

*TEMPE CITY CODE CHAPTER 22, ARTICLE II  
PROPOSED REVISION OF TEMPE CITY CODES INDICATED  
IN ALL CAPITAL, LARGE, BOLD, ITALIC PRINT 06-25-01*

ARTICLE II. SMOKING POLLUTION CONTROL  
DIVISION 1. REGULATION OF SMOKING

**Sec.22-40. Purpose.**

Since the smoking of tobacco or any plant is a positive danger to the health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces, and in order to serve the public health, safety and welfare, the declared purpose of this article is to restrict the smoking of tobacco or any plant within enclosed places, in particular, public places and places of employment.  
(Ord. No. 86.06, 1-30-86)

**Sec.22-41. Definitions.**

The following definitions shall apply in the interpretation and enforcement of this article:

(a) *Smoke or smoking*, as defined in this article, includes the:

- (1) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling and exhaling smoke or blowing smoke rings;
- (2) Placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle, and allowing smoke to diffuse in the air; or
- (1) Carrying or placing of a lighted cigarette or lighted cigar or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air.

(b) *Enclosed public place* means any area closed in by a roof and walls with openings for ingress and egress which is available to and customarily used by the public. Enclosed public places governed by this article shall include, but not be limited to, public areas of grocery stores, waiting rooms, public and private schools, doctors' office buildings, community centers, child care centers, public restrooms, all indoor facilities and any public places already regulated by A.R.S. § 36-601.01 and restaurants/cafeterias, ***BARS, SPORTS BARS, BOWLING ALLEYS AND BILLIARD HALLS.*** ~~with seating capacity of one hundred (100) or more, including outside seating; however, restaurants/cafeterias with fewer than one hundred (100) seats may designate nonsmoking areas; restaurants/cafeterias with fewer than one hundred (100) seats which do not provide a nonsmoking section must post a notice in a conspicuous location at the entrance stating that a nonsmoking section is not available. A private residence is not a "public place."~~

(c) *Bar* shall mean an area devoted primarily to alcoholic beverage service to which food service is only incidental.

(d) *Employee* means any person who is employed by any employer for direct or indirect monetary wages or profit.

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(e) *Employer* means any person or entity employing the services of an employee.

(f) *Place of employment* means any enclosed area under the control of a private or public employer. A private residence is not a "place of employment".

(g) *Designated smoking area* means any area ***OUTDOORS WHICH IS OUTSIDE OF ANY*** ~~within an enclosed public place~~ ***AND REMOVED FROM BUILDING ENTRANCES AND EXITS.*** ~~where smoking is specifically permitted. No designated smoking area shall exceed an area in size in a nonsmoking area within the enclosed public place and.~~ ***Any*** any designated smoking area must be so situated as to allow nonsmoking individuals to conduct normal activity in a smoke-free environment.

(h) *Employee work area* means any areas within a place of employment, which share a common ventilation, heating or air conditioning system.

(Ord. No. 86.06, 1-30-86; Ord. No. 88.16, 2-25-88; Ord. No. 88.18, 2-25-88; Ord. No. 88.28, § 1, 3-31-88)

**Sec. 22-42. Prohibition and regulation of smoking in city-owned facilities.**

(a) All enclosed public places, places of employment and employee work areas owned, leased or operated by the city shall be subject to this article.

(b) Smoking is prohibited in all vehicles and enclosed public places, places of employment and employee work areas owned, leased or operated by the city.

(Ord. No. 86.06, 1-30-86; Ord. No. 94.02, 2-10-94)

**Sec. 22-43. Prohibition of smoking in enclosed public places.**

No person shall smoke in any enclosed public place or place of employment except ***OUTDOORS*** in designated smoking areas.

(Ord. No. 86.06, 1-30-86)

**Sec. 22-44. Regulation of smoking in places of employment.**

(a) Within ninety (90) days after the effective date of this article, each employer in each place of employment within the city shall adopt, implement and maintain a smoking policy containing at a minimum the following requirements:

(1) Prohibition of smoking in all employee work areas within the city.

(2) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, waiting areas, medical facilities, hallways, stairways and elevators.

(b) The employer shall announce its smoking policy within ninety (90) days after the effective date of this article to all its employees working in work areas within the city.

(c) The provisions of this section shall not apply to those areas listed in § 22-45, ~~to restaurants or to the merchandise display areas of any retail sales business.~~

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(d) No employee shall be terminated or subject to disciplinary action solely as a result of his complaint about smoking or nonsmoking in the workplace.

(Ord. No. 86.06, 1-30-86; Ord. No. 88.17, 2-25-88; Ord. No. 88.19, 2-25-88; Ord. No. 88.20, 2-25-88; Ord. No. 88.28, § 2, 3-31-88; Ord. No. 88.36, 6-9-88; Ord. No. 94.02, 2-10-94)~

**Sec. 22-45. Where smoking is not regulated.**

Notwithstanding any other provisions of this article to the contrary, the following area shall not be subject to the smoking restrictions of this article:

(a) Private residences.

(b) ~~Bars.~~

(c) ~~Bowling lanes, billiards/recreation rooms.~~

(d) Hotel and motel rooms rented to guests. ***WHICH ARE ON A SEPARATELY PARTITIONED VENTILATION SYSTEM.***

(e) Retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia., ***AS LONG AS SEPARATELY PARTITIONED AND ON A SEPARATE VENTILATION SYSTEM.***

(f) On-stage smoking as part of a stage production, ballet or similar exhibition.

(g) Conference/meeting rooms and private meeting rooms while these places are being used exclusively for private functions., ***AS LONG AS SEPARATELY PARTITIONED AND SEPARATELY VENTILATED.***

(h) Private clubs and recreation facilities., ***WHICH DO NOT SERVE THE PUBLIC OR CHARGE THE PUBLIC FOR SERVICES.***

(Ord, No. 86.06, 1-30-86)

**Sec. 22-46. Posting requirements**

"Smoking" or "No Smoking" signs, or the international "No Smoking" symbol shall be clearly and conspicuously posted by the owner, operator, manager, employer or other person in control in every place where smoking is controlled by this article.

(Ord. No. 86.06, 1-30-86)

**Sec. 22-47. Enforcement and penalties.**

(a) Citations may be issued for violation of § 22-43 and § 22-46.

(b) Any person violating any of the provisions of §§ 22-43 and 22-46 shall be liable for the imposition of a civil sanction not to exceed twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each successive offense. Each day a violation of § 22-43 and 22-46 continues after a citation for the violation has been issued constitutes a separate violation.

(c) The city shall provide for payment by mail of civil fines under this article.

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(d) Any owner, manager, operator or employer of any establishment controlled by this article shall, upon either observing or being advised of a violation of § 22-43, have the obligation to inform the violator of the appropriate requirements of this law and then request immediate compliance.

(e) Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to this article has the responsibility:

(1) To properly set aside ~~"no smoking" areas;~~ ***IDENTIFY ALL SHARED ENCLOSED INDOOR AIRSPACE AS NON-SMOKING AS WELL AS PROTECT ENTRANCES AND EXITS FROM OUTDOOR DRIFTING ENVIRONMENTAL TOBACCO SMOKE.***

(2) To properly post signs required hereunder; and

(3) To take the action required by paragraph (e) of this section when observing or being advised of a violation.

(f) Any employer who knowingly and intentionally violates § 22-44 may be liable for a civil penalty not to exceed five hundred dollars (\$500). Each day such violation is committed or permitted to continue shall constitute and be punished as a separate offense.

(g) By enforcing this article, the city undertakes only to promote the general welfare and health of the community. It does not assume, nor does it impose on its officers and employees, an Obligation for breach of which it is liable in money damages to any person claiming injury from such breach.

(Ord. No. 86.06, 1-30-86)

### **~~Sec. 22-48. Hardship cases; exemptions.~~**

~~(a) An employer may be granted an exemption from the requirements of § 22-44 on a showing that an undue hardship would result to the business of the employer if forced to comply with the provisions of that section, and such exemption would not be detrimental to the employees of the employer.~~

~~(b) An application for an exemption pursuant to this section shall be made to the city manager and shall be in writing. The application shall set forth the reasons why the requirements of this article would result in undue hardship, shall contain a statement by the employer that such an exemption would not be detrimental to any of its employees, and shall list the names, addresses and telephone numbers of all employees of the employer.~~

~~(c) Upon receiving an application, the city manager shall appoint a hearing officer to hear the application. The hearing officer shall set a hearing date, time and place within a reasonable time. The employer and all employees of the employer shall be given written notice by the hearing officer of the date, time and place of the hearing, and shall be given an opportunity to be heard. If the hearing officer finds that compliance with the requirements of § 22-44 would be an undue hardship and that an exemption would not be detrimental to any of the employees, the hearing officer may grant an exemption.~~

~~(Ord. No. 88.21, 2-25-88)~~

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### ~~Sec. 22-49. Appeals to the city council.~~

~~(a) Any person who appeared before the hearing officer at the hearing provided for in § 22-48 may appeal the decision of the hearing officer to the city council. An appeal may be taken by filing with the hearing officer, appointed pursuant to § 22-48, a notice of appeal specifying the grounds thereof. The hearing officer shall forthwith transmit to the members of the city council all papers constituting the record or problem which the action appealed from was taken.~~

~~(b) Upon receiving the notice of appeal and the records from the hearing officer, the city council shall set a hearing date, time and place within a reasonable time, with a hearing to be held before the city council. The employer and all employees of the employer shall be given written notice by the city clerk of the date, time and place of the hearing and shall be given an opportunity to be heard. The city council may affirm, reverse or modify any ruling made by the hearing officer, and the decision of the city council shall be final.  
(Ord. No. 88.21, 2-25-88)~~

### **Sec. 22-50. Prohibited in Tempe Diablo Stadium.**

Smoking is prohibited in Tempe Diablo Stadium. ~~except for designated smoking areas that may only exist outside the seating area.~~  
(Ord. No. 94.02, 2-10-94)

## DIVISION 2. REGULATION OF TOBACCO PRODUCTS

### **Sec.22-51. Definitions.**

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

- (1) *Control device* means electronic or mechanical control which causes the contents of a vending machine to be distributed;
- (2) *Distribution* means to give, sell, deliver, dispense, issue, offer to give, sell, deliver, dispense or issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue;
- (3) *Minor* means any person under the age of eighteen (18) years;
- (4) *Person* means any natural person, corporation, partnership, firm, organization or other legal entity;
- (5) *Public place* means any area to which the public is invited or permitted;
- (6) *Tobacco product* means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion; and
- (7) *Vending machine* means any mechanical, electronic or other similar device which dispenses tobacco products.

(Ord. No. 93.41, 12-9-93; Ord. No. 99.15, 7-22-99)

**Sec. 22-52. Regulation of tobacco products through vending machines.**

(a) No person shall permit the distribution of tobacco products through the operation of a vending machine in a public place. ~~unless the owner of the premises, or his employee or agent, uses a control device to dispense tobacco products from such vending machine; and only after the owner, or his employee or agent checks the person's valid identification for proof that such person is not a minor.~~

~~(b) No person shall permit the distribution of tobacco products through the operation of a vending machine in a public place unless the vending machine is directly visible to the owner of the premises, or his employee or agent, during the operation of such vending machine.~~

~~(Ord. No. 93.41, 12-9-93; Ord. No. 99.15, 7-22-99)~~

**Sec. 22-53. Storage and display of tobacco products.**

(a) Access. No person who owns, conducts, operates or maintains a business where tobacco products are sold, nor any person who sells or offers for sale tobacco products, shall store or display, or cause to be stored or displayed, such tobacco products in an area or manner that is accessible to the public without employee assistance.

(b) Exemptions. A person is exempt from the requirement of this section if both:

~~1. The person prohibits entry of individuals under the age of eighteen (18) to the premises or that portion of the premises where tobacco products are accessible without employee assistance; and~~

~~2. The person requires photographic identification of any individual who appears to be under the age of eighteen (18) prior to or immediately upon the individual entering the premises or that portion of the premises where tobacco products are accessible without employee assistance. This section does not require a person to prohibit entry or require photographic identification of an individual under the age of eighteen (18) when the individual is accompanied by a parent, legal guardian or spouse over the age of eighteen (18).~~

(c) Penalty. Each instance of violation of this section shall constitute a separate civil offense. For the first civil offense at a retail site, the fine is one hundred dollars (\$100). For the second and third civil offense at a retail site, the fine is five hundred dollars (\$500). However, if more than three (3) violations occur at a retail site in any consecutive twelve (12) month period, the person or entity operating such retail site shall be subject to a minimum fine of five hundred dollars (\$500) or a maximum fine of two thousand five hundred dollars (\$2,500).

(Ord. No. 99.15, 7-22-99)

**Secs. 22-53--22-59. Reserved.**