

CITY OF SOUTH TUCSON ORDINANCE NO: 10-02

AN ORDINANCE OF THE CITY OF SOUTH TUCSON, ARIZONA, AMENDING AND ADOPTING, BY REFERENCE, CITY CODE CHAPTER 7, ARTICLE IV ("UNLAWFUL ACTS"), SECTION 7-34 ("PUBLIC NUISANCE") BY AMENDING AND INSERTING NEW LANGUAGE, NUMBERING AND LETTERING TO THOSE SECTIONS AND SUBSECTIONS AND REPEALING THE EXISTING SECTIONS AND SUBSECTIONS OF THE NEIGHBORHOOD PRESERVATION ORDINANCE OF THE CITY OF SOUTH TUCSON.

WHEREAS, one of the primary purposes of the amendment to Chapter 7, Article IV, Section 7-34 of the Neighborhood Preservation Ordinance is to promote the welfare, safety and temperance of persons under twenty-one (21) years of age by reducing their exposure to certain publicly visible advertisement of alcoholic beverages; and

WHEREAS, one of the primary purposes of the amendment to Chapter 7, Article IV, Section 7-34 of the Neighborhood Preservation Ordinance is to promote the welfare, safety and temperance of persons under twenty-one (21) years of age by reducing their exposure to certain publicly sold restricted smoking materials that when ingested produce effects similar to THC or marijuana; and

WHEREAS, according to the Governor's youth Commission, 88 percent of Arizona Adults are concerned about underage drinking and believe that alcohol use among teens is a dangerous problem; and

WHEREAS, South Tucson neighborhood groups such as the ST Prevention Coalition and family health groups strongly endorse a restriction of outdoor alcohol advertisement and the sale of restricted smoking material as a means to promote consistent educational messages and to reduce youth alcohol and restricted smoking material related problems; and

WHEREAS, it has been determined that the effects of these beverages and restricted smoking materials are a health concern to the citizens and Youth of the City of South Tucson; and

WHEREAS, Mayor and Council desire to address concerns related to alcohol and restricted smoking materials by amending the Chapter 7 of the City Code; and

WHEREAS, Mayor and Council have determined that it is in the best interest of the City and its citizens to approve and adopt the amendment to as presented.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, AS FOLLOWS:

Section 1: Adoption by Reference.

That a certain document, three (3) copies of which are on file in the office of the City Clerk of the City of South Tucson, being marked and designated as Amended Chapter 7, Article IV, Section 7-34 of the South Tucson City Code, be and is hereby adopted, by reference, amending Section 7-34 in its entirety and repealing the existing Section 7-34. This amendment serves to include, to revise, to amend and to add subsections in the designated Section.

State law reference — Adoption by reference, A.R.S. §§ 9-801 and 9-802

Section 2: Amending and Numbering for Chapter 7, Article IV.

That the following Article, Section, and subsections are amended, added and re-numbered:

Article IV: § 7-34 (A) (“Definitions”); (B) (Public Nuisance”); (C) (Outdoor Alcohol Advertising Regulations”); (D) (Minor Consumption of Liquor”); (E) (“Restricted Smoking Material”); (F) (“Violation; Penalty; Enforcement”)

§ 7-34 (A) (“Definitions”):

- (1) **“Alcoholic beverage”** shall mean alcohol, or any beverage, or nay beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.
- (2) **“Alcoholic beverage outdoor advertisement”** shall mean any sign, poster, placard, device, graphic display, or any other form of advertisement bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of the person who manufactures, sells, or distributes and alcoholic beverage in publicly visible locations. **“Alcoholic beverage outdoor advertisement”** does not include (i) advertisements inside licensed premises, (ii) any advertisement that contains the name or slogan of the licensed premises that has been placed for the purposes of identifying the licensed premises, (iii) any neon or electronically charged sign, if otherwise allowed by the South Tucson Zoning Code, on licensed premises that is provided as part of promotion of a particular brand of alcoholic beverage, (iv)

advertising appearing on radio or television, or (v) advertisements in a public vehicular conveyance for hire, on a race car while participating at a professional racing event or at a permanent motorized racetrack facility, on a boat participating in a racing event or a boat show, on an aircraft, on a bicycle or on the clothing of a member of a bicycle team participating in an organized bicycle race, or in a newspaper, magazine, or other literary publication published periodically. For the purpose of this definition, the word (sign", with respect to a retailer, does not include an identifying label affixed to a container as authorized by law.

- (3) **"Licensed premises"** shall mean the premises for which a valid Arizona liquor license has been issued.
- (4) **"Minor Consumption"** shall mean consumption of alcoholic beverages as defined in subsection (1) by a person who has not attained the legal drinking age as provided by Arizona law.
- (5) **"Publicly visible locations"** shall include, but are not limited to, outdoor billboards, awnings, electric signs, sides of buildings, screens, benches, barriers, stages, fences, signs attached to poles, posts, or other figures, and freestanding signboards, wherever located, whether indoor or outdoor, however manufactured, and comprising whatever materials.
- (6) **"Restricted Smoking Material"** shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices, or any blend thereof if it includes any of the following chemicals or a comparable chemical:
 - (a) Salvia divinorum or salvinorin A: all parts of the plant presently classified botanically as salvia divinorum, whether grown or not, the seeds thereof, any extract from any such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
 - (b) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
 - (c) (6aS,10aS)-9-(hydroxymethyl)-6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol) (also known as HU-211 or Dexanabinol);
 - (d) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
 - (e) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); or
 - (f) 1-pentyl-3-(4-methxynaphthoyl)indole (also known as JWH-081);

Products containing some of the above substances are currently being marketed under the following commercial names in lower or upper case

(or combination thereof) lettering and new products may be marketed under different names and all shall be subject to this definition if they contain any of the chemical components set forth above:

“BUZZ”, “DASCENTS”, “DaSCENTS”, “DEMON”, “DIAMOND SPICE”, “EARTHQUAKE”, “FAKE WEED”, “FIRE N’ ICE”, “GENIE”, “HUSH”, “K2”, “K-2”, “K2 HERB”, “K2 INCENSE”, “K-2 SEX”, “K-2 SUMMET”, “K-2 SUMMIT”, “K3”, “KO KNOCK-OUT 2”, “L.A. SPICE”, “MISTER SMILEY”, “MR. DUTCHY”, “MR. SMILEY”, “MYSTERY”, “OCEAN BLUE”, “PEP SPICE”, “POT-POURRI”, “PULSE”, “SAGE”, “SALVIA DIVINORUM”, “SALVINORIN A”, “SENCE”, “SERENITY”, “SILVER SPICE”, “SKUNK”, “SMOKE”, “SOLAR FLARE”, “SPACE TRUCKIN”, “SPICE”, “SPICE DIAMOND”, “SPICE GOLD”, “STINGER”, “SYNTHETIC CANNABINOIDS”, “SYNTHETIC CANANBIS”, “ZOHAI”.

- (7) **“Restricted Smoking Material Paraphernalia”** shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling restricted smoking materials and may include:
- a. A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
 - b. A water pipe;
 - c. A carburetion tube or device;
 - d. A smoking or carburetion mask;
 - e. A chamber pipe;
 - f. A carburetor pipe;
 - g. An electric pipe;
 - h. An air-driven pipe;
 - i. A chillum;
 - j. A bong; or
 - k. An ice pipe or chiller

§ 7-34 (B) (“Public Nuisance”):

1. Anything that is injurious to public health and safety, or is indecent or offensive to the senses, or is restricted by state law or regulated by city code, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or contributes to the delinquency of underage persons, shall be declared to be a public nuisance. Any conduct, act, or thing that affects an entire community, neighborhood or protected age group, or any considerable number of persons, as herein described, is not less a nuisance because of the extent of the annoyance or damage or injury inflicted upon individuals is unequal.

2. A declared nuisance shall be subject to the penalties proscribed under the penalty clause under Subsection "F" herein.

§ 7-34 (C) (Outdoor Alcohol Advertising Regulations"):

1. **"Purpose"**: The purpose of this subsection is to prohibit Alcoholic Beverage Advertisements within five hundred (500) feet of identified locations enumerated under subsection 2 below.
2. **"Alcoholic Beverage Outdoor Advertisements"**: No person or business entity may erect or maintain an alcoholic beverage outdoor advertisement within 500 feet of any public playground, private playground, public park playground, elementary or secondary school, place of worship or childcare facility.
3. **"Application for Exemption"**: Any person or entity seeking to place an alcoholic beverage outdoor advertisement within the 500 foot limit established in subsections (1) and (2) above may apply for an exemption with the city. The city shall grant the exemption if the applicant demonstrates that the 500 foot limit denies the applicant a reasonable opportunity to communicate truthful information regarding alcoholic beverages to adult consumers who reside and work in the city. In determining whether the applicant has been denied such an opportunity, the city may consider:
 - a. Potential locations for outdoor advertising that are outside the 500 foot limit and the percentage of the adult population that resides or works in these areas;
 - b. The availability of other forms of advertising to reach adult audiences and their relative cost;
 - c. The extent to which adults within the city are familiar with the applicant's alcoholic beverage products;
 - d. Any advertising practices codes with which the applicant voluntarily has agreed to comply; and
 - e. Any other relevant evidence.
4. **"Public Service Advertising"**: This Ordinance shall not be construed to prohibit the display of public service messages designed to communicate the hazards of alcoholic beverages or to encourage minors to refrain from consuming or purchasing or purchasing alcoholic beverages. However, this section shall not be construed to permit such a message when it is made in conjunction with the positive display of a representation, image, artwork, photograph, logo, graphic, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name used for marketing or promotion of alcoholic beverages.

5. **“Administration”**: The City Manager shall appoint a Sign Administrator, who shall administer and enforce the terms, conditions, or provisions of this Ordinance. The Sign Administrator shall make such inspections as may be necessary and may initiate appropriate action to bring about compliance with this Ordinance if such inspection discloses any instance of noncompliance. The Sign Administrator shall investigate thoroughly any complaints of alleged violations of this Ordinance.
6. **“Violations, Penalties, Civil Sanctions”**: Any person or business entity that violates any provision of this Section shall be subject to the penalties and civil sanctions as provided under Subsection “F” below.
7. **“Appeals”**: Any person aggrieved by the action of the Sign Administrator shall have the right to appeal the decision pursuant to the procedures for appealing other sign violations.

§ 7-34 (D) (Minor Consumption of Liquor”):

1. No person of legal drinking age in Arizona may knowingly permit or fail to take reasonable action to prevent the unlawful consumption of alcoholic beverages by an underage person on premises owned by the person or under the person’s control.
2. Any person who knowingly fails or refuses to perform any legal duty relating to this subsection shall be subject to the penalties as provided under Subsection “F” below

§ 7-34 (E) (“Restricted Smoking Material”):

1. **“Purpose”**: The purpose of this subsection is to prohibit the sale, delivery of restricted smoking materials as defined in subsection (A) above to any individual below twenty-one (21) years of age within the city limits of the City of South Tucson and to prohibit the possession of restricted smoking materials by any individual below twenty-one (21) years of age within the city limits of the City of South Tucson. Any form of delivery to include a simple gift constitutes a violation of this Ordinance.
2. **“Sale, Delivery, Offer, or Gift”**: It shall be unlawful to sell, offer to sell, deliver to or to give any restricted smoking material to anyone below twenty-one (21) years of age.
3. **“Use or Possession of Restricted Smoking Material”**: It shall be unlawful for any person below twenty-one (21) years of age to have in their possession or to use restricted smoking materials within the corporate limits of the City of South Tucson.

4. ***“Use or Possession of Restricted Smoking Paraphernalia”***: It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale, or otherwise consume restricted smoking material if they are below twenty-one years of age. If an individual under twenty-one years of age is found in possession of this type of paraphernalia it will be a violation of this Ordinance if appropriate forensic testing is done on the paraphernalia and traces of restricted smoking material are present on the device.
5. ***“Location of Sale of Restricted Smoking Material and Paraphernalia”***: It shall be unlawful for any person or business entity to sell, offer to sell, deliver or to give any restricted smoking material or restricted smoking paraphernalia to any person other than otherwise allowed by the South Tucson Zoning Code.
6. ***“Defenses to Prosecution”***: It shall be a defense to a violation of this subsection that any act described herein is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

§ 7-34 (F) (“Violation; Penalty; Enforcement”):

1. Any person or business entity violating any of the provisions of Title 7, Article IV, **§ 7-34 (B) (“Public Nuisance”)**, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of South Tucson, Arizona, shall be punished by a fine not to exceed the sum of two thousand five hundred (\$2,500.00) for each offense and each and every day any such violation shall continue and shall constitute a separate offense.
2. Any person or business entity causing, permitting, aiding, abetting or concealing a violation any of the provisions of Title 7, Article IV, **§ 7-34 (C) (“Outdoor Alcohol Advertisement Regulations”)**, as amended hereby, shall be deemed guilty of an infraction and, upon a finding of such a violation by the Sign Administrator, shall be subject to administrative assessment of civil penalties:
 - a. First violation shall be assessed a civil penalty of \$500.00 with an additional \$50.00 per day for each day that the violation continues. Second violation shall be assessed a civil penalty of \$1,000.00 with an additional \$100.00 per day per day for each day the violation continues. Third and subsequent violations shall be assessed a civil penalty of \$2,000.00 with an additional \$200.00 per day per day for each day the violation continues.

- b. All revenues collected by the City shall be placed in a special fund to be administered by the City for purposes of enforcing this Ordinance.
 - c. In addition to the other remedies provided herein, any violation of this Ordinance may be enforced by a civil action brought by the City. In such action, the City may seek, and the Court shall grant, as appropriate; (1) a temporary and/or a permanent injunction; (2) assessment to the violator of costs related to any investigation, inspection or monitoring survey that led to the establishment of the violation, including but not limited to, reasonable costs of preparing and bringing legal action under this subsection, and attorney fees; (3) costs incurred in removing, correcting, abating, or terminating the adverse effects resulting from the violation.
 - d. A finding, after two or more violations of this Ordinance provisions involving the same outdoor advertisement, that outdoor advertisement violation shall constitute a public nuisance and is subject to the penalties proscribed under subsection (1).
3. Any person or business entity violating any of the provisions of Title 7, Article IV, **§ 7-34 (D) (“Minor Consumption of Liquor”)**, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of South Tucson, Arizona, shall be punished by a fine not to exceed the sum of two thousand five hundred (\$2,500.00) for each offense and each and every day any such violation shall continue and shall constitute a separate offense.
 4. Any person or business entity violating any of the provisions of Title 7, Article IV, **§ 7-34 (E) (“Restricted Smoking Material”)**, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of South Tucson, Arizona, shall be punished by a fine not to exceed the sum of two thousand five hundred (\$2,500.00) for each offense and each and every day any such violation shall continue and shall constitute a separate offense.

Section 3: All remaining Articles, Sections and Subsections shall remain in full force and effect.

Section 4: Repealing the existing Article IV, Section 7-34, Subsections (A), (B) and (C).

Section 5: All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6: That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect

the validity of the remaining portions of this Ordinance and the City of South Tucson, Arizona hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase, irrespective of the fact that any sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 7: That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of actions acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 8: That the various City Officers and Official(s) and/or any other duly appointed deputy are authorized and directed to perform all acts necessary or desirable to give effect and to carry out all the duties authorized under this Ordinance and the City Code.

Section 9: That where this Ordinance conflicts or overlaps with any other Ordinance, Code provision or regulation, whichever imposes the more stringent restrictions for the health, safety and welfare of the public shall prevail.

Section 10: The City Clerk is ordered and directed to cause this Ordinance to be published and posted.

Section 11: The City Clerk shall attest to the adoption of this Ordinance and cause same to be maintained as a public record as required by law. This Ordinance shall become effective thirty (30) days after the Mayor and Council conducts a public hearing, publication and posting as required by law, passage and adoption thereof.

PASSED AND ADOPTED by the Mayor and Council of the City of South Tucson, Arizona, this 18th day of October, 2010.


APPROVED/EXECUTED


MAYOR, JENNIFER ECKSTROM

ATTEST:

APPROVED AS TO FORM:


City Clerk, Veronica B. Moreno


City Attorney, Hector M. Figueroa, Esq.