

ORDINANCE NO. O2014.33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 22, ARTICLE II, DIVISION 1, TEMPE CITY CODE, RELATING TO REGULATION OF SMOKING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 22, Article II, Division 1, Section 22-40 of the Tempe City Code is hereby amended to read as follows:

Sec. 22-40. Purpose.

(A) ~~Since the~~ 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, ~~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.~~

(B) ELECTRONIC SMOKING DEVICES, WHICH FIRST ENTERED THE UNITED STATES MARKET IN 2007, ARE ELECTRONIC INHALERS MEANT TO SIMULATE CIGARETTE SMOKING. ELECTRONIC SMOKING DEVICES USE A HEATING ELEMENT THAT VAPORIZES A LIQUID SOLUTION. MANY ELECTRONIC SMOKING DEVICES RELEASE NICOTINE, A HIGHLY ADDICTIVE SUBSTANCE, WHILE SOME MERELY RELEASE FLAVORED VAPOR. THEY ARE DESIGNED TO MIMIC TRADITIONAL SMOKING IMPLEMENTS IN THEIR USE AND APPEARANCE. ALTHOUGH THE LONG-TERM EFFECTS OF ELECTRONIC SMOKING DEVICES MAY REQUIRE FURTHER STUDY, THE UNITED STATES FOOD AND DRUG ADMINISTRATION HAS FOUND THAT SOME DEVICES CONTAIN TOXINS AND CARCINOGENS AND HAS EXPRESSED CONCERNS ABOUT THEIR SAFETY. USE OF ELECTRONIC SMOKING DEVICES, PARTICULARLY IN PLACES WHERE SMOKING IS PROHIBITED, MAY INTERFERE WITH SMOKERS' ATTEMPTS TO QUIT BY MAKING IT EASIER FOR THEM TO MAINTAIN THEIR NICOTINE ADDICTION. CHILDREN AND YOUTH WHO EXPERIMENT WITH ELECTRONIC SMOKING DEVICES MAY BECOME ADDICTED TO NICOTINE AND ULTIMATELY SWITCH TO SMOKING CIGARETTES.

(C) THEREFORE, IN ORDER TO SERVE THE PUBLIC HEALTH, SAFETY AND WELFARE, THE DECLARED PURPOSE OF THIS ARTICLE IS TO RESTRICT SMOKING

WITHIN ENCLOSED PLACES, IN PARTICULAR, PUBLIC PLACES AND PLACES OF EMPLOYMENT.

Section 2. That Chapter 22, Article II, Division 1, Section 22-41 of the Tempe City Code is hereby amended to read as follows:

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~~
- (3) 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; OR
- (4) USING AN ELECTRONIC SMOKING DEVICE DESIGNED FOR THE PURPOSE OF INHALING AND EXHALING AEROSOL OR VAPOR.

(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. 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.

(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 enclosed public place and removed from building entrances and exits. 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.

(i) *ELECTRONIC SMOKING DEVICE OR ELECTRONIC CIGARETTE* MEANS ANY PRODUCT CONTAINING OR DELIVERING NICOTINE OR ANY OTHER SIMILAR SUBSTANCE INTENDED FOR HUMAN CONSUMPTION THAT CAN BE USED BY A PERSON TO SIMULATE SMOKING THROUGH INHALATION OF VAPOR OR AEROSOL FROM THE PRODUCT. THE TERM INCLUDES ANY SUCH DEVICE, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, E-HOOKAH, OR VAPE PEN, OR UNDER ANY OTHER PRODUCT NAME OR DESCRIPTOR.

Section 3. That Chapter 22, Article II, Division 1, Section 22-47 of the Tempe City Code is hereby amended to read as follows:

Sec. 22-47. Responsibility of owners, etc.

In addition to any other requirements imposed by this article, an owner, manager, operator, employer or other person in control of any place regulated by this article shall:

- (1) Properly identify all shared enclosed indoor airspace as non-smoking; and
- (2) Protect entrances and exits from outdoor drifting environmental tobacco OR ELECTRONIC SMOKING DEVICE smoke.

Section 4. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA this ____ day of _____, 2014.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney