

FILED

DEC 11 2013

CITY CLERK

**GENERAL ORDINANCE NO. 14, 2013
AS AMENDED**

AN ORDINANCE TO AMEND THE *TERRE HAUTE CITY CODE* TO INSERT ARTICLE 24. REGULATING ESTABLISHMENTS THAT OFFER FOR SALE DRUG AND TOBACCO PARAPHERNALIA/ACCESSORIES.

SECTION 1. *Terre Haute City Code* Chapter 4, is hereby amended by the insertion of Article 24 and the included text herein as follows:

**ARTICLE 24. DRUG AND TOBACCO
PARAPHERNALIA/ACCESSORIES ESTABLISHMENTS**

Sec. 4-360 Purpose and Intent.

a. The Common Council finds that establishments which offer for sale drug and tobacco related paraphernalia and/or accessories represent an age-restrictive business in that paraphernalia and/or accessories used for, with or to aide in the ingestion of drugs is illegal under *I.C. § 35-48-8 et seq.* and paraphernalia used for, with, or to aide in the ingestion of tobacco is restricted to persons of age eighteen (18) years or older.

b. It is the intent of this Article to regulate this type of age-restrictive business to promote the health, safety, and general welfare of the citizens of the City.

c. The Common Council finds that regulation of this type of business is within its authority and is a reasonable, legal, and legitimate use of its police powers to minimize adverse effects while not unreasonably denying access by adults to age-restricted products or the distribution of such products.

Sec. 4-361 Definitions. For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

a. **Drug and Tobacco Paraphernalia/Accessories shall mean:**

(1) Any device designed primarily for use by individuals for the smoking or ingestion of tobacco, marijuana, synthetic cannabinoids or other drug, hashish, hashish oil, cocaine, methamphetamine or any other "controlled substance" as defined by Indiana *I.C. § 35-48-2*;

(2) Any device designed primarily for the smoking or ingestion of those items set forth in subsection (1) above, or any device which has been fabricated, constructed, altered, adjusted, or marked especially for use in the smoking or ingestion of tobacco, marijuana, synthetic cannabinoids or other drug, hashish, hashish oil, cocaine, methamphetamine or any other "controlled substance," and is peculiarly adapted to that purpose by virtue of a distinctive feature or combination of features associated with tobacco or drug paraphernalia and/or

accessories, notwithstanding that it might also be possible to use the device for some other purpose;

(3) Drug and tobacco paraphernalia/accessories shall include, but not be limited to the following described items:

- (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens or filters, permanent or otherwise, heads of punctured metal bowls;
- (B) A device constructed so as to prevent the escape of smoke into the air and to channel smoke into a chamber where it may be accumulated to permit inhalation or ingestion of larger quantities of smoke that would otherwise be possible, whether the device is commonly known as a "bong" or otherwise;
- (C) A smokable pipe constructed with a receptacle or container in which water or other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested.
- (D) A smokable pipe that contains a heating unit, whether the device is known as an "electric pipe," or otherwise;
- (E) A device constructed so as to permit the simultaneous mixing and ingestion of smoke and nitrous oxide or other compressed gas, whether the device is known as a "buzz bomb," or otherwise;
- (F) A device constructed so as to permit the inhalation and/or ingestion of nitrous oxide (N₂O), whether known as "whippets," or otherwise;
- (G) A canister, container or other device with a tube, nozzle or other similar arrangement attached and so constructed as to permit the forcing of accumulated smoke into the user's lungs under pressure;
- (H) A device for holding burning material, such as a cigarette that has become too small or too short to be held in hand, whether the device is known as a "roach clip," or otherwise;
- (I) Lighters and matches are specifically excluded from the definition of tobacco and drug paraphernalia/accessories.

b. **Drug and Tobacco Paraphernalia/Accessories Establishment.** Any establishment where Drug and Tobacco Paraphernalia and/or Accessories are sold, offered for sale, displayed for sale, or delivered.

c. **Absolute Age-Restrictive Business.** Any Drug and Tobacco Paraphernalia/Accessories Establishment, which sells, offers for sale or displays for sale Drug and Tobacco Paraphernalia and/or Accessories, which refuses entry into its establishment by, and does not conduct business with, patrons under the age of eighteen (18).

d. **Non-Absolute Age-Restrictive Business.** Any Drug and Tobacco Paraphernalia/Accessories Establishment, which sells, offers for sale or displays for sale Drug and Tobacco Paraphernalia and/or Accessories, which allows entry into its establishment by, and conducts business with, patrons under the age of eighteen (18), for the purpose of conducting sales of non-age restrictive products.

e. **Synthetic Drugs.** Any item defined by I.C. § 35-31.5-2-321 and/or I.C. § 35-31.5-2-321.5 or any product, herbal or powdered in form, which is sold, offered for sale, or displayed for sale by weight, which is labeled, marked, or marketed as "Incense", "Spice", "K2", or any other trade name, ~~which is priced at a grossly inflated price compared to an average market values of traditional tobacco or incense products,~~ or which is specifically labeled or marked to indicate that the product does not contain synthetic drugs as defined by Indiana I.C. § 35-31.5-2-321 by specific chemical compound name .

Sec. 4-362 Permit Required; Fee; Regulation.

a. Any business that offers for sale drug and tobacco related paraphernalia and/or accessories shall be required to obtain an annual permit through the Board of Public Works and Safety.

b. Fee. Upon the making of an application for the permit described herein, the applicant shall pay to the City Controller an annual fee in the sum of Sixty Dollars (\$60.00). This permit fee may be pro-rated using a monthly calculation. Permits shall be valid from January 1 through December 31 of the year in which they are purchased.

c. Permit Application. All applications for such permit shall be on forms designated by the Board of Public Works and Safety and shall include the following information:

- (1) The full name and address of business;
- (2) The full name, business address and home address of business owner and business manager;
- (3) A telephone number at which the City of Terre Haute can reach the manager and/or owner during business hours of operation.
- (4) Statement of the manager and or owner that the business is in full compliance with all federal, state and local laws, including zoning regulations.

(5) Authorization for the City, its agents and employees to seek information and to conduct an investigation into the truth of the statements set forth in the application.

(6) Authorization for the City, its agents, and employees to enter the business during any normal business hours to conduct an inspection of the premises to determine compliance with all applicable regulations.

d. Change of Information. Business shall promptly notify the Board of Public Works and Safety in writing of any change of information contained in the application form.

e. Permit Non-transferable. Permit shall be for the specific business location and is not transferable to another business or business location.

f. Violation To Operate without a Permit. It shall be a violation of this Article to operate, or permit to operate said business unless a permit has been obtained therefore from the Board of Public Works and Safety.

g. Denial of Permit. A permit to operate such business may be denied based on any of the following:

- (1) Applicant omitted required information on application;
- (2) Applicant made any materially false statement on his application for permit;
- (3) The premises sought to be permitted fails to comply in any manner with any applicable laws or ordinances, including zoning laws or ordinances;
- (4) Applicant has been previously denied a permit for violation of federal, state or local laws; or
- (5) A permit has been previously suspended or revoked from the business owner and or manager for violations of federal, state or local laws.

Sec. 4-364 Denial, Suspension, or Revocation of Permit.

a. The Board of Public Works and Safety may deny, suspend, or revoke any permit issued under the provisions of this Article upon complaint being made by a federal, state, or local law enforcement officer or an authorized representative of the City that the business is being operated in violation of State or Federal law or of the provisions of this Article.

b. Upon notification by the Board of Public Works and Safety of a denial, suspension, or revocation of a permit, the applicant or permittee may, within ten (10) days, request a hearing by written notice to the Board of Public Works and Safety. During those ten

(10) days, a currently permitted business may remain open. If no hearing is requested, the permit shall stand denied or revoked.

c. When a hearing is set by the Board of Public Works and Safety the applicant or permittee shall receive, with not less than twenty (20) days written notice, a notice of the allegation of non-compliance, as well as the time and place where the hearing will be held. A current permitted business may remain open until notified of the hearing results or thirty (30) days whichever is less.

d. At a hearing conducted pursuant to this Section, the applicant or permittee shall have the right to be represented by counsel, to present witnesses, to testify and cross examine any other witness and to subpoena witnesses. All proceedings shall be conducted under oath.

e. The President of the Board of Public Works shall preside at the hearing and the Board shall make the final decision.

f. If any decision adverse to the applicant or permittee is made by the Board of Public Works and Safety after a hearing as provided above, the Board shall provide to the applicant or permittee a written reason for such decision, as well as a notice that the applicant or permittee has the right to pursue any legal remedies available under Indiana law.

Sec. 4-365 Sale of Tobacco and/or Drug and Tobacco Paraphernalia and/or Accessories.

a. All Drug and Tobacco Paraphernalia/Accessories Establishments permitted by the under this Article, which sells, offers for sale or displays for sale, any Drug or Tobacco Paraphernalia and/or Accessories shall require the purchaser of said items be at least eighteen (18) years of age and shall require the purchaser to provide valid government issued photo identification prior to conducting said transaction.

b. Any Drug and Tobacco Paraphernalia/Accessories Establishment permitted under this Article, which is a Non-Absolute Age-Restrictive Business as defined in Sec. 4-361 d. of this Article, shall not display or offer for sale, any tobacco or tobacco paraphernalia and/or accessories in any manner or location which may be readily accessible to a minor under the age of eighteen (18).

c. Any Drug and Tobacco Paraphernalia/Accessories Establishment permitted under this Article, shall not sell, offer for sale, or display for sale, any "synthetic drug" as defined in Sec. 4-361 e. of this Article.

Sec. 4-366 Enforcement & Penalty.

a. It shall be the duty of the Terre Haute Police Department to enforce this Article.

b. The City of Terre Haute, the Board of Public Works and Safety or any designated enforcement official may institute a suit for injunction in the circuit court to restrain an individual or business from violating the provisions of this Article.

c. If the City of Terre Haute or the Board of Public Works and Safety is successful in its suit, the respondent shall bear the cost of the action.

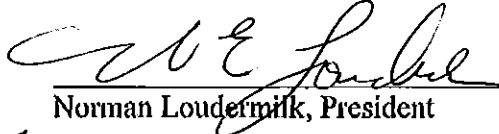
d. Each day of non-compliance with the provisions of this Division constitutes a separate and distinct ordinance violation. Judgment of up to Two Thousand Five Hundred Dollars (\$2,500.00) per day may be entered for a violation of any provision of this Article.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

WHEREAS, ~~an emergency exists for the immediate taking effect of the Ordinance, the same~~ this Ordinance shall be in full force and effect from and after its passage on and after April 1, 2014 by the Common Council of Terre Haute, Indiana and its approval by the Mayor and publication as required by law.


Introduced by:  Norman Loudermilk, Councilman

Passed in open Council this 12th day of December, 2013.

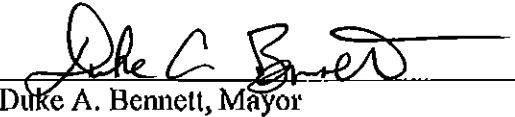

Norman Loudermilk, President

ATTEST:  Charles P. Hanley, City Clerk

Presented by me to the Mayor this 13th day of December, 2013.


Charles P. Hanley, City Clerk

Approved by me, the Mayor, this 13th day of DECEMBER, 2013.


Duke A. Bennett, Mayor

ATTEST:  Charles P. Hanley, City Clerk