

CHAPTER 11

SMOKING REGULATIONS AND HEALTHIER SMOKEFREE ENVIRONMENTS

(Initiative I95-1 - Approved 3-26-96,2112,3204,3205,3218,3287)

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6-11-1: PURPOSE:

Since the active smoking of tobacco and the inhalation of environmental tobacco smoke (ETS) are dangers to human health and the most prevalent cause of preventable death, disease, and disability, as well as are annoyances, inconveniences, discomforts, and general health hazards to those who are involuntarily exposed to such, and in order to serve the public health, safety, and welfare, the declared purpose of this Chapter is to protect people from dangerous, unnecessary, and/or involuntary health risks by prohibiting the smoking of tobacco or any other plant in City or public places and places of employment, as defined in this Chapter. (2112,I95-1)

6-11-2: DEFINITIONS:

ACCESSORY BAR: A place within a restaurant for the incidental service of alcoholic beverages and associated snacks, appetizers, and other products for on-site consumption. For purposes of this paragraph, "incidental" means that the gross annual receipts, for every consecutive twelve-month period, from the sale of alcoholic beverages, associated snacks, appetizers, and other products for consumption at the accessory bar are no greater than twenty-five percent (25%) of the gross annual receipts of the entire restaurant, for the same period of time. (3287)

BAR: Those business premises where the Arizona Department of Liquor Licenses and Control has licensed the retail sale and on-site consumption of alcoholic beverages, and fifty percent (50%) or more of the business' gross annual revenues, for every consecutive twelve-month period, are derived from the sale of alcoholic beverages. (2112,I95-1,3287)

BUILDING SAFETY DIRECTOR: The public officer appointed to that position by the City Manager, or such other person as the City Manager shall designate. (3287,4252)

DESIGNATED SMOKING AREA: Means: (3287)

- (A) An indoor area where smoking is allowed under this Chapter that is physically separated and independently ventilated from smokefree areas, so that air within designated smoking areas allowed under this Chapter does not drift or get vented into any smokefree areas. The Building Safety Director is authorized to make reasonable requirements, consistent with the Mesa Building Code and this Chapter, including the use of self-closing and tight-fitting doors, applying the terms "physically separated" and "independently ventilated" to accomplish this goal. (3649,3715,4252)

However, under no circumstances shall the designated smoking area exceed in size the smokefree area in that facility. Moreover, the smoking area shall not include the entry lobby, waiting areas, rest rooms, or areas where minors may customarily congregate in that facility. The designated smoking area shall be constructed so that nonsmoking customers can receive all services provided by that business without walking through the smoking area and without exposure to tobacco smoke. Repeated and confirmed violations pertaining to the infiltration of smoke particulates into nonsmoking areas may result in rescission of any alternatives to a smokefree environment offered in this Section, or annulment of the privilege to allow any smoking within the establishment. (3287,3649)

- (B) A designated smoking area may also include the grounds of a building or other facility required to be smokefree under this Chapter when the designated outdoor smoking area is at least fifteen feet (15') away from nonsmoking patrons and the public entrances and exits of the facility. (3287)

EMPLOYEE: Any person who is employed by any "employer" for direct or indirect monetary wages or profits. (2112,I95-1,3287)

EMPLOYER: Any person or entity employing the service of an "employee." (2112,I95-1,3287)

PLACE OF EMPLOYMENT: Any area under control of a private or public employer that is used as a workplace for employees. (2112,I95-1,3287)

PUBLIC PLACE: Any area available to, and customarily used by, the public, including areas closed in by a roof and walls with openings for ingress and egress, and any areas used for public gatherings where persons are seated, standing, or otherwise there for a common purpose such as attendance at or waiting lines for events in a park, amphitheater, stadium, or other assembly area so designated or allowed by the City of Mesa for a legal event. Public places regulated by this Chapter shall include, but not be limited to: grocery and other retail stores, waiting rooms, public and private schools, doctors' office buildings, pharmacies, hospitals and nursing homes, community centers, child care centers, any group meeting places for children's clubs, scout troops, or other child-/youth-centered organizations, public rest rooms, lobby and public service areas of hotels, motels, sports/recreational facilities, restaurants, and all public places regulated by A.R.S. §36-601.01. A public place shall also include all places identified under Arizona or federal law as a place of public accommodation. (I95-1,3287)

RESTAURANT: A facility regularly open for the primary purpose of serving food prepared for consumption, either on or off the premises, to customers for compensation, including those that also serve alcoholic beverages from an accessory bar. For purposes of this Chapter only, a "restaurant" shall have annual gross revenue from the sale of food exceeding fifty percent (50%) for every consecutive twelve-month period, excluding, however, food such as appetizers, snacks, and other food products consumed in an accessory bar which the owner chooses to designate as a smoking area under this Chapter. (2112,I95-1,3287)

SMOKE OR SMOKING: Means and includes: (2112,I95-1,3287)

- (A) Carrying or placing of a lighted cigarette, 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; (2112,I95-1,3287)
- (B) Placing of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air; (2112,I95-1,3287)
- (C) Carrying or placing of a lighted cigarette, cigar, or pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air. (2112,I95-1,3287)

SMOKEFREE: No tobacco or other plant smoke and freedom from inhaling environmental tobacco smoke (ETS) or passive smoke, including secondhand smoke generated by an active smoker or sidestream smoke or fumes from any such burning material, device, or ashtray that continues to emit such tobacco smoke or fumes from lighted or extinguished smoking materials. (I95-1,3287)

TOBACCO SHOP: Means: (3287)

- (A) An exclusively retail business, (3287)
- (B) That is not part of a larger store, and (3287)
- (C) That derives at least ninety percent (90%) of its gross annual revenue, for every consecutive twelve-month period, from the retail sale of tobacco products and smoking equipment. (3287)

6-11-3: REGULATION OF SMOKING, CITY PROPERTY:

All buildings and vehicles owned, leased, or occupied by the City of Mesa shall be subject to the provisions of this Chapter, as well as outdoor areas or facilities, the primary intended use of which requires persons to assemble, such as group seating or standing or waiting in lines, thus exposing them to inhalation of ETS, excepting designated smoking areas as per Section 6-11-5(A)3. (2112,I95-1)

6-11-4: REGULATION OF SMOKING IN PUBLIC PLACES:

No person shall smoke in any public place when the public gathers together for any purpose or event, except in a bar whose owner chooses to allow smoking, in a designated smoking area meeting all the requirements of this Chapter, or pursuant to a hardship exception or phase-in as prescribed in this Chapter. (2112,I95-1,3204,3287)

6-11-5: REGULATION OF SMOKING IN PLACES OF EMPLOYMENT:

- (A) On or before March 1, 1997, each employer in each place of employment within the City shall adopt, implement, maintain, and announce to its employees a smoking policy containing at a minimum the following requirements: (2112,I95-1,3287)
 1. Except as set forth below, all workplace areas shall be "smokefree" as previously defined in Section 6-11-2. (I95-1,3287)

2. Smoking is prohibited in conference rooms, meeting rooms, classrooms, auditoriums, cafeterias, kitchens, lunchrooms, employees' lounges, rest rooms provided by employers for employee use, and in waiting areas, including outdoor waiting lines, hallways, stairways, elevators, and areas common to all employees. (2112,I95-1,3287)
 3. A separate smoking area outdoors which does not require others to walk through it upon entering or a smoking area indoors which is separately constructed and negatively pressure ventilated using a separate cooling and/or heating ventilation system may be provided at the option of the employer. However, if an employee complains to the employer or the City that smoke is drifting or being vented out of the designated smoking area and interfering with nonsmokers, and the employer or the City confirm that as a fact, the employer shall repair, relocate, or eliminate the designated smoking area. (I95-1,3287)
 4. Nothing in Chapter 11 shall require an employer to construct, purchase, or otherwise provide or facilitate any smoking area, and nothing in Chapter 11 shall preclude the designation of the total premises as smokefree at the option of the employer. (I95-1,3287)
- (B) No employee shall be retaliated against in any fashion, nor subject to termination or to disciplinary action as a result of his complaint about smoking violations in the workplace. (2112,I95-1,3287)

6-11-6: WHERE SMOKING IS ALLOWED:

- (A) A private residence or public housing dwelling unit, but the common areas and common open space, as defined in Title 11, Mesa City Code, of public housing projects and private multiple- and single-residence developments that are accessible to the public or the residents of the project or development (such as lobbies, playgrounds or "tot lots," elevators, and recreation areas, whether located indoors or outdoors) are required to be smokefree when the public or residents gather in those areas, as are private residences required to be smokefree when used as commercial child care or health care facilities. (I95-1,3205,3287)
- (B) Hotel and motel rooms rented to guests which may include rooms specified as permitting smoking within rooms so designated. (I95-1,3287)
- (C) Private clubs, including fraternal lodges, meeting the definition of private clubs rather than places of public accommodation under the 1964 Civil Rights Act, as amended, conducting private functions where the public is not invited, welcomed, or served, hence not charged for services, will be expected to set their own policies relative to smoking control within their private facilities. Private clubs do not include establishments holding public liquor licenses from the Arizona Department of Liquor Licenses and Control, or clubs formed to circumvent this Chapter where persons pay nominal dues or the "members" do not control the operation of the "club." (I95-1,3287)
- (D) Where smoking or smoking materials are being used to exercise protected First Amendment activity, such as smoking materials used for bona fide religious purposes. (3287)
- (E) Tobacco shops. However, if a tobacco shop shares a common ventilation system with an area required to be smokefree under this Chapter, the tobacco shop must meet the requirements of a designated smoking area before smoking can occur there. (3287)

- (F) Hotel, motel, wedding chapel, reception center, restaurant, and any other bona fide conference or meeting rooms while these are being used exclusively for, or leased exclusively for, private meeting functions to which the public is not invited or allowed to attend. However, if a conference or meeting room shares a common ventilation system with an area required to be smokefree under this Chapter, the conference or meeting room where smoking is allowed must meet the requirements of a designated smoking area before smoking can occur there. (3287)
- (G) In a designated smoking area meeting the requirements of this Chapter. (3287)
- (H) In a building or facility operating under a hardship exception or phase-in, as allowed pursuant to an order of the Building Safety Director under this Chapter. (3287,4252)
- (I) In any building, facility, or area not required to be smokefree under this Chapter. (3287)

6-11-7: SIGN POSTING:

- (A) "No Smoking" signs, "Smokefree" signs, "This is a Nonsmoking Establishment" sign, or the international "No Smoking" symbol shall be clearly and conspicuously posted by the owner/operator/manager/employer or other person in control in enclosed areas where smoking is prohibited by this Chapter, including each entry point. The owner, manager, operator, or other person having control of a business or facility shall remove all ashtrays and other smoking paraphernalia from all areas required to be smokefree under this Chapter. (2112,195-1,3287)
- (B) Where smoking is permitted indoors under this Chapter, the owner shall conspicuously post a sign stating "Designated Smoking Area" at all entrances to that area. All bars that choose to allow smoking throughout their facility shall post a sign on all outside entry doors stating "This is a Smoking Establishment, and Does Not Provide a Nonsmoking Area." All signs designating smoking areas or smoking establishments under this Chapter shall also state that "Minors May Not Enter Unless Accompanied and Supervised by a Parent or Legal Guardian." It is unlawful for an owner, manager, operator, or other person in control of a business or facility to allow minors to enter any area where smoking is permitted under this Chapter unless each minor is accompanied and supervised by a parent or legal guardian. (3287)
- (C) If a building or facility has both smokefree areas and a designated smoking area, the owner, manager, operator, or other person in control of that building shall conspicuously post a sign at all initial entry points clearly indicating that "This Establishment Provides Both Smoking and Nonsmoking Areas." The owner, manager, operator, or other person in control of such a building or facility shall also clearly indicate inside the building or facility, through the signs required in paragraphs (A) and (B) above, in which areas smoking is permitted and in which areas smoking is prohibited. (3287)
- (D) All signs and symbols required under this Chapter shall have letters or symbols no smaller than three inches (3") in height. (195-1,3287)

6-11-8: BARS AND RESTAURANTS: (3204,3218,3287)

- (A) Smoking is allowed throughout all bars and their grounds (other than accessory bars in restaurants) providing it does not affect nonsmoking areas. (3287)

(B) All restaurants shall be smokefree, except the restaurant owner may choose to allow smoking: (3287)

1. In an accessory bar if it is a designated smoking area meeting all the requirements of this Chapter; or (3287)
2. If the restaurant owner applies for, is granted, and complies with a hardship exception or phase-in under this Chapter. (3287)

6-11-9: (RESERVED) (3287)

6-11-10: HARDSHIP SITUATIONS:

(A) Hardship Phase-In. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter may apply to the Building Safety Director for a phase-in of part or all of the structural, HVAC, signage, and other requirements of this Chapter applicable to designated smoking areas. The Building Safety Director may grant a phase-in period of up to one (1) year. Hardship applicants shall bear the burden of showing that immediate implementation of the requirements of this Chapter would create an undue financial hardship. (3287,4252)

1. For purposes of this Section, an "undue financial hardship" means that the owner does not have current funds, or the current ability to borrow and repay funds, necessary and sufficient to remodel the owner's facility to comply with this Chapter. (3287)
2. A hardship phase-in application shall contain the following: (3287)
 - (a) An estimate from an appropriately licensed contractor of the costs of complying with this Chapter; (3287)
 - (b) Mesa sales tax and other financial statements for the most recent annual period purporting to show an undue financial hardship on the applicant; (3287)
 - (c) A time and task schedule for complying with all requirements of this Chapter should a hardship phase-in be granted; (3287)
 - (d) A sworn statement explaining how the applicant will protect the health of employees and the public from secondhand and sidestream smoke during a phase-in period; (3287)
 - (e) A sworn statement that the applicant shall completely fulfill the structural, HVAC, signage, and all other requirements of this Chapter applicable to designated smoking areas in that facility in accordance with its submitted time and task statement and within the hardship phase-in period, if granted; (3287)
 - (f) A description of all efforts the applicant has made, and which reasonably could be made, to operate the business or facility successfully within a smokefree environment. (3287)

(B) Hardship Smoking Exception. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter but wishing to allow smoking throughout the owner's business or facility may apply to the Building Safety Director for a hardship smoking exception allowing smoking in an area or areas otherwise required to be smokefree under this Chapter. Applicants shall bear the burden of showing that operating smokefree in part or all of their premises has created an undue financial hardship. (3287)

1. For purposes of this Section, evidence of a fifteen percent (15%), or more, reduction in gross revenue over the applicable period of time shall constitute prima facie evidence and a rebuttable presumption of an "undue financial hardship." (3287)
 2. An application for a hardship smoking exception shall contain the following: (3287)
 - (a) A description of all efforts the applicant has made, or which reasonably could be made, to operate the business or facility successfully within a smokefree environment. (3287)
 - (b) Mesa sales tax statements comparing sales receipts for a four-month period of compliance under this Chapter and the same four-month period in the year prior to compliance, or other comparable period acceptable to the Building Safety Director. (3287,4252)
 - (c) A sworn statement that the applicant shall comply with the terms of the Building Safety Director's hardship exception order, including structural, HVAC, periodic reevaluation of the grounds for a smoking hardship exception, and such other requirements the Building Safety Director may deem reasonably necessary to protect the health of employees and the public. (3287,4252)
- (C) Application. (3287)
1. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking phase-in, that person shall apply to the Building Safety Director within sixty (60) days of December 20, 1996. (3287,4252)
 2. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking exception, that person shall apply to the Building Safety Director within one year of December 20, 1996. (3287,4252)
 3. All operations within new businesses or new facilities constructed or remodeled after December 20, 1996 shall comply with the provisions of this Chapter, and are not eligible for a hardship exception or phase-in. (3287)
 4. If a person submits a complete application for a hardship phase-in or exception within the time frames set forth above, and works in good faith to fulfill the requirements of this Chapter and the orders of the Building Safety Director, the Building Safety Director may temporarily permit smoking in areas otherwise required to be smokefree under this Chapter until the Building Safety Director finally grants or denies the application. (3287,4252)
 5. If a person fails to submit a complete application for a hardship phase-in or exception within the time frames set forth above, or fails to fulfill the requirements of this Chapter or the orders of the Building Safety Director in processing such application, the business or facility must be smokefree as required under this Chapter, or the owner, manager, tenant, and other person(s) in control of the premises are subject to enforcement action under this Chapter. (3287,4252)
- (D) Investigation and Decision. The Building Safety Director, or designee, may hold an administrative hearing to review a hardship application under this Section, and the Building Safety Director may conduct such other investigation and review as the Building Safety Director deems necessary. The applicant shall cooperate with the Building Safety Director's investigation. (3287,4252)

1. The Building Safety Director may grant a hardship phase-in or hardship smoking exception subject to such terms and conditions as the Building Safety Director deems reasonably necessary to protect the health and safety of employees and the nonsmoking public, in light of the "Purpose" section of this Chapter (6-11-1), and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1) (see footnote two [2] pages forward). (3287,4252)
 2. The decision of the Building Safety Director granting or denying a hardship application under this Section is subject to appeal as a special action in the Maricopa County Superior Court, to the extent and in the manner provided in Volume 17B, A.R.S. (3287)
- (E) No Application or Permit Fees. The City shall not assess or collect any application fee or charge for hardship exceptions or phase-ins. Furthermore, if remodeling of existing structures, as of December 20, 1996, is undertaken solely for the purpose of complying with the smokefree requirements of this Chapter, no Mesa building permit fees or other City-imposed charges shall be assessed or collected due to such remodeling. (3287)

6-11-11: CHAPTER NOT TO EXCUSE NONCOMPLIANCE WITH OTHER MEASURES:

Nothing in this Chapter excuses noncompliance with any Mesa Code (including the Mesa Zoning Code), county, state, or federal law (such as Occupational Safety and Health Administration standards), or any rule or regulation adopted pursuant thereto. (3287)

6-11-12: ENFORCEMENT:

- (A) Against the Smoker. Any person who smokes in an area required to be smokefree under this Chapter shall be subject to citation for a petty offense. For the first petty offense, the fine is one hundred dollars (\$100.00). For the second petty offense, the fine is two hundred dollars (\$200.00). For the third petty offense, the fine is three hundred dollars (\$300.00). For each petty offense thereafter, the violator shall be subject to Class One criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of five hundred dollars (\$500.00), a maximum fine of two thousand five hundred dollars (\$2,500.00), six (6) months in jail, or both such fine and imprisonment. (I95-1,3287)
- (B) Against the Owner, Manager, and Tenant of a Facility. All owners, managers, operators, tenants, or other persons in control of an establishment or area regulated under this Chapter ("responsible party") are jointly and individually liable for compliance with this Chapter. (I95-1,3287)
1. Upon a determination of reasonable cause that a responsible party has failed to fulfill a requirement of this Chapter or to maintain a smokefree environment where required under this Chapter, the Building Safety Director, or designee, may issue and serve upon the responsible party a notice of civil violation stating the nature of the violation. The notice shall be in the form established by the Building Safety Director. Service shall be made by mailing a copy thereof to the place of business by certified or registered mail. Service shall be deemed completed when so mailed. (2112,I95-1,3287,4252)
 2. Within ten (10) days of service of said notice, the responsible party shall either pay the fine to the Building Safety Director, or designee, or request a hearing on the violation by filing a written request for hearing with the Building Safety Director. If the responsible party pays the fine, the allegations in the notice shall be deemed admitted, and such person shall be deemed responsible for having committed the offenses described in the notice. If a hearing is requested, the City Manager shall appoint a Hearing Officer. (2112,I95-1,3287)

3. Failure to respond timely to a notice of violation shall result in a default judgment finding the party responsible for the violations described in the notice and imposing the penalties provided for in this Chapter. Unpaid judgments, whether by default or after hearing, may be recorded as liens against the responsible party's property. (2112,I95-1,3287)
 4. Each instance of noncompliance with this Chapter or each instance of failure to maintain a smokefree environment where required under this Chapter shall constitute a separate civil offense. For the first civil offense, the fine is one hundred dollars (\$100.00). For the second civil offense, the fine is two hundred dollars (\$200.00). For the third civil offense, the fine is three hundred dollars (\$300.00). For each offense thereafter, the violator shall be subject to criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of five hundred dollars (\$500.00), a maximum fine of two thousand five hundred dollars (\$2,500.00), six (6) months in jail, or both such fine and imprisonment. (3287)
 5. If the Hearing Officer or judge determines that a violation of this Chapter has occurred, they shall issue an order imposing a sanction in accordance with the schedule in paragraph 4 above and in addition, shall assess against the responsible party the City's personnel, mailing, and other costs incurred in investigating and hearing the case. (2112,I95-1,3287)
- (C) Inspection and Investigation. To the maximum extent allowed by law, the Building Safety Director, or designee, is authorized to inspect for compliance with all requirements of this Chapter and the Mesa City Code, including all technical requirements the Building Safety Director is authorized to develop under this Chapter and any hardship order the Building Safety Director may issue under this Chapter. The Building Safety Director's authority includes, but is not limited to, requiring information from persons subject to the Mesa City Code and investigating the truth of that information, as necessary to determine compliance with the City Code. Persons regulated under this Chapter shall retain for at least three (3) years all information necessary to validate compliance with this Chapter. (3287,4252)
- (D) Suspension, Revocation of Hardship Exception or Phase-in. A material change in circumstances or failure of any person to comply at all times with all terms and conditions of a hardship exception or phase-in shall be grounds for revocation or suspension of the hardship exception or phase-in that was granted. The Building Safety Director is authorized to initiate revocation or suspension proceedings pursuant to the civil hearing procedures in this Section. (3287,4252)

6-11-13: NONRETALIATION:

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, customer, or other person because such person exercises any right to a smokefree environment afforded by this Chapter. (3287)

6-11-14: CITY MANAGER IMPLEMENTATION DECISIONS:

Any affected person with questions about the implementation of this Chapter and desiring written guidance indicating how the City will apply this Chapter may write to the Mesa City Manager, P.O. Box 1466, Mesa, AZ. The City Manager is authorized to provide binding, written direction in response to such requests. Such direction shall be consistent with the purposes of this Chapter, as reflected in Section 6-11-1, and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1)*. The City Manager's directions shall also be consistent with the City Charter's requirement that the City Manager faithfully execute all laws of the City, the City Charter, and all acts of the City Council. The City Manager's directions under this Section are subject to challenge in the Maricopa County Superior Court under the special action provisions, Volume 17B, A.R.S., to the extent and in the manner provided therein. (3287)

6-11-15: (RESERVED)**6-11-16: (RESERVED)****6-11-17: (RESERVED)****6-11-18: (RESERVED)****6-11-19: (RESERVED)****6-11-20: (RESERVED)**

*The text of Proposition 200 (Initiative I95-1) contained the following preamble:

WHEREAS the city of Mesa adopted Ordinance 2112 Sept. 8, 1986, and since that time much more scientific and medical research is reported from the U.S. Environmental Protection Agency (EPA), the U.S. Surgeon General and other researchers, more fully documenting the health risks and health effects of both active and passive smoking; and

WHEREAS smoking is the most prevalent and preventable cause of death in the U.S.A., leading to more than twice as many deaths as the other leading causes combined (including alcohol, illegal drugs, motor vehicles, murders, suicide, AIDS, fires, firearms, etc.); and

WHEREAS the EPA has determined that "widespread exposure to environmental tobacco smoke (ETS) in the United States presents a serious and substantial public health impact" and that ETS contains many harmful chemicals and carcinogens and is a serious health risk to human beings, especially to infants, children, and pregnant women; and

WHEREAS in children, in the U.S.A., ETS exposure is causally associated with hundreds of thousands of respiratory infections and up to a million cases of increased severity of asthma, as well as being a serious risk factor for new cases of asthma in children; and

WHEREAS an increasing majority of voters in Mesa (nearly 75%) "support a complete ban on smoking in public places" as reported by O'Neil Associates' Valley Monitor Poll, in a public opinion survey of Mesa registered voters, October 1994.

ARTICLE II

STORAGE AND DISPLAY OF TOBACCO PRODUCTS

SECTION:

6-11-21: DEFINITIONS

6-11-22: STORAGE AND DISPLAY OF TOBACCO PRODUCTS

6-11-23: PENALTY

6-11-21: DEFINITIONS:

In this Article, unless the context otherwise requires: (3563)

1. "Person" means the State, the County, a political subdivision of the State, other governmental entities, a corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual. "Person" also includes a trustee, receiver, an assignee, or similar representative. (3563)
2. "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. (3563)

6-11-22: STORAGE AND DISPLAY OF TOBACCO PRODUCTS:

- (A) 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. (3563)
- (B) A person is exempt from the requirement of this Section if both: (3563)
1. The business where tobacco products are sold prohibits entry of individuals under the age of eighteen (18) at all times; and (3563)
 2. Photographic identification is required from any individual who appears to be twenty-six (26) years of age or younger prior to entering the business where tobacco products are sold. (3563)

6-11-23: PENALTY:

Each instance of violation of this Article 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). The City, through its Code Compliance Supervisor, or designee, will follow the civil offense procedures set forth in Section 6-11-12(B), Mesa City Code. (3563)

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