



To: Members of the Town Council

From: Dustin Anderson, Town Manager
Tom Vander Woude, Planning Director

CC: Nicole Bennett, Town Attorney

Date: February 16, 2022

Re: Approval of Ordinance 1855: An Amendment to Ordinance #1835: An Ordinance Amending the Smoke-Free Air Regulations for Workplaces and Public Places Within the Town of Munster

The purpose of this memo is to introduce *Ordinance 1855: An Amendment to Ordinance #1835: An Ordinance Amending the Smoke-Free Air Regulations for Workplaces and Public Places Within the Town of Munster*. Adoption of this ordinance will permit the establishment of cigar bars in the Town of Munster, in accordance with Indiana state law.

Background

Munster Municipal Code *Article III. – Smoke Free Air Regulations for Workplaces and Public Places* prohibits smoking and “vaping” in most public places and workplaces in the Town of Munster. These regulations were adopted by the Munster Town Council in November 2019 under Ordinance No. 1780.

The developer of Maple Leaf Crossing has proposed the development of a “bistro and cigar bar” on Lot 7 in Maple Leaf Crossing, a public-private redevelopment project located at 9400 Calumet Avenue, the site of the former Munster Business Complex.

Preliminary plans presented to the Town Site Plan Review Committee show an approximately 6000 square foot, three-story building. The plans show a piano bar and cigar lounge on the first floor, a private, members-only cigar lounge on the 2nd floor, and a cigar-party rental room on the 3rd floor/roof. All floors will have indoor and outdoor seating. The establishment will have a small menu, serve/sell cigars, and serve “high-end” bourbons, scotches, and other liquor. Cigar smoking will be permitted on all floors. Cigarette smoking will not be permitted. Customers must be age 21 or over. Memberships are available for a minimum spend of \$3500 annually. Proposed hours are 11 to 11, Monday through Saturday and noon to 8 on Sunday.

The proposed use is not compliant with the above referenced Article III of the Munster Municipal Code, which specifically prohibits “Tobacco specialty bars”. The State of Indiana permits municipalities to adopt smoking bans that are more restrictive than the statewide smoking ban. That is the case in this instance. The Town ordinance is more restrictive than the Indiana law (IC 7.1-5-12-5) which allows the following exception for cigar bar type uses:

IC 7.1-5-12-5 *Exceptions to smoking ban; signage; areas where smoking is prohibited in exempted premises; verified statement*

Sec. 5. (a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

(6) *An establishment owned or leased by a business that meets the following requirements:*

- (A) *The business prohibits entry by an individual who is less than twenty-one (21) years of age.*
- (B) *The owner or operator of the business holds a beer, liquor, or wine retailer's permit.*
- (C) *The business limits smoking in the establishment to cigar smoking.*
- (D) *During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.*
- (E) *The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.*

The attached amendments to the Munster Municipal Code prepared by Attorney Nicole Bennett remove the Town's prohibition on cigar bars, in accordance with the requirements listed in IC 7.1-5-12-5. The attachments include a red-line version of the ordinance, a clean merged version, and spreadsheet of the changes for easy comparison.

The proposed amendments do not alter the Town's zoning code restrictions on smoking and tobacco-related uses. A *Smoke, Tobacco or CBD Shop* will remain a conditional use in the Town's mixed-use districts and a prohibited use in planned unit development, exclusively residential, and civic districts. That use is defined as *any establishment in which greater than five (5) percent of floor area is devoted to display, sales or storage of tobacco, vaping, or cannabidiol products.*

Maple Leaf Crossing is zoned as a Planned Unit Development and the proposed cigar bar meets the definition of *Smoke, Tobacco or CBD Shop*. Therefore, upon approval of these municipal code amendments, the developer of Maple Leaf Crossing or the cigar bar will still be required to obtain a use variance, reviewed by the Munster Board of Zoning Appeals and approved by the Town Council, to establish the proposed cigar bar. Additionally, the site and building plans are subject to review and approval by the Munster Plan Commission.

Attachments:

1. *Ordinance 1855: An Amendment to Ordinance #1835: An Ordinance Amending the Smoke-Free Air Regulations for Workplaces and Public Places Within the Town of Munster*

Recommendation

Hear Ordinance 1855 on second reading and, by motion and roll-call vote, approve Ordinance 1855 as presented.