

ORDINANCE NO. O2022.XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING TEMPE CITY CODE, BY ADDING A NEW SECTION TO CHAPTER 16A CREATING A REQUIREMENT FOR A NEW TOBACCO SELLER LICENSE AND PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS WITHIN THE CITY OF TEMPE; AND AMENDING ARTICLE II RELATING TO SMOKING POLLUTION CONTROL TO DEFINE THE MINIMUM AGE FOR THE PURCHASE OF TOBACCO PRODUCTS AT AGE TWENTY-ONE.

WHEREAS, the Family Smoking Prevention and Control Act authorized the Food and Drug Administration to regulate tobacco products, preempting some state and local regulations that are contrary to the law but saving and preserving from preemption some state and local authority over tobacco; and,

WHEREAS, the President signed legislation amending the Federal Food, Drug, and Cosmetic Act to raise the federal minimum age for the sale of tobacco products from eighteen (18) to twenty-one (21) years old; and,

WHEREAS, the City of Tempe has a vested interest in the public health and safety of its residents and according to the Centers for Disease Control and Prevention, tobacco use is the leading cause of preventable disease, disability, and death in the United States; and,

WHEREAS, as of 2020, approximately 30.8 million U.S. adults smoke cigarettes. Every day, more than 1,600 young people under age eighteen (18) years smoke their first cigarette, and more than 235 kids under the age of eighteen (18) begin smoking cigarettes daily; and,

WHEREAS, flavored tobacco have been shown to be “starter” product for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term addiction; and,

WHEREAS, 51% of Arizona high school students have tried vaping;

WHEREAS, according to the Surgeon General, nicotine can harm the parts of the adolescent brain responsible for attention, learning, mood and impulse control, and can prime the brain for addiction to other drugs;

WHEREAS, the long-term health effects of cigarettes and electronic cigarettes have been linked to serious health issues including but not limited to cancer, stroke, asthma, pulmonary disease, and cardiovascular disease; and

WHEREAS, over 16 million people live with at least one disease caused by smoking and smoking causes about one of every five deaths in the United States each year.

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

Section 1: That Chapter 16A, Licenses and Business Regulations, of the Tempe City Code is hereby amended by adding a new Article X to read as follows:

ARTICLE X. - TOBACCO SALES LICENSE.

SEC. 16A-192. - PURPOSE AND INTENT.

- (A) THE IMPACT OF SMOKING ON AN INDIVIDUAL'S HEALTH IS WELL DOCUMENTED. IT IS THE PURPOSE OF THIS ARTICLE TO REGULATE TOBACCO SALES ESTABLISHMENTS TO PROMOTE THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS OF THE CITY, AND TO AVOID AND PREVENT THE ILLEGAL SALE OF TOBACCO PRODUCTS, INCLUDING CIGARETTES, ELECTRONIC SMOKING DEVICES, ELECTRONIC CIGARETTES OR ANY OTHER TOBACCO PARAPHERNALIA, IN PARTICULAR, TO MINORS AND YOUNG ADULTS UNDER THE AGE OF TWENTY-ONE (21) IN ORDER TO MITIGATE THE DETRIMENTAL EFFECTS OF SMOKING, INHALING OR INGESTING TOBACCO.
- (B) THE USE OF ELECTRONIC CIGARETTES BY MINORS AND YOUNG ADULTS HAS BEEN RISING IN RECENT YEARS DUE TO THE FLAVORED TOBACCO USED IN VAPING THUS ELIMINATING THE SALE ANY FLAVORED TOBACCO PRODUCTS AEROSOLIZED OR VAPORIZED THROUGH THE USE OF AN ELECTRONIC SMOKING DEVICE. THIS WILL REDUCE AND PREVENT THE NUMBER OF MINORS AND YOUNG ADULTS IMPACTED BY THE HARMS OF TOBACCO. YOUNG PEOPLE WHO USE E-CIGARETTES ARE MORE LIKELY TO SMOKE CIGARETTES IN THE FUTURE.
- (C) WHILE THE LONG-TERM HEALTH EFFECTS OF TOBACCO INHALED THROUGH AN ELECTRONIC SMOKING DEVICE OR ELECTRONIC CIGARETTE MAY NOT YET BE CLEAR, REPORTED STUDIES HAVE LINKED IT TO INCREASED ODDS OF ASTHMA, CHRONIC OBSTRUCTIVE PULMONARY DISEASE AND CARDIOVASCULAR DISEASE. THE CENTERS FOR DISEASE CONTROL AND PREVENTION WARN THAT ELECTRONIC SMOKING DEVICES OR ELECTRONIC CIGARETTES ARE NOT SAFE FOR YOUTH, YOUNG ADULTS,

AND PREGNANT ADULTS, AS WELL AS ADULTS WHO DO NOT CURRENTLY USE TOBACCO PRODUCTS.

(D) MOST TROUBLING IS THAT ELECTRONIC SMOKING DEVICES HAVE EXPOSED A NEW GENERATION OF YOUNG ADULTS TO TOBACCO AND NICOTINE, WHICH IS HIGHLY ADDICTIVE AND TOXIC BY TARGETING MINORS AND YOUNG ADULTS THROUGH THE SALE OF FLAVORED TOBACCO PRODUCTS.

(E) THE CITY COUNCIL FINDS IT IN THE PUBLIC INTEREST TO LICENSE TOBACCO SALES ESTABLISHMENTS AS PROVIDED IN THIS ARTICLE AS A PRUDENT AND REASONABLE MEASURE TO PREVENT THE ILLEGAL SALE OF TOBACCO PRODUCTS TO MINORS AND YOUNG ADULTS UNDER THE AGE OF TWENTY-ONE (21) AND TO MITIGATE THE USE OF THESE PRODUCTS BY MINORS AND YOUNG ADULTS BY PROHIBITING THE SALE OF ANY FLAVORED TOBACCO PRODUCTS.

Sec. 16A-193. –DEFINITIONS

APPLICANT MEANS ANY PERSON, PARTNERSHIP, JOINT VENTURE, SOCIETY, CLUB, TRUSTEE, TRUST, ORGANIZATION, ASSOCIATION OR CORPORATION OR THE EMPLOYEES OF ANY SUCH PERSON, PARTNERSHIP, JOINT VENTURE, SOCIETY, CLUB, TRUSTEE, TRUST, ORGANIZATION, ASSOCIATION OR CORPORATION WHO OWNS A SINGLE LOCATION TOBACCO SALES ESTABLISHMENT. EACH PLACE OF BUSINESS OWNED BY THE APPLICANT MUST BE LICENSED SEPARATELY.

EMPLOYEE MEANS ANY PERSON WHO PERFORMS ANY SERVICE ON A FULL-TIME, PART-TIME OR CONTRACTED BASIS WHETHER OR NOT THE PERSON IS DENOMINATED AN EMPLOYEE, INDEPENDENT CONTRACTOR OR OTHERWISE AND WHETHER OR NOT THE PERSON IS COMPENSATED OR IS A VOLUNTEER.

ELECTRONIC SMOKING DEVICE MEANS ANY DEVICE THAT MAY BE USED TO DELIVER ANY AEROSOLIZED OR VAPORIZED SUBSTANCE TO THE PERSON INHALING FROM THE DEVICE, INCLUDING, BUT NOT LIMITED TO, AN E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH. ELECTRONIC SMOKING DEVICE INCLUDES ANY COMPONENT, PART, OR ACCESSORY OF THE DEVICE, AND ALSO INCLUDES ANY SUBSTANCE THAT MAY BE AEROSOLIZED OR VAPORIZED DURING THE USE OF THE DEVICE, WHETHER OR NOT THE SUBSTANCE CONTAINS NICOTINE. ELECTRONIC SMOKING DEVICE DOES NOT INCLUDE DRUGS, DEVICES, OR COMBINATION PRODUCTS SPECIFICALLY AUTHORIZED FOR SMOKING CESSATION PURPOSES SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION, AS THOSE TERMS ARE DEFINED UNDER 21 U.S.C. 321 AND 353(G) OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT.

FLAVORED TOBACCO PRODUCT MEANS ANY TOBACCO PRODUCT THAT

IMPARTS A TASTE OR SMELL, OTHER THAN THE TASTE OR SMELL OF TOBACCO, THAT IS DISTINGUISHABLE BY AN ORDINARY CONSUMER, EITHER PRIOR TO, OR DURING THE CONSUMPTION OF, A TOBACCO PRODUCT, INCLUDING, BUT NOT LIMITED TO, ANY TASTE OR SMELL RELATING TO FRUIT, MENTHOL, MINT, WINTERGREEN, CHOCOLATE, COCOA, VANILLA, HONEY, OR ANY CANDY, DESSERT, ALCOHOLIC BEVERAGE, HERB, OR SPICE.

LICENSE OR TOBACCO SALES LICENSE MEANS A LICENSE REQUIRED FOR OPERATING A TOBACCO SALES ESTABLISHMENT UNDER SECTION 16A-195. *LICENSE* AND *TOBACCO SALES LICENSE* ARE USED INTERCHANGEABLY IN THIS ARTICLE.

LICENSING OFFICER MEANS THE INDIVIDUAL DESIGNATED BY THE FINANCIAL SERVICES DIRECTOR TO ADMINISTER AND ENFORCE THIS ARTICLE.

PERSON MEANS ANY NATURAL PERSON.

SELL OR SALE MEANS TO FURNISH, GIVE, PROVIDE, SELL, OR TO ATTEMPT TO DO SO, WHETHER GRATUITOUSLY OR FOR ANY TYPE OF COMPENSATION.

TOBACCO PRODUCT MEANS:

- (1) ANY PRODUCT CONTAINING, MADE OF, OR DERIVED FROM TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED, OR INGESTED BY ANY OTHER MEANS, INCLUDING A TOBACCO CIGARETTE, CIGAR, PIPE TOBACCO, SMOKELESS TOBACCO, SMOKING TOBACCO, SNUFF, SNUS; OR
- (2) ANY SUBSTANCE THAT MAY BE AEROSOLIZED OR VAPORIZED THROUGH THE USE OF AN ELECTRONIC CIGARETTE, WHETHER OR NOT THE SUBSTANCE CONTAINS NICOTINE; OR
- (3) ANY COMPONENT, PART, ACCESSORY, INSTRUMENT, OR PARAPHERNALIA OF SUBSECTIONS (1) OR (2) OF THIS DEFINITION, WHETHER OR NOT IT CONTAINS TOBACCO OR NICOTINE AND WHETHER OR NOT SOLD SEPARATELY, INCLUDING A HOOKAH, WATER PIPE, FILTERS, ROLLING PAPERS, FLAVOR ENHANCERS, PIPE, OR ELECTRONIC SMOKING DEVICE;
- (4) THE TERM "TOBACCO PRODUCT" DOES NOT INCLUDE DRUGS, DEVICES, OR COMBINATION PRODUCTS SPECIFICALLY AUTHORIZED FOR SMOKING CESSATION PURPOSES BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION, AS THOSE TERMS ARE DEFINED UNDER 21 U.S.C. 321 AND 353 (G) OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT.

- (5) A TOBACCO PRODUCT DOES NOT INCLUDE ANY SUBSTANCE REGULATED BY THE ARIZONA MEDICAL MARIJUANA ACT (A.R.S. § 36-2801 – 36-2822) OR THE SAFE AND SMART ACT (A.R.S. § 36-2850 – 36-2865).

TOBACCO SALES ESTABLISHMENT MEANS ANY PLACE OF BUSINESS THAT SELLS OR OFFERS FOR SALE TOBACCO, TOBACCO PRODUCTS, TOBACCO PARAPHERNALIA OR ALTERNATIVE NICOTINE PRODUCTS, OR WHO SAMPLES TOBACCO PRODUCTS OR PARAPHERNALIA. THESE BUSINESSES INCLUDE BUT ARE NOT LIMITED TO TOBACCO SHOPS, CIGARS AND PIPE RETAILER, CIGARETTE OR ELECTRONIC CIGARETTE RETAILER, SMOKING ESTABLISHMENTS, GROCERY STORES, KIOSKS, CONVENIENCE STORES, GASOLINE SERVICES STATIONS, BARS, AND RESTAURANTS. TOBACCO SALES ESTABLISHMENT DOES NOT MEAN THE NONMANAGEMENT EMPLOYEES OF ANY TOBACCO SALES ESTABLISHMENT.

Cross reference— Zoning and Development Code *reference*—“T” Definitions.

SEC. 16A-194. – ADMINISTRATION AND LICENSE

- (A) THE FINANCIAL SERVICES DIRECTOR SHALL DESIGNATE A LICENSING OFFICER FROM THE TAX & LICENSE FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE.
- (B) THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE, INCLUDING THE DUTY OF PRESCRIBING FORMS, IS VESTED IN THE LICENSING OFFICER OF THE TAX & LICENSE DIVISION.
- (C) THE POLICE CHIEF OR DESIGNEE SHALL RENDER ASSISTANCE IN THE ENFORCEMENT OF THIS ARTICLE AS REQUIRED BY THE LICENSING OFFICER AS FOLLOWS:
- (1) IF A COMPLAINT IS RECEIVED BY THE LICENSING OFFICER WILL WORK WITH THE TEMPE POLICE DEPARTMENT, COMMUNITY DEVELOPMENT, OR ANY OTHER DEPARTMENT DESIGNATED BY THE CITY MANAGER OR THEIR DESIGNEE TO VERIFY THE COMPLAINT, IF NECESSARY.
 - (2) POLICE CHIEF OR DESIGNEE SHALL NOTIFY THE LICENSING OFFICER IF A TOBACCO SALES ESTABLISHMENT HAS FAILED TO COMPLY WITH OR IS IN VIOLATION OF APPLICABLE PROVISIONS OF THIS ARTICLE; AND
 - (3) NOTHING HEREIN IS INTENDED TO PROHIBIT OR RESTRICT THE POLICE CHIEF OR DESIGNEE FROM PROVIDING ADDITIONAL

ASSISTANCE FROM THEIR NORMAL DUTIES AND RESPONSIBILITIES OR AS REQUESTED BY THE LICENSING OFFICER.

- (D) AN APPLICATION FOR A LICENSE OR FOR THE RENEWAL OF A LICENSE MADE PURSUANT TO THIS ARTICLE SHALL BE SUBMITTED TO THE LICENSING OFFICER WHO SHALL GRANT OR DENY THE APPLICATION IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE. THE LICENSING OFFICER SHALL ALSO SUSPEND OR REVOKE A LICENSE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.
- (E) A LICENSE ISSUED PURSUANT TO THIS ARTICLE SHALL EXPIRE ON DECEMBER 31 OF EACH CALENDAR YEAR AND MAY BE RENEWED ANNUALLY IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE. FOR ANY NEW LICENSE ISSUED BY THE CITY ON OR AFTER JULY 1 OF ANY CALENDAR YEAR, THE LICENSE FOR THE REMAINING PORTION OF THE CALENDAR YEAR SHALL BE IMPOSED AT A TWENTY-FIVE PERCENT (25%) DISCOUNT OF THE ANNUAL LICENSE FEE.
- (F) IF A LICENSEE HAS A VALID LICENSE, THE TOBACCO SALES ESTABLISHMENT MAY UPDATE OR DESIGNATE A NEW APPLICANT BY SUBMITTING AN APPLICATION ON A FORM PRESCRIBED BY AND OBTAINABLE FROM THE LICENSING OFFICER. AND THE APPLICATION SHALL CONTAIN ALL OF THE INFORMATION AND PROCESSING REQUIRED BY SECTION 16A-195. NO FEE SHALL BE NECESSARY TO UPDATE THE APPLICANT SO LONG AS THE LICENSE IS VALID. THE LICENSING OFFICER SHALL PROVIDE AN UPDATED LICENSE HOWEVER THE ONE-YEAR TIMEFRAME FOR WHICH THE LICENSE WAS ORIGINALLY GRANTED SHALL REMAIN.
- (G) A LICENSE, IF GRANTED, MUST BE DISPLAYED AT THE PREMISES BELOW AND SHALL STATE ON ITS FACE:
- (1) THE NAME OF THE LICENSEE, THE NAME AND ADDRESS OF THE TOBACCO SALES ESTABLISHMENT;
 - (2) THE OWNER, OFFICER OF DESIGNEE OF THE LICENSEE; AND
 - (3) THE LICENSE NUMBER.
- (H) DURING ANY TIME IN WHICH THE TOBACCO SALES ESTABLISHMENT'S LICENSE HAS BEEN SUSPENDED, THE TOBACCO SALES ESTABLISHMENT MUST REMOVE THE LICENSE FROM PUBLIC VIEW AND REMOVE ALL TOBACCO PRODUCTS FROM THE TOBACCO SALES ESTABLISHMENT'S RETAIL AREA. DURING ANY TIME IN WHICH THE TOBACCO SALES ESTABLISHMENT'S LICENSE HAS BEEN REVOKED, THE TOBACCO SALES ESTABLISHMENT MUST REMOVE THE LICENSE AND ANY TOBACCO

ADVERTISING FROM PUBLIC VIEW AND REMOVE ALL TOBACCO PRODUCTS FROM THE TOBACCO SALES ESTABLISHMENT'S RETAIL AREA.

- (I) ANY TOBACCO SALES ESTABLISHMENT FOUND TO BE SELLING TOBACCO PRODUCTS WITHOUT A LICENSE SHALL BE INELIGIBLE TO RECEIVE A TOBACCO SALES LICENSE FOR A PERIOD OF THREE (3) YEARS FROM THE DATE OF THE INFRACTION.

SEC. 16A-195. – APPLICATION FOR A TOBACCO SALES LICENSE AND LICENSE FEES.

- (A) NO PERSON OR TOBACCO SALES ESTABLISHMENT MAY SELL TOBACCO PRODUCTS WITHOUT A VALID TOBACCO SALES LICENSE. THIS LICENSE SHALL BE DISPLAYED AT ALL TIMES AT THE TOBACCO SALES ESTABLISHMENT LOCATION THAT IS LICENSED.

- (B) PRIOR TO ENGAGING IN THE SALE OF TOBACCO PRODUCTS, EACH TOBACCO SALES ESTABLISHMENT, AT EACH LOCATION IN THIS CITY, SHALL SUBMIT AN APPLICATION TO THE LICENSING OFFICER AS REQUIRED BY THIS TITLE. THE APPLICATION SHALL BE ON A FORM PRESCRIBED BY AND OBTAINABLE FROM THE LICENSING OFFICER. AN APPLICATION SHALL BE DEEMED FILED WITH THE CITY WHEN THE LICENSING OFFICER HAS RECEIVED THE REQUIRED FEES, A COMPLETED APPLICATION WITH ALL INFORMATION REQUIRED IN SUBSECTION (F) AND (G). THE APPLICANT MUST ALSO PROVIDE A COPY OF A VALID AND CURRENT TRANSACTION PRIVILEGE TAX LICENSE ISSUED BY THE ARIZONA DEPARTMENT OF REVENUE.

- (C) IT IS THE RESPONSIBILITY OF THE TOBACCO SALES ESTABLISHMENT TO BE INFORMED OF ALL LAWS APPLICABLE TO THE SALE OF TOBACCO PRODUCTS IN THE STATE OF ARIZONA AND THE CITY OF TEMPE, INCLUDING THOSE LAWS AFFECTING THE ISSUANCE OF A LICENSE, AND TO PROVIDE APPROPRIATE TRAINING TO ANY PERSONS AND/OR EMPLOYEES WHO INTERACT WITH CUSTOMERS ON ITS PREMISES WHICH SHALL INCLUDE INFORMATION ABOUT THE ILLEGAL SALE OF TOBACCO PRODUCTS (E.G. FLAVORED TOBACCO PRODUCTS AND UNDERAGE SALES TO PERSONS UNDER 21 YEARS OF AGE), THE TYPES OF IDENTIFICATION LEGALLY ACCEPTABLE FOR PROOF OF AGE, AND THAT ILLEGAL SALES SHALL SUBJECT THE TOBACCO SALES ESTABLISHMENT TO PENALTIES.

- (D) AN APPLICATION FOR A TOBACCO SALES LICENSE OR FOR ITS RENEWAL MAY BE DENIED BASED ON ANY OF THE FOLLOWING:

- (1) THE APPLICANT GIVES FALSE INFORMATION OR MAKING A MATERIAL MISREPRESENTATION OF FACT IN THE APPLICATION FOR A TOBACCO SALES LICENSE. INTENTIONALLY PROVIDING FALSE INFORMATION OR A MATERIAL MISREPRESENTATION SHALL BE A VIOLATION OF THIS ARTICLE;
 - (2) THE APPLICANT IS DELINQUENT IN PAYMENT TO THE CITY OF ANY TAXES OR FEES;
 - (3) THE APPLICANT NO LONGER HAS A VALID TRANSACTION PRIVILEGE TAX LICENSE ISSUED TO THEIR TOBACCO SALES ESTABLISHMENT BY THE ARIZONA DEPARTMENT OF REVENUE;
 - (4) THE APPLICATION SEEKS AUTHORIZATION FOR THE SALE OF TOBACCO PRODUCTS AT A TOBACCO SALES ESTABLISHMENT LOCATION FOR WHICH THIS SECTION OR THE ZONING AND DEVELOPMENT CODE PROHIBITS A LICENSE TO BE ISSUED;
 - (5) THE APPLICATION SEEKS AUTHORIZATION FOR THE SALE OF TOBACCO PRODUCTS BY A TOBACCO SALES ESTABLISHMENT TO WHOM THIS ARTICLE PROHIBITS A LICENSE TO BE ISSUED; AND,
 - (6) ANY OTHER SUITABLE REASON THE GRANTING OF A LICENSE TO THE APPLICANT IS NOT CONSISTENT WITH THE PUBLIC HEALTH AND WELFARE, INCLUDING THE APPLICANT'S HISTORY OF NONCOMPLIANCE WITH THIS SECTION AND OTHER LAWS RELATING TO THE SALE OF TOBACCO PRODUCTS.
- (E) THE ISSUANCE OF A LICENSE IS NOT A DETERMINATION BY THE CITY OR THE LICENSING OFFICER THAT THE TOBACCO SALES ESTABLISHMENT HAS COMPLIED WITH ANY LAWS APPLICABLE TO TOBACCO PRODUCTS.
- (F) THE TOBACCO SALES LICENSE ISSUED BY TEMPE TAX & LICENSE SHALL BE RENEWED ANNUALLY UNLESS IT IS SOONER REVOKED AS ALLOWED BY THE PENALTIES SECTION OF THIS ARTICLE. A LICENSE SHALL NOT BE TRANSFERRED FROM ONE TOBACCO SALES ESTABLISHMENT TO ANOTHER OR FROM ONE LOCATION TO ANOTHER.
- (G) THE APPLICATION FOR A NEW LICENSE OR A RENEWAL SHALL INCLUDE AN AFFIDAVIT TO BE SIGNED BY THE APPLICANT OR LICENSEE AFFIRMING THE FACT THAT THE TOBACCO SALES ESTABLISHMENT RECEIVING THE TOBACCO SALES LICENSE SHALL NOT SELL OR OFFER FOR SALE, OR POSSESS WITH THE INTENT TO SELL OR OFFER FOR SALE, ANY TOBACCO PRODUCT TO ANY PERSON UNDER THE AGE OF TWENTY-ONE (21) OR SELL ANY FLAVORED TOBACCO PRODUCTS. THIS AFFIDAVIT MUST BE SIGNED BY THE APPLICANT.
- (H) THE APPLICANT OR LICENSEE SHALL BE NOTIFIED OF ANY DENIAL OF THEIR APPLICATION IN WRITING. THIS NOTICE SHALL BE SENT BY

CERTIFIED MAIL TO THE ADDRESS OF THE APPLICANT OR LICENSEE LISTED IN THE APPLICATION THE EFFECTIVE DATE OF NOTICE SHALL BE THE DATE THE NOTICE IS ACTUALLY RECEIVED OR FIVE (5) BUSINESS DAYS AFTER THE DATE THE NOTICE IS MAILED, WHICHEVER OCCURS FIRST. THE CAUSE FOR SUCH DENIAL SHALL BE SET FORTH IN THE NOTICE. SERVICE SHALL BE COMPLETE UPON MAILING TO THE ADDRESS OF RECORD, IN THE OFFICE OF THE LICENSING OFFICER. THE NOTIFICATION SHALL PROVIDE NOTICE OF THE APPEALS PROCESS SET FORTH IN SEC. 16A-201 AND 16A-202.

Sec. 16A-196. RENEWAL OF LICENSE.

- (A) ANY LICENSE ISSUED PURSUANT TO THE PROVISIONS OF THIS ARTICLE, WHICH HAS NOT BEEN REVOKED, MAY BE RENEWED FOR A PERIOD OF ONE (1) YEAR ON APPLICATION TO THE LICENSING OFFICER MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE OF THE CURRENT VALID LICENSE. LICENSES SHALL EXPIRE ANNUALLY ON DECEMBER 31. IF A LICENSE IS NOT TIMELY RENEWED, A TOBACCO SALES ESTABLISHMENT IS CONSIDERED TO BE OPERATING WITHOUT A LICENSE AND IS SUBJECT TO PENALTIES IMPOSED BY THIS ARTICLE.
- (B) THE RENEWAL APPLICATION SHALL BE ON A FORM PROVIDED BY THE LICENSING OFFICER AND SHALL CONTAIN ALL OF THE INFORMATION AND PROCESSING REQUIRED BY SECTION 16A-195.
- (C) NO TOBACCO SALES ESTABLISHMENT MAY APPLY FOR A TOBACCO SALES LICENSE WITHIN ONE (1) YEAR FROM THE REVOCATION OF ANY SUCH LICENSE. A LICENSE ALSO CANNOT BE RENEWED IF THE TOBACCO SALES ESTABLISHMENT HAS OUTSTANDING FINES PURSUANT TO THIS ARTICLE.
- (D) THE LICENSEE SHALL BE NOTIFIED OF ANY DENIAL OF THEIR RENEWAL APPLICATION IN WRITING. THIS NOTICE SHALL BE SENT BY CERTIFIED MAIL TO THE ADDRESS OF THE LICENSEE LISTED IN THE CURRENT YEAR'S APPLICATION OR RENEWAL APPLICATION AND THE EFFECTIVE DATE OF NOTICE SHALL BE THE DATE THE NOTICE IS ACTUALLY RECEIVED OR FIVE (5) BUSINESS DAYS AFTER THE DATE THE NOTICE IS MAILED, WHICHEVER OCCURS FIRST. THE CAUSE FOR SUCH DENIAL SHALL BE SET FORTH IN THE NOTICE. SERVICE SHALL BE COMPLETE UPON MAILING TO THE ADDRESS OF RECORD, IN THE OFFICE OF THE LICENSING OFFICER. THE NOTIFICATION SHALL PROVIDE NOTICE OF THE APPEALS PROCESS SET FORTH IN SEC. 16A-201 AND 16A-202.

Sec. 16A-197. FEES.

- (A) THE APPLICATION FOR A TOBACCO SALES LICENSE SHALL BE SUBMITTED WITH A LICENSING FEE OF THREE HUNDRED DOLLARS. THE FEES SHALL BE USED TO COVER THE ADMINISTRATIVE COST FOR LICENSING ADMINISTRATION, ANY REQUIRED EDUCATION AND TRAINING, AND ANY UNANNOUNCED COMPLIANCE CHECKS.
- (B) LATE FEE. IF A LICENSE OR APPLICANT APPLIES FOR A RENEWAL OF A LICENSE PAST THEIR RENEWAL DATE, A LATE FEE OF ONE HUNDRED DOLLARS (\$100.00) IS HEREBY ESTABLISHED.
- (C) REINSPECTION FEE. IF A TOBACCO SALES ESTABLISHMENT IS FOUND TO BE IN VIOLATION OF THIS ARTICLE, A REINSPECTION FEE OF THREE HUNDRED DOLLARS (\$300.00) IS HEREBY ESTABLISHED. THE TEMPE POLICE DEPARTMENT, COMMUNITY DEVELOPMENT DEPARTMENT OR ANY OTHER DEPARTMENT DESIGNATED BY THE CITY MANAGER OR THEIR DESIGNEE SHALL PERFORM AN UNANNOUNCED COMPLIANCE CHECK OF THE TOBACCO ESTABLISHMENT WITHIN SIXTY (60) DAYS OF THE VIOLATION.

Sec. 16A-198. SIGNAGE.

- (A) SIGNAGE STATING, “NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING ELECTRONIC SMOKING DEVICES,” MUST BE POSTED IN A MANNER CONSPICUOUS TO BOTH EMPLOYEES AND PATRONS, AND WITHIN SIX FEET OF WHERE TOBACCO PRODUCTS ARE AVAILABLE FOR PURCHASE. THE LICENSING OFFICER WILL PROVIDE THIS SIGNAGE AT THE TIME OF LICENSE APPROVAL OR RENEWAL, OR UPON REQUEST. THE NOTICE MUST BE AT LEAST 4” BY 6” AND WITH CAPITALIZED LETTERS AT LEAST 60 POINT TYPE SIZE.
- (B) FAILURE TO COMPLY WITH THIS SECTION IS A VIOLATION UNDER SECTION 16A-199 ONLY AFTER THE LICENSEE HAS FAILED TO CORRECT ANY DEFICIENCY AT THE LICENSE OFFICER OR DESIGNEE’S REQUEST.

Sec. 16A-199. UNLAWFUL ACTIVITIES.

- (A) IT SHALL BE UNLAWFUL TO OPERATE A TOBACCO SALES ESTABLISHMENT WITHOUT A VALID LICENSE ISSUED PURSUANT TO THIS ARTICLE, WHICH MUST BE DISPLAYED ON THE PREMISES IN A MANNER AS TO BE READILY VISIBLE TO PATRONS.
- (B) IT SHALL BE UNLAWFUL TO SELL OR DISTRIBUTE ANY TOBACCO PRODUCT TO ANY PERSON UNDER THE AGE OF TWENTY-ONE (21).

- (1) BEFORE SELLING OR DISTRIBUTING A TOBACCO PRODUCT TO ANY INDIVIDUAL WHO APPEARS UNDER THE AGE OF TWENTY-SEVEN (27), A TOBACCO SALES ESTABLISHMENT OR THE EMPLOYEE OF SUCH A TOBACCO SALES ESTABLISHMENT MUST EXAMINE VALID, GOVERNMENT-ISSUED IDENTIFICATION CARD AND VERIFY THAT THE INDIVIDUAL IS AT LEAST TWENTY-ONE (21) YEARS OLD.
- (2) FOR THE PURPOSES OF THIS SECTION, A VALID, GOVERNMENT-ISSUED IDENTIFICATION CARD IS ONE SET FORTH BY A.R.S. §4-241(K).
- (3) ANY INDIVIDUAL DETERMINED TO BE IN VIOLATION OF THIS SECTION MAY ALSO BE SUBJECT TO THE PENALTIES ESTABLISHED IN A.R.S. § 13-3622.

(C) IT SHALL BE UNLAWFUL TO SELL; OFFER FOR SALE; DISPLAY, MARKET OR ADVERTISE ON THE PREMISES ANY FLAVORED TOBACCO PRODUCTS.

- (1) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A TOBACCO PRODUCT IS A FLAVORED TOBACCO PRODUCT IF A TOBACCO SALES ESTABLISHMENT, MANUFACTURER, OR ANY EMPLOYEE OR AGENT OF A TOBACCO SALES ESTABLISHMENT OR MANUFACTURER HAS:
 - a. MADE A PUBLIC STATEMENT OR CLAIM THAT THE TOBACCO PRODUCT IMPARTS A TASTE OR SMELL OTHER THAN THE TASTE OR SMELL OF TOBACCO;
 - b. USED TEXT OR IMAGES, OR BOTH, ON THE TOBACCO PRODUCT'S LABELING OR PACKAGING TO EXPLICITLY OR IMPLICITLY INDICATE THAT THE TOBACCO PRODUCT IMPARTS A TASTE OR SMELL OTHER THAN TOBACCO; OR
 - c. TAKEN ACTION DIRECTED TO CONSUMERS THAT WOULD BE REASONABLY EXPECTED TO CAUSE CONSUMERS TO BELIEVE THE TOBACCO PRODUCT IMPARTS A TASTE OR SMELL OTHER THAN TOBACCO.

(D) IT SHALL BE UNLAWFUL TO CONTINUE THE SALE OF TOBACCO PRODUCTS UPON THE SUSPENSION OR REVOCATION OF A VALID LICENSE. IF A LICENSED IS SUSPENDED OR REVOKED, THE TOBACCO SALES ESTABLISHMENT MUST REMOVE THE LICENSE FROM DISPLAY AND THE RETAIL AREA. ANY SALE OF TOBACCO PRODUCTS MUST ALSO CEASE AT THIS TIME.

(E) IN ADDITION TO THE VIOLATIONS OUTLINED IN THIS ARTICLE, A TOBACCO SALES LICENSEE THAT VIOLATES ANY OTHER FEDERAL OR STATE LAW RELATING TO TOBACCO PRODUCT SALES IS SUBJECT TO THE PENALTIES PROSCRIBED IN SEC. 16A-200, INCLUDING REINSPECTION FEES AND THE SUSPENSION AND/OR REVOCATION OF THEIR TOBACCO LICENSE.

Sec. 16A-200. PENALTIES.

(A) IN ADDITION TO ANY OTHER PENALTIES PROVIDED UNDER THIS SECTION AND STATE LAW, ANY PERSON OR TOBACCO SALES LICENSEE FOUND RESPONSIBLE UNDER THIS ARTICLE SHALL BE SUBJECT THE PENALTIES AND FEES ESTABLISHED HEREIN.

(B) IF THE LICENSING OFFICER DETERMINES THAT A TOBACCO SALES LICENSEE OR ITS AGENT, REPRESENTATIVE OR EMPLOYEE HAS VIOLATED THIS ARTICLE, SUCH LICENSEE SHALL BE SUBJECT TO:

(1) FOR A FIRST VIOLATION, A REINSPECTION FEE OF THREE HUNDRED (\$300.00) AND THE TOBACCO SALES ESTABLISHMENT AGENT OR DESIGNEE MUST ATTEND AND SHOW PROOF OF COMPLIANCE, IF AVAILABLE, AN ARIZONA RETAIL TOBACCO TRAINING CLASS APPROVED BY THE LICENSING OFFICER;

(2) FOR A SECOND VIOLATION WITHIN A THIRTY-SIX MONTH PERIOD, A REINSPECTION FEE OF THREE HUNDRED (\$300.00) AND THE TOBACCO SALES ESTABLISHMENT LICENSE SHALL BE SUSPENDED THAT THE LICENSEE SHALL BE PROHIBITED FROM THE SALE OF TOBACCO PRODUCTS FOR A PERIOD OF SEVEN (7) DAYS;

(3) FOR A THIRD VIOLATION WITHIN A THIRTY-SIX MONTH PERIOD, A REINSPECTION FEE OF THREE HUNDRED (\$300.00) AND THE TOBACCO SALES ESTABLISHMENT LICENSE SHALL BE SUSPENDED THAT THE LICENSEE SHALL BE PROHIBITED FROM THE SALE OF TOBACCO PRODUCTS FOR A PERIOD OF THIRTY (30) DAYS;

(4) FOR A FOURTH VIOLATION WITHIN A THIRTY-SIX MONTH PERIOD, THE TOBACCO SALES ESTABLISHMENT SHALL HAVE THEIR LICENSE REVOKED.

(C) A LICENSEE SHALL ALSO HAVE THEIR LICENSE REVOKED UPON A FINDING OF ANY ONE (1) OR MORE OF THE FOLLOWING GROUNDS COMMITTED BY THE LICENSEE, ITS AGENT, REPRESENTATIVE, OR

EMPLOYEE:

- (1) GIVING FALSE INFORMATION OR MAKING A MATERIAL MISREPRESENTATION OF FACT IN THE APPLICATION FOR A TOBACCO SALES LICENSE;
 - (2) THE LICENSEE NO LONGER HAS A VALID TRANSACTION PRIVILEGE TAX LICENSE ISSUED TO THEIR TOBACCO SALES ESTABLISHMENT BY THE ARIZONA DEPARTMENT OF REVENUE.
- (D) THE LICENSEE SHALL BE NOTIFIED OF ANY PENALTY, SUSPENSION OR REVOCATION IN WRITING. THIS NOTICE SHALL BE SENT BY CERTIFIED MAIL TO THE ADDRESS OF THE LICENSEE LISTED IN THE CURRENT YEAR'S APPLICATION OR RENEWAL APPLICATION AND THE EFFECTIVE DATE OF NOTICE SHALL BE THE DATE THE NOTICE IS ACTUALLY RECEIVED OR FIVE (5) BUSINESS DAYS AFTER THE DATE THE NOTICE IS MAILED, WHICHEVER OCCURS FIRST. THE CAUSE FOR SUCH REVOCATION SHALL BE SET FORTH IN THE NOTICE. SERVICE SHALL BE COMPLETE UPON MAILING TO THE ADDRESS OF RECORD, IN THE OFFICE OF THE LICENSING OFFICER. THE NOTIFICATION SHALL PROVIDE NOTICE OF THE APPEALS PROCESS SET FORTH IN SEC. 16A-201 AND 16A-202.

SEC. 16A-201. APPEALS.

- (A) ANY APPLICANT OR LICENSEE WHOSE LICENSE IS DENIED, DENIED A RENEWAL OR WHICH HAS BEEN SUSPENDED OR REVOKED MAY, WITHIN TEN (10) DAYS AFTER HAVING BEEN DEEMED TO HAVE RECEIVED NOTICE OF SUCH A DENIAL, SUSPENSION OR REVOCATION BY CERTIFIED MAIL, GIVE WRITTEN NOTICE TO THE CITY OF TEMPE TAX & LICENSE DIVISION OF ITS INTENTION TO APPEAL.
- (B) THE WRITTEN NOTICE TO THE LICENSING OFFICER SHALL INCLUDE A STATEMENT OF REASONS WHY THE LICENSE OR ANY RENEWAL THEREOF, SHOULD NOT BE DENIED, SUSPENDED OR REVOKED AND MAY INCLUDE A REQUEST FOR A HEARING. IF A RESPONSE IS NOT RECEIVED BY THE LICENSING OFFICER IN THE TIME STATED, THE DENIAL, SUSPENSION OR REVOCATION SHALL BE FINAL AND NOTICE THEREOF SHALL BE SENT TO THE APPLICANT OR LICENSEE BY CERTIFIED MAIL.
- (C) WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIPT OF A RESPONSE, THE LICENSING OFFICER SHALL SCHEDULE A HEARING BEFORE THE HEARING OFFICER AS DESIGNATED BY THE FINANCIAL SERVICES DIRECTOR. THE RESPONDENT SHALL BE NOTIFIED IN WRITING BY CERTIFIED MAIL OF THE

DATE, TIME AND PLACE OF THE HEARING. THE HEARING SHALL BE SCHEDULED NOT LESS THAN FIFTEEN (15) AND NO MORE THAN THIRTY (30) DAYS AFTER RECEIPT BY THE LICENSING OFFICER OF THE REQUEST FOR A HEARING.

- (D) THE HEARING SHALL BE CONDUCTED IN AN INFORMAL MANNER. THE RESPONDENT MAY BE REPRESENTED BY COUNSEL. THE RULES OF EVIDENCE WILL NOT APPLY.
- (E) THE HEARING OFFICER SHALL RENDER A WRITTEN DECISION WITHIN FIVE (5) BUSINESS DAYS AFTER COMPLETION OF THE HEARING AND SHALL MAIL A COPY OF THE DECISION BY CERTIFIED MAIL TO THE ADDRESS OF THE RESPONDENT LISTED IN THE CURRENT YEAR'S APPLICATION. IN THE CASE OF A DECISION TO UPHOLD THE DENIAL OF A LICENSE RENEWAL, OR SUSPENSION OR REVOCATION OF A LICENSE, THE LICENSEE MAY CONTINUE TO FUNCTION UNDER THE LICENSE PENDING RECEIPT OF THE FINAL DECISION OF THE HEARING OFFICER. THE DECISION SHALL BE DEEMED FINAL FIVE (5) BUSINESS DAYS AFTER IT IS MAILED AND SHALL CONSTITUTE FINAL ADMINISTRATIVE ACTION.

SEC. 16A-202. JUDICIAL APPEAL.

- (A) AFTER AN APPLICANT OR LICENSEE HAS BEEN DENIED AND ALL ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED, THE APPLICANT MAY FILE IN THE SUPERIOR COURT, BY SPECIAL ACTION OR OTHER AVAILABLE PROCEDURE, AN APPEAL CHALLENGING THE VALIDITY OF THE DENIAL.
- (B) IN THE EVENT THAT A LICENSE IS SUSPENDED OR REVOKED, AND ALL ADMINISTRATIVE REMEDIES HAVE BEEN EXHAUSTED, THE LICENSEE MAY FILE IN THE SUPERIOR COURT, BY SPECIAL ACTION OR OTHER AVAILABLE PROCEDURE, AN APPEAL CHALLENGING THE VALIDITY OF THE SUSPENSION OR REVOCATION.

SEC. 16A-203. EXCEPTIONS AND DEFENSES.

- (A) THE PENALTIES IN SEC. 16A-200 DO NOT APPLY TO A PERSON YOUNGER THAN TWENTY-ONE (21) YEARS OLD WHO PURCHASES, USES, POSSESSES, OR ATTEMPTS TO PURCHASE TOBACCO PRODUCTS.
- (B) NOTHING IN THIS ARTICLE PREVENTS THE PROVISION OF TOBACCO PRODUCTS TO ANY PERSON AS PART OF AN INDIGENOUS PRACTICE OR A LAWFULLY RECOGNIZED RELIGIOUS, SPIRITUAL, OR CULTURAL CEREMONY OR PRACTICE.

(C) IT SHALL BE AN AFFIRMATIVE DEFENSE TO A VIOLATION OF THIS ARTICLE FOR A LICENSEE OR ITS AGENT OR EMPLOYEE TO HAVE REASONABLY RELIED ON PROOF OF AGE AS DESCRIBED BY STATE LAW.

Section 2: That Chapter 22, Offenses—Miscellaneous, Article II—Smoking Pollution Control of the Tempe City Code is hereby amended to read:

ARTICLE II

SMOKING POLLUTION CONTROL

DIVISION 1. Regulation of Smoking

Sec. 22-40. Purpose.

- (a) The smoking of tobacco or any plant is a positive danger to the health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces.
- (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.
- (c) Children and youth who experiment with electronic smoking devices may become addicted to nicotine, MAY CONTINUE TO USE NICOTINE, and ultimately switch to smoking cigarettes.
- (d) 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.

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;
 - (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 covered by this article and whose activities are controlled and directed by the employer, for whom services are being performed.
- (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 DEVICE THAT MAY BE USED TO DELIVER ANY AEROSOLIZED OR VAPORIZED SUBSTANCE TO THE PERSON INHALING FROM THE DEVICE, INCLUDING, BUT NOT LIMITED TO, AN E-CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN OR E-HOOKAH. ELECTRONIC SMOKING DEVICE INCLUDES ANY COMPONENT, PART, OR ACCESSORY OF THE DEVICE, AND ALSO INCLUDES ANY SUBSTANCE THAT MAY BE AEROSOLIZED OR VAPORIZED DURING THE USE OF THE DEVICE, WHETHER OR NOT THE SUBSTANCE CONTAINS NICOTINE. ELECTRONIC SMOKING DEVICE DOES NOT INCLUDE DRUGS, DEVICES, OR COMBINATION PRODUCTS AUTHORIZED FOR SALE BY THE U.S. FOOD AND DRUG ADMINISTRATION, AS THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT.

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.

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

- (a) No person shall smoke in any enclosed public place or place of employment except outdoors in designated smoking areas.
- (b) No owner, manager, operator, employer or other person in control of any place regulated by this article shall allow smoking in any enclosed public place or place of employment except outdoors in designated smoking areas.

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 Section 22-45.
- (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.

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:

- (1) Private residences;
- (2) Hotel and motel rooms rented to guests, which are on a separately partitioned ventilation system;
- (3) 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;
- (4) On-stage smoking as part of a stage production, ballet or similar exhibition;
- (5) 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; and
- (6) Private clubs and recreation facilities, which do not serve the public or charge the public for services.

Sec. 22-46. - Posting requirements.

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

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.

Sec. 22-48. - Repealed.

Sec. 22-49. - Repealed.

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

Smoking is prohibited in Tempe Diablo Stadium.

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
 - A. ANY PRODUCT CONTAINING, MADE OF, OR DERIVED FROM TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION OR IS LIKELY TO BE CONSUMED, WHETHER SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED, OR INGESTED BY ANY OTHER MEANS, INCLUDING A TOBACCO CIGARETTE, CIGAR, PIPE TOBACCO, SMOKELESS TOBACCO, SMOKING TOBACCO, SNUFF, SNUS;
 - B. ANY SUBSTANCE THAT MAY BE AEROSOLIZED OR VAPORIZED THROUGH THE USE OF AN ELECTRONIC CIGARETTE, WHETHER OR NOT THE SUBSTANCE CONTAINS NICOTINE; OR

- C. ANY COMPONENT, PART, ACCESSORY, INSTRUMENT, OR PARAPHERNALIA OF SUBPARTS (1) OR (2) OF THIS DEFINITION WHETHER OR NOT IT CONTAINS TOBACCO OR NICOTINE AND WHETHER OR NOT SOLD SEPARATELY, INCLUDING A HOOKAH, WATER PIPE, FILTER, ROLLING PAPERS, FLAVOR ENHANCERS, PIPE, OR ELECTRONIC SMOKING DEVICE;
- D. THE TERM "TOBACCO PRODUCT" DOES NOT INCLUDE DRUGS, DEVICES, OR COMBINATION PRODUCTS, AS THOSE TERMS ARE DEFINED IN THE FEDERAL FOOD, DRUG AND COSMETIC ACT, THAT ARE AUTHORIZED FOR SALE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION ~~utilized for smoking, chewing, inhalation or other manner of ingestion~~; and
- E. A TOBACCO PRODUCT DOES NOT INCLUDE ANY SUBSTANCE REGULATED BY THE ARIZONA MEDICAL MARIJUANA ACT (A.R.S. § 36-2801 – 36-2822) OR THE SAFE AND SMART ACT (A.R.S. § 36-2850 – 36-2865).

(7) *Vending machine* means any mechanical, electronic or other similar device which dispenses tobacco products.

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

No person shall permit the distribution of tobacco products through the operation of a vending machine in a public place.

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

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.

Sec. 22-54. - Civil fines and penalties imposed.

- (a) The civil fine/penalty for violating the provisions of Section 22-43(a), 22-46 or 22-47(1) shall not exceed fifty dollars (\$50.00) for the first offense and seventy-five dollars (\$75.00) for each successive offense.
- (b) The civil fine/penalty for violating the provisions of Sections 22-42, 22-43(b), 22-44, 22-47(2), 22-52 or 22-53 is one hundred dollars (\$100.00) for the first offense, five hundred dollars (\$500.00) for the second and third offense, and a minimum fine of five hundred dollars (\$500.00) or a maximum fine of two thousand five hundred dollars

(\$2,500.00) if more than three (3) violations occur in any consecutive twelve (12) month period.

- (c) 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.

Secs. 22-55 – 22-59. - Reserved.

Section 4. Pursuant to the Tempe City Charter, Section 2.12, this ordinance is effective on **April 1, 2023 (ESTIMATED TIME BASED ON THE PROPOSED TIMELINE).**

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2022.

Corey D. Woods, Mayor

ATTEST:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Sonia M. Blain, City Attorney