond and other improvements in McHattie Park in an amount not to exceed \$70,000 with the City's portion to be \$35,000 and that the contract to be signed by the City Manager

VOTE:

MOTION CARRIED UNANIMOUSLY

#### 2. Cultural Arts Commission

Mayor Wallace stated that there has been some interest in the community for quite some time for various art projects.

Margaret Kurtzweil of 939 West Hills Drive stated that this is a model ordinance that has been put together. She stated when you are dealing with arts, you are dealing with a different animal and you have to have a distance from the political process. This is intended to be a sounding board, a listening board when it comes to art in the community.

Council Member Kopkowski questioned the appointment process and Charter requirements. City Clerk/Treasurer Zemke explained that she used language in our existing DDA ordinance. She stated that this is set by Code, not Charter.

Discussion was held on what types of projects they would be looking at.

The question was asked if this will be South Lyon residents only. It was stated that much like the Historical Commission, it is not intended to be residents only. Mayor Wallace stated that he can see the local people getting "squeezed out". Further discussion was held on residency.

Councilman Ryzyi questioned the financing of these projects. City Manager Murphy stated that Council would have to adopt a departmental budget. Further discussion was held on adding to the City's budget.

CM 4-4-12 – APPROVAL – FIRST READING AMENDMENT TO CITY CODE

Motion by Wedell, supported by Kopkowski

To approve the proposed amendment to the City Code, Chapter 2, Article V, Division 6 – Cultural Arts Commission (see attached amendment as part of these minutes)

Mayor Wallace stated that he will not support this. He further discussed the financing and the City's budget.

ROLL CALL VOTE:

MOTION CARRIED (2 opposed)

Dixson – Yes

Kivell – Yes

Kopkowski – Yes

Kramer – Yes

Rzyzi – No

Wedell – Yes

Wallace - Yes

3. Affirm City Manager's Appointment to the DDA Board of Directors

City Manager Murphy stated that Joe Repanshek has resigned from the DDA and he would like to appoint Mr. Bill Jarratt to fill that position. It was stated that Mr. Jarratt has previously served on the DDA Board.

CM 4-5-12 – AFFIRMATION OF DDA APPOINTMENT

Motion by Kramer, supported by Wedell

To affirm the City Manager's appointment of Bill Jarratt owner of Jarratt Architecture to the DDA Board of Directors

VOTE:

MOTION CARRIED UNANIMOUSLY

4. Book'n Trilogy Run

Chief Collins stated that this would encompass approximately 15 minutes and would affect the westbound lane of Nine Mile from Millennium Middle School out to the rail trail. He would recommend approval.

CM 4-6-12 – APPROVAL OF ROAD CLOSURE

Motion by Kivell, supported by Dixon

To approve the closure of westbound Nine Mile Road from Millennium Middle School to the South Lyon Rail Trail from 9:00 a.m. to 9:15 a.m. on Saturday, May 19, 2012

Mayor Wallace asked if the businesses are going to be notified. Discussion was held on this being a relatively short period.

VOTE:

MOTION CARRIED UNANIMOUSLY

5. Set Budget Workshop



Mr. Steve Mosier of 205 Harvard stated that Boy Scout Troop #38 began clean-up along the City's bike path April 28<sup>th</sup>. They picked up garbage and debris from Oak Creek to 12 Mile Road. He stated that Girl Scouts from Troop #21746 also participated.

Mr. Carl Richards 390 Lenox discussed the hole caused by the drain on McMunn at the Tube Mill. The job has been great and they have had no cave-ins, pot holes, etc.

A resident of 897 West Hills Drive stated that he is here over concerns about the on-going development of Volunteer Park. It now looks like it has been turned over to commercial development. They would like a restriction to keep the present nature trail intact. Mayor Wallace stated that there are three former pastures there that we are trying to reclaim. We are going to be reorganizing the path and suggested that he contact the City Manager for further information and input on the re-laying of the path.

### **OLD BUSINESS:**

#### **1. Second Reading - Cultural Arts Commission**

City Manager Murphy stated that there have been no changes since the first reading.

#### **CM 5-6-12 – SECOND READING AND ADOPTION – AMENDMENT TO CHAPTER 2**

Motion by Kramer, supported by Wedell

To approve the proposed amendment to the City Code, Chapter 2, Article V, Division 6 – Cultural Arts Commission

Mayor Wallace stated that he does not support this because he thought that this would be an extension of the DDA, and he does not agree with creating additional budget items.

VOTE:

**MOTION CARRIED (2 opposed)**

### **NEW BUSINESS:**

#### **2. Lexington Place**

City Manager Murphy stated that the Planning Commission has approved the final site plan and are recommending approval to City Council.

Mr. Jim Clark of 69059 Telegraph Road, Bloomfield Hills, Michigan representing Robertson Brothers stated that they have worked with the Planning Commission to address their concerns and are awaiting final engineering approval. They are anxious to get going and will get started getting rid of the dirt pile.

The question was asked if our planner switched companies. City Manager Murphy stated that we are still working with Mr. Avantini, however he has started his own company. Additional information will be forthcoming.

Discussion was held on the site plan.

Attorney Lee stated that if they are going to edit the Master Deed, the City will need to review it as well as the By-laws.

## Marianne Jamison

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**From:** Michael Lasley <mlasley@fhgov.com>  
**Sent:** Wednesday, March 09, 2016 9:45 AM  
**To:** Anason, David; Baumgarten, Matthew; Bob Martin; Brian Babcock; Brisson, Dan; Calley, Robert; Clancey, Mark; coogan, colleen; Craig Treppa; cumminsl@rochesterhills.org; dadams@cityofwestland.com; ddrysdale@cityofriverview.com; dgrice@auburnhills.org; dmathews@gpwmil.us ; Doug Ballard; dschueller@berkleymich.net; Gerry McCallum; gregr@ci.royal-oak.mi.us; Marianne Jamison; Jim Buhlinger; lconway@ci.romulus.mi.us; Martin, Kerri; McCarthy, Kevin; mlumpkin@cityofsouthfield.com; mslater@ci.livonia.mi.us; Paul Van Damme (City of Roseville); publicservices, WL; Randy Altimus; Steve Renwick; ritchie, martha; rmelchert@auburnhills.org; Ron Smith; Shermetaro Gary; Smith, Brent; Trice, Tom  
**Subject:** Rock Salt order status  
**Attachments:** itb-fh-14-15-1881\_tab.pdf; MITN 03 07 16.xlsx

Good Morning,

Attached please find the current order information for the MITN Rock Salt bid. Please note that the bid requires a minimum order volume of 70%. If you have unordered tonnage to meet the 70% commitment please make arrangements with Detroit Salt to get orders processed.

If you are unable to make the minimum 70% commitment, please advise and we will see what arrangements(if any) we can make with Detroit Salt to carry over until next season.

Please note our bid was for a two year award(bid tabulation attached) so we are currently confirming the second year extension.

Best Regards,

Michael Lasley, CPPB  
Director of Central Services  
City of Farmington Hills, MI  
[v]248-871-2425 [f]248-871-2431  
[www.fhgov.com](http://www.fhgov.com)  
[www.mitn.info](http://www.mitn.info) (bids/quotes)



City of Farmington Hills, MI  
 Bid Tabulation  
 Rock Salt  
 ITB-FH-14-15-1891  
 Bid Opening  
 \*\*AS READ\*\*

4/15/2015

|                          |                   | Oakland City      |                  |                  | Macomb City       |                  |                  | Wayne City        |                  |                  | Mined/Storage                | Exceptions      |
|--------------------------|-------------------|-------------------|------------------|------------------|-------------------|------------------|------------------|-------------------|------------------|------------------|------------------------------|-----------------|
|                          |                   | Early fill \$/ton | Late fill \$/ton | Total(late fill) | Early fill \$/ton | Late fill \$/ton | Total(late fill) | Early fill \$/ton | Late fill \$/ton | Total(late fill) |                              |                 |
| 2015/16 Season           |                   | 43,100            |                  |                  | 30,550            |                  |                  | 12,000            |                  |                  |                              |                 |
| Vendor                   | City/State        | \$/ton            | \$/ton           |                  | \$/ton            | \$/ton           |                  | \$/ton            | \$/ton           |                  |                              |                 |
| Morton Salt              | Chicago, IL       | \$102.91          | \$107.91         | \$4,850,921.00   | \$103.37          | \$108.37         | \$3,310,703.50   | \$102.04          | \$107.04         | \$1,284,120.00   | Detroit                      |                 |
| Compass Minerals America | Overland Park, KS | \$79.95           | \$79.95          | \$3,445,845.00   | \$79.95           | \$79.95          | \$2,442,472.50   | \$79.95           | \$79.95          | \$959,400.00     | Goodrich Ontario/River Rouge | 80%min/100% max |
| Detroit Salt             | Detroit, MI       | \$56.61           | \$57.11          | \$2,461,441.00   | \$56.40           | \$56.90          | \$1,799,395.00   | \$54.57           | \$55.07          | \$60,840.00      | Detroit/Detroit              |                 |

|                          |                   | Oakland City      |                  |                  | Macomb City       |                  |                  | Wayne City        |                  |                  | Mined/Storage                | Exceptions      |
|--------------------------|-------------------|-------------------|------------------|------------------|-------------------|------------------|------------------|-------------------|------------------|------------------|------------------------------|-----------------|
|                          |                   | Early fill \$/ton | Late fill \$/ton | Total(late fill) | Early fill \$/ton | Late fill \$/ton | Total(late fill) | Early fill \$/ton | Late fill \$/ton | Total(late fill) |                              |                 |
| 2016/17 Season(option)   |                   | 43,100            |                  |                  | 30,550            |                  |                  | 12,000            |                  |                  |                              |                 |
| Vendor                   | City/State        | \$/ton            | \$/ton           |                  | \$/ton            | \$/ton           |                  | \$/ton            | \$/ton           |                  |                              |                 |
| Morton Salt              | Chicago, IL       | \$107.91          | \$112.91         | \$4,866,421.00   | \$108.37          | \$113.37         | \$3,463,463.50   | \$107.01          | \$112.01         | \$1,344,120.00   | Detroit                      |                 |
| Compass Minerals America | Overland Park, KS | No Bid            | No Bid           | No Bid           | No Bid            | No Bid           | No Bid           | No Bid            | No Bid           | No Bid           | Goodrich Ontario/River Rouge | 80%min/100% max |
| Detroit Salt             | Detroit, MI       | \$56.61           | \$56.11          | \$2,547,641.00   | \$60.40           | \$60.90          | \$1,860,495.00   | \$56.57           | \$57.07          | \$684,940.00     | Detroit/Detroit              |                 |

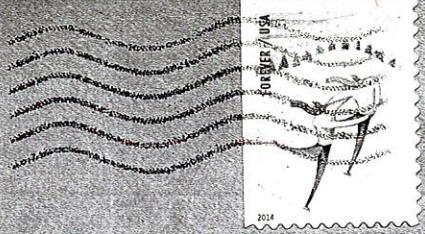


| Customer                 | Customer ID | 70%  | 100%   | 130%  | Taken   | Order As of<br>3/4/16 pm | 70%     | 100%  | 130%     |
|--------------------------|-------------|------|--------|-------|---------|--------------------------|---------|-------|----------|
| Auburn Hills             | AUBURN      | 1400 | 2,000  | 2600  | 0       | -                        | 1400    | 2,000 | 2600.00  |
| Berkley                  | BERKLEY     | 980  | 1,400  | 1820  | 1060.91 | 150                      | -230.91 | 189   | 609.09   |
| Bloomfield Twp           | BLOOMTWP    | 3010 | 4,300  | 5590  | 3032.3  | -                        | -22.3   | 1,268 | 2557.70  |
| Grosse Pointe Shores     | GPS         | 210  | 300    | 390   | 149.12  | -                        | 60.88   | 151   | 240.88   |
| Grosse Pointe Woods      | GPW         | 840  | 1,200  | 1560  | 350.47  | -                        | 489.53  | 850   | 1209.53  |
| Oak Park                 | HL7         | 350  | 500    | 650   | 503.47  | -                        | -153.47 | -3    | 146.53   |
| Roseville                | HL8         | 1260 | 1,800  | 2340  | 1802.5  | -                        | -542.5  | -3    | 537.50   |
| Centerline               | MICENTER    | 350  | 500    | 650   | 401.23  | 50                       | -101.23 | 49    | 198.77   |
| Clawson                  | MICLAWSO    | 980  | 1,400  | 1820  | 1072.84 | 150                      | -242.84 | 177   | 597.16   |
| Eastpointe               | MIEASTPO    | 1400 | 2,000  | 2600  | 2059.19 | -                        | -659.19 | -59   | 540.81   |
| Farmington Hills         | MIFARHIL    | 3500 | 5,000  | 6500  | 3016.31 | -                        | 483.69  | 1,984 | 3483.69  |
| Lathrup Village          | MILATHVL    | 210  | 300    | 390   | 50.67   | 50                       | 109.33  | 199   | 289.33   |
| Livonia                  | MILIVON     | 1750 | 2,500  | 3250  | 811.03  | 500                      | 438.97  | 1,189 | 1938.97  |
| Orchard Lake             | MIORCHLK    | 350  | 500    | 650   | 349.86  | 50                       | -49.86  | 100   | 250.14   |
| Rochester                | MIROCHE     | 1050 | 1,500  | 1950  | 1198.62 | -                        | -148.62 | 301   | 751.38   |
| Rochester Hills          | MIROCHI     | 2100 | 3,000  | 3900  | 2933.54 | 100                      | -933.54 | -34   | 866.46   |
| Royal Oak                | MIROYALO    | 4340 | 6,200  | 8060  | 2694.5  | 600                      | 1045.5  | 2,906 | 4765.50  |
| Southfield, City         | MISFIELD    | 8400 | 12,000 | 15600 | 4989.17 | 50                       | 3360.83 | 6,961 | 10560.83 |
| Southfield Parks         | MISFPARK    | 210  | 300    | 390   | 200.89  | -                        | 9.11    | 99    | 189.11   |
| Southfield Schools       | MISFSCH     | 455  | 650    | 845   | 200.64  | -                        | 254.36  | 449   | 644.36   |
| South Lyon               | MISLYON     | 630  | 900    | 1170  | 802     | 50                       | -222    | 48    | 318.00   |
| St Clair Shores          | MISTCLSH    | 1925 | 2,750  | 3575  | 1416.98 | 250                      | 258.02  | 1,083 | 1908.02  |
| Walled Lake              | MIWALLK     | 665  | 950    | 1235  | 548.87  | 50                       | 66.13   | 351   | 636.13   |
| Riverview                | MIWARIVR    | 700  | 1,000  | 1300  | 451.72  | 100                      | 148.28  | 448   | 748.28   |
| Warren                   | MIWARREN    | 8400 | 12,000 | 15600 | 2003.06 | -                        | 6396.94 | 9,997 | 13596.94 |
| Westland                 | MIWESTLA    | 3500 | 5,000  | 6500  | 1983.46 | 200                      | 1316.54 | 2,817 | 4316.54  |
| Romulus                  | ROMULUS     | 1400 | 2,000  | 2600  | 2535.3  | -                        | -1135.3 | -535  | 64.70    |
| Sterling Heights         | STERLING    | 8050 | 11,500 | 14950 | 4497.19 | -                        | 3552.81 | 7,003 | 10452.81 |
| Wixom                    | WIXOM       | 910  | 1,300  | 1690  | 1014.19 | -                        | -104.19 | 286   | 675.81   |
| Huron Meadows Metropark  | MIHCHEME    | 35   | 50     | 65    | 0       | -                        | 35      |       |          |
| Hudson Mills Metropark   | MIHCUMI     | 70   | 100    | 130   | 51.14   | -                        | 18.86   |       |          |
| Indian Springs Metropark | MIHCINSP    | 35   | 50     | 65    | 0       | -                        | 35      |       |          |
| Kensington Metropark     | MIHCCKENS   | 210  | 300    | 390   | 298.18  | -                        | -88.18  |       |          |
| Metro Beach Metropark    | MIHCMPMB    | 70   | 100    | 130   | 51.83   | -                        | 18.17   |       |          |
| Stony Creek Metropark    | MIHCSTCK    | 210  | 300    | 390   | 149.63  | -                        | 60.37   |       |          |
|                          |             | 630  |        |       | 550.78  |                          | 79.22   |       |          |



9340 Sweet Ct  
S Lyon MI

METROPLEX MI 480  
14 MAR 2016 PM 10 1



South Lyon Rd.  
217 Whipple St  
South Lyon MI



This was a mutual aid to  
Salem Twp F.D. on 1/13/2016.

South Lyon Fire Chief -  
please extend my thanks  
to you & your staff  
for their help in  
fighting my house fire.  
We appreciated all the  
efforts to minimize the  
damage. The Ladies