

**ORDINANCE NO. 2508**

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 42 OFFENSES AND ABATEMENT OF PUBLIC NUISANCES, ARTICLE VII OFFENSES INVOLVING PUBLIC HEALTH AND SANITATION, DIVISION 4 PROHIBITION ON SMOKING IN ENCLOSED PUBLIC PLACES AND PLACES OF EMPLOYMENT, BY AMENDING SECTION 42-266 DEFINITIONS, SECTION 42-268 PROHIBITION OF SMOKING IN PUBLIC PLACES, AND SECTION 42-276 OTHER APPLICABLE LAWS RELATED TO SMOKING AND THE USE OF ELECTRONIC CIGARETTES IN PUBLIC PLACES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Gilbert and the nation have seen a significant increase in the use of electronic or e-cigarettes that emit vapors containing nicotine or other chemical substances; and

WHEREAS, members of the public may desire to avoid contact with nicotine and chemical vapors in enclosed spaces; and

WHEREAS, Gilbert wishes to regulate such substances on properties that it both owns and operates, but also desires to allow private business and property owners to regulate the use of electronic cigarettes in the manner they deem consistent with the use of their facilities;

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article VII Offenses Involving Public Health and Sanitation, Division 4 Prohibition on Smoking in Enclosed Public Places and Places of Employment, Section 42-266 Definitions, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 42-266. Definitions.**

The following words and phrases, whenever used in this division, shall be construed as defined in this section:

*Bar* means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises, deriving 50 percent of their gross revenue from the sale of alcohol and in which the serving of food is only incidental to the consumption of such beverages.

*Business* means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

*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.

*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.

*Employer* means any person, partnership, association, the State of Arizona and its political subdivisions, corporation, including a municipal corporation, trust, or non-profit entity, who employs the services of one or more individual persons.

*Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways) which extend from the floor to the ceiling. Enclosed area includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.

*GOVERNMENT BUILDING* MEANS ANY ENCLOSED AREA INCLUDING VEHICLES OWNED OR LEASED AND OPERATED BY THE TOWN OF GILBERT AND USED FOR GOVERNMENTAL PURPOSES, INCLUDING BUT NOT LIMITED TO, ADMINISTRATIVE BUILDINGS, MAINTENANCE FACILITIES, PARK FACILITIES (INCLUDING RESTROOMS), LIBRARIES, AND RECREATION CENTERS, AND SPECIFICALLY INCLUDING THE DOWNTOWN PARKING GARAGE.

*Health care facility* means any enclosed area utilized by any health care institution licensed according to Title 36 Chapter 4, Chapter 6 Article 7, or Chapter 17, or any health care professional licensed according to Arizona A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, or 42.

*Person* means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of a governmental subdivision, or a public or private organization of any character.

*Physically separated* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageway) and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas.

*Place of employment* means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, office buildings, work areas, auditoriums, employee lounges and restrooms, conference and class rooms, meeting rooms, cafeterias and hallways, stairs, elevators, health care facilities, private offices and vehicles owned and operated by the town during working hours when the vehicle is occupied by more than one person. A private residence is not a "place of employment" unless it is used for childcare, adult day care, or health care facilities.

*Public place* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, airports, banks, bars, common areas of apartment buildings, condominiums or other multi-family housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters and waiting rooms. A private residence is not a "public place" unless it is used for childcare, adult day care, or health care facilities.

*Restaurant* means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

*Retail tobacco store* means a retail store that derives the majority of its sales from tobacco products and accessories.

*Smoking* means inhaling, exhaling, burning or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product, BUT SHALL NOT MEAN INHALING OR EXHALING AN ELECTRONIC CIGARETTE PRODUCT.

*Sports facilities* means enclosed areas of sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

*Veteran and fraternal club* means a club as defined in A.R.S. § 4-101(7)(A)(B) or (C).

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article VII Offenses Involving Public Health and Sanitation, Division 4 Prohibition on Smoking in Enclosed Public Places and Places of Employment, Section 42-268 Prohibition of smoking in public places, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 42-268. Prohibition of smoking in public places AND THE USE OF ELECTRONIC CIGARETTES IN GOVERNMENT BUILDINGS.**

- (a) Smoking is prohibited in all public places and places of employment within the town except in the following places:
- 1) Private residences, except when used as a licensed child care, adult day care, or health care facility.
  - 2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 50 percent of rooms rented to guests in a hotel or motel are so designated.
  - 3) Retail tobacco stores that are physically separated so that smoke from retail tobacco stores does not infiltrate into areas where smoking is prohibited under the provisions of this section.
  - 4) Veterans and fraternal clubs when they are not open to the general public.

- 5) Smoking when associated with a religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978.
  - 6) Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
  - 7) A theatrical performance upon a stage or in the course of a film or television production if the smoking is part of the performance or production.
- (b) THE USE OF ELECTRONIC CIGARETTES IS PROHIBITED IN GOVERNMENT BUILDINGS.
- (c) ~~(b)~~ Notwithstanding any other provision of this section, any owner, operator, manager or other person or entity who controls any establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking or NON-ELECTRONIC CIGARETTE USE establishment.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article VII Offenses Involving Public Health and Sanitation, Division 4 Prohibition on Smoking in Enclosed Public Places and Places of Employment, Section 42-276 Other applicable laws, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 42-276. Other applicable laws.**

This division shall not be interpreted or constructed to permit smoking OR THE USE OF ELECTRONIC CIGARETTES where it is otherwise restricted by other applicable laws.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

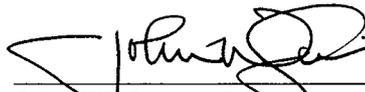
PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 30<sup>th</sup> day of October, 2014, by the following vote:

AYES: COOK, COOPER, DANIELS, LEWIS, RAY, TAYLOR

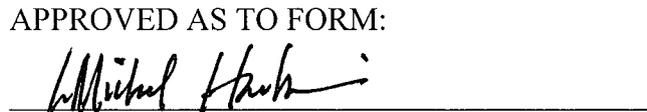
NAYES: PETERSEN ABSENT: NONE

EXCUSED: NONE ABSTAINED: NONE

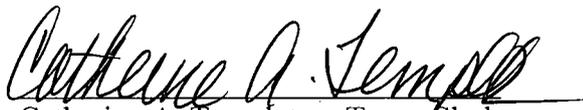
APPROVED this 30<sup>TH</sup> day of OCTOBER, 2014.

  
\_\_\_\_\_  
John W. Lewis, Mayor

ATTEST:  
  
\_\_\_\_\_  
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
L. Michael Hamblin  
Town Attorney

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2508 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 30<sup>TH</sup> DAY OF OCTOBER, 2014, WAS POSTED IN FOUR PLACES ON THE 6th DAY OF NOVEMBER, 2014.

  
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Catherine A. Templeton, Town Clerk