

COUNCIL MINUTES

December 13, 1996

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on December 13, 1996 at 7:30 a.m.

COUNCIL PRESENT

Mayor Wayne Brown
Pat Gilbert
John Giles
Dennis Kavanaugh
Joan Payne
Wayne Pomeroy
Jim Stapley

COUNCIL ABSENT

None

STAFF PRESENT

C.K. Luster
Pauline Backer
Joan Baier
Cindy Barris
Neal Beets
Dan Brewer
Fred Conway
Mark Coon
Glenn Gorke
Joe Holmwood
Lars Jarvi.e
Barbara Jones
Les Jones
Sharon Joyce
Harry Kent
Ron Krosting
Larry Lines
Rich Lorig
Jeff Martin
Tom Mattingly
Ruth Anne Norris
John Oliver
Ellen Pence
Bill Petrie
Bryan Raines
Andrea Rasizer

STAFF PRESENT (CONT.)

Doug Tessendorf
Tom Remes
Mike Ryan
Denise Samuel
Sharon Seekins
Debbie Vickman
Ron Von Burg
Jaime Warner
Mindy White
Ralph Wisz
Larry Woolf
Christine Zielonka

OTHERS PRESENT

Bill Brando
John DeShetler
Kat Gallant
Cliff Harris
Robert Jackson
Chris Medrea
Chris Moeser
Don Morris
Dan Nowicki
Others

Mayor Brown excused Councilmember Payne from the beginning of the meeting. Councilmember Payne arrived at 7:45 a.m.

Items on the agenda were discussed out of order but for purpose of clarity will remain as listed on the agenda.

1. Further discussion and consideration concerning smoking regulations.

Mayor Brown advised that at the direction of Council, City Attorney Neal Beets has developed a draft ordinance revising the City's existing smoking regulations. Mayor Brown stated that the ordinance has been prepared in an effort to rectify provisions of Proposition 200 that do not appear to be working as anticipated.

Councilmember Stapley spoke regarding the Council's responsibility to act in the public's interest. Councilmember Stapley referred to the ordinance prepared by Mr. Beets (see attached) and proposed the following revisions:

Page 1: Line 16 - change "50 percent" or more of the business' gross annual revenue to "60 percent"; Line 20 -change to read: "an indoor area where smoking is allowed that is physically separated by a floor-to-ceiling wall and negative pressure ventilation and independent ventilation from smokefree areas"; Line 23 - remove the word "reasonable"; Line 32 - add the words "and without exposure to tobacco smoke" to the end of the sentence.

Page 2: Line 8 - label as Section "C"; Line 25 - omit the word "primary."

Page 3: Line 11 - change "75 percent" of its monthly gross revenue to "90 percent"; Line 18 remove "where" and replace with "when" so that the sentence reads: "no person shall smoke in any public place when the public gathers together for a legal purpose or event"; Line 39 - add the word "kitchens" after "cafeteria"; Line 41- omit the word "and" and add "and areas common to all employees" after the word "elevators."

Page 4: Line 14-omit Section "C."

Page 5: Lines 24 and 25 - omit the words "on-stage smoking during a play."

Page 6: Line 14 - omit "an adult" and add "a parent or legal guardian"; Line 29 - omit "an adult" and add "a parent or legal guardian"; Line 48 - add "providing it does not affect nonsmoking areas as defined by Sections 6-11-2 (A), (B), and (C).

Page 7: Line 1- substitute Section "B" with "All restaurants shall be smokefree. Restaurants with an occupancy limit of fifty (50) persons or less under the Mesa Building Code may apply for a hardship exemption under Section 6-11-10."

Page 9: Line 14 - change the three-year phase-in period to a six-month phase-in period.

Page 10: Line 23 - Section "C" should be changed to Section "D"; Line 24 - substitute the word "shall" for the word "may"; Line 38 - Section D should be changed to Section "E."

Page 13: Line 29 - change to read: "This act is an emergency measure that is necessary to preserve the public peace, health, and safety. Public hearings and other public input have suggested that the current ordinance may be causing a hardship to some individual businesses. Public health data collected at these same public hearings show that secondhand and sidestream smoke pose a serious health risk. It is hoped the public health can be protected

through less restrictive means than the current ordinance. Therefore, this act is operative immediately as provided by law."

Vice Mayor Gilbert thanked Councilmember Stapley for the suggested changes and commended Mr. Beets for his work. Vice Mayor Gilbert indicated that he is in agreement with a majority of Councilmember Stapley's recommendations.

In response to a question from Vice Mayor Gilbert, Mr. Beets stated that the ordinance has been drafted with the intent that receipts from an accessory bar would account for less than 50 percent of the total gross revenue of the business. Mr. Beets said that the ordinance provides an opportunity for a designated smoking area whether or not an establishment has an accessory bar.

Councilmember Giles said that he can support the adjustments presented by Councilmember Stapley with the following exceptions: retain the provision for "50 percent" of the business' gross annual revenues rather than "60 percent" and provide a one-year phase-in period instead of the suggested six-month phase-in period. Councilmember Giles additionally suggested the following: a) omit the words "or in any other designated smoking area within or outside the restaurant" from Lines 5-7 of page 7; b) limit the types of food that can be served in an accessory bar to include items such as appetizers and snacks; c) eliminate the changes to workplace regulations included in the draft ordinance and instead retain the Proposition 200 provisions; and d) attempt to assist "mom and pop" establishments via hardship, rather than exemption, provisions.

In response to a question from Councilmember Giles, Mr. Beets explained the hardship application review process and provisions for an administrative hearing and appeal.

Councilmember Pomeroy spoke in favor of retaining "50 percent" of the business' gross annual revenues and a one-year phase-in period. Councilmember Pomeroy suggested that a new ordinance incorporating changes mentioned by Council be prepared and submitted for Council action on Monday, December 16, 1996.

Councilmember Kavanaugh stated concurrence with Councilmember Stapley's suggested changes, with the following exceptions: retain the provision for "50 percent" of the business' gross annual revenues rather than "60 percent"; in defining a tobacco shop, retain "75 percent" of its monthly gross revenue from the retail sale of tobacco products and smoking equipment instead of "90 percent"; establish a one-year phase-in period instead of the suggested six-month phase-in period; retain provisions relating to on-stage smoking; and maintain language regarding designated smoking areas outside a restaurant.

Councilmember Kavanaugh noted that he is in concurrence with Councilmember Giles' suggestions regarding the workplace but disagreed relative to recommendations pertaining to accessory bars and "mom and pop" businesses.

Councilmember Payne expressed appreciation for the efforts of Mr. Beets but stated that she opposes the introduction of any type of compromise to Proposition 200.

Mayor Brown expressed concern that the enforcement provisions of the proposed ordinance are unfair to business owners and suggested consideration of modifications. Discussion ensued relative to the enforcement of Proposition 200 and the responsibilities of the owner/manager of an establishment.

Vice Mayor Gilbert stated that he would like additional time to review the suggested changes. Vice Mayor Gilbert said that he will strongly favor enforcement once a new ordinance is adopted.

Councilmember Kavanaugh expressed concurrence with the need for stronger penalties in relation to habitual offenders.

Councilmember Stapley indicated that he could support the changes to his suggestions, except those pertaining to a designated smoking area outside a restaurant and on-stage smoking during a play.

Mayor Brown requested that Mr. Beets prepare a revised draft of the ordinance with the changes suggested by Council. Mayor Brown stated that a Special Session may be held to consider adoption of a new ordinance.

At the request of City Manager Charles Luster, Mr. Beets provided a status report concerning litigation filed relative to Proposition 200. Mr. Beets commented that it appears that the courts are upholding the measure.

2. Consider calling a Special Election for the purpose of voting on Initiative No. I96-4 filed by Citizens to Repeal Prop. 200 - The Smoking Ban.

Mayor Brown spoke concerning the importance of finalizing issues relative to Proposition 200.

Councilmember Kavanaugh indicated that he would be in favor of a Special Election for the purpose of voting on Initiative No. I96-4 but commented that March 1997 may be too soon to determine the effects of Council's proposal to revise the City's smoking regulations. Councilmember Kavanaugh suggested that consideration be given to a May 1997 Special Election.

Councilmember Stapley agreed with Councilmember Kavanaugh that time is needed to evaluate the effectiveness of the proposed modifications to Proposition 200 but stated the opinion that three to four months is not sufficient. Councilmember Stapley informed the Council that turnout is typically less for a Special Election, and given the significance of the matter, spoke in favor of including Initiative No. I96-4 on the ballot for the regularly scheduled election to be held in 1998.

Vice Mayor Gilbert expressed the opinion that a March 1997 Special Election will not allow sufficient time to determine the effectiveness of Council's changes to the smoking regulations.

In response to a question from Vice Mayor Gilbert concerning time frames for adopting a revised ordinance, Mr. Beets advised that an emergency clause may be included in the ordinance but said that six votes would be necessary for approval.

Vice Mayor Gilbert questioned the appropriateness of utilizing approximately \$100,000 to conduct a Special Election.

Councilmember Payne stated that she favors conducting a Special Election in March 1997 but said that she would be willing to agree to a May 1997 date rather than March 1998 given the importance of the issue. Councilmember Payne commented that many businesses in Mesa have experienced losses in excess of \$100,000 as a result of Proposition 200 and are no longer marketable. Councilmember Payne commented that sufficient signatures were obtained to place Initiative No. I96-4 on the ballot and that citizens of Mesa support a Special Election.

Councilmember Pomeroy noted the importance of enacting the revised ordinance regulating smoking and then determining if a Special Election is necessary.

Councilmember Giles stated concurrence with Councilmember Pomeroy. Councilmember Giles commented that an election in March 1997 will not allow sufficient opportunity to evaluate the effects of the revised smoking regulations.

Mayor Brown stated that there is insufficient Council support to call a March 1997 Special Election for the purpose of voting on Initiative No. I96-4.

3. Discuss telecommunication issues, including adoption of a model telecommunication ordinance.

Management Services Manager Dan Brewer informed the Council that in January 1996 President Clinton signed into law extensive revisions to the Telecommunications Act. Mr. Brewer noted the importance of community preparation and involvement in the telecommunication field in an effort to streamline services to citizens, reduce traffic and air pollution, and provide educational opportunities and assist schools. Mr. Brewer spoke briefly concerning cable retrenching/rebuilding and the City's infrastructure needs in relation to telecommunication.

Vice Mayor Gilbert indicated interest in obtaining a better knowledge of the subject of telecommunication and suggested a more detailed review of the matter by a Council Committee.

(Vice Mayor Gilbert was excused at 8:55 a.m. for the remainder of the meeting.)

Mr. Brewer informed the Council that a Committee of 30 members has been established to review telecommunication issues and has been divided into groups to study three aspects: regulations, service, and infrastructure.

Associate Library Director Mike Ryan related challenges and benefits of telecommunication relative to City services. Mr. Ryan said that the Committee envisions that telecommunication could reduce or eliminate the need for citizens to physically visit City offices to secure library books, pay court fees, obtain City Council updates, etc. Mr. Ryan noted that technological advances could create a reduction in manpower needs and employee travel to/from work.

Public Works Manager Harry Kent spoke regarding telecommunication infrastructure and the importance of a public/private partnership. Mr. Kent identified two major issues for consideration: a) co-location of wireless towers and conduit for underground telecommunication

facilities and b) Mesa's master plan to provide a telecommunication structure. Mr. Kent advised that the City will be contacting corporations to determine interest and noted that the City may want to consider installing telecommunication conduit in conjunction with street improvement projects.

Mr. Beets reviewed regulatory issues and noted prior attempts by the telecommunication industry to pre-empt local control. Mr. Beets expressed the Committee's opinion that the public should receive compensation for the use of right-of-way. Mr. Beets said that cities are currently working together to create a model telecommunication code.

Councilmember Kavanaugh stated that the issue of telecommunication was discussed recently at a conference sponsored by the National League of Cities.

In response to a question from Councilmember Kavanaugh, Government Relations Coordinator Jeff Martin noted that a coalition has been established by members of the telecommunication industry. Mr. Martin spoke briefly concerning the potential for future State legislative action in relation to telecommunication.

Mayor Brown stated appreciation to staff for their efforts.

4. Hear a presentation concerning air quality matters.

Environmental Coordinator Christine Zielonka utilized overhead slides and provided Council with an update concerning three primary air pollutants: 1) carbon monoxide, 2) particulates, and 3) ozone. Ms. Zielonka reported that vehicles continue to be the major contributor to the Valley's air quality problem. Ms. Zielonka advised that the Valley was reclassified to "serious nonattainment" in May 1996 due to the status of particulate material and in July 1996 due to the status of carbon monoxide.

Ms. Zielonka informed the Council that a Serious Area Plan must be submitted to the Environmental Protection Agency (EPA) by February 28, 1998 regarding carbon monoxide and by December 10, 1997 regarding particulate matter. Ms. Zielonka said that attainment of the standard for carbon monoxide is required by December 31, 2000 and that Best Available Control measures relative to particulate matter must be considered for implementation by the City. Ms. Zielonka noted the penalties for failure to attain standards.

Ms. Zielonka reported that ozone levels remain classified as moderate nonattainment due to minimal exceedences during the past summer and that a voluntary early ozone plan is being prepared in an attempt to avoid reclassification to serious nonattainment.

Ms. Zielonka spoke concerning a recent "brown cloud" study and the "urban haze" study currently underway by the Maricopa Association of Governments (MAG).

Vice Mayor Gilbert noted the link between population growth and air quality. Vice Mayor Gilbert encouraged regional as well as local consideration of air quality solutions, including mass transit.

Mayor Brown thanked Ms. Zielonka for the presentation.

5. Acknowledge receipt of minutes of meetings of various boards and committees.

- a. Board of Adjustment meeting - December 3, 1996.
- b. Design Review Board meeting - December 4, 1996.
- c. Library Advisory Board meeting - December 3, 1996.

It was moved by Councilmember Stapley, seconded by Councilmember Pomeroy, to acknowledge the receipt of minutes of meetings of various boards and committees.

Carried unanimously.

6. Hear reports on meetings and/or conferences attended.

Councilmember Kavanaugh reported that he, Mayor Brown, and Councilmember Payne recently attended a conference in San Antonio, Texas, sponsored by the National League of Cities. Councilmember Kavanaugh noted that the conference included topics such as telecommunication, housing, and information networking.

7. Scheduling of meetings and general information.

City Manager Charles Luster stated that the date and time for a Utility Committee meeting and the January Policy Session will be finalized on Monday, December 16, 1996.

8. Review items on the agenda for the December 16, 1996 Regular Council Meeting.

All of the agenda items were reviewed among the Council and staff, with no formal action taken. There was particular discussion with regard to the following agenda items:

7. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding ordinances:
 - b. **Z96-58** The 9600 and 9700 blocks of East Baseline Road (north side). Rezone from R1-43 to R1-9 and R1-6 (52± acres). This case involves the development of a 175-lot conventional subdivision. Mesa 50 LC, owner; Beazer Homes, applicant.

Community Development Manager Wayne Balmer advised that all issues have been resolved pertaining to the case.

Mayor Brown stated that this item will be added to the consent agenda.

- c. **Z96-64** The southwest corner of Brown Road and Greenfield Road. Rezone from AG to R1-15 (17± acres). This involves a proposed 28-lot single-residence subdivision. US Development, owner; Ralph Pew, applicant. **THIS CASE WAS CONTINUED FROM THE NOVEMBER 18 AND DECEMBER 2, 1996 CITY COUNCIL MEETINGS. A 3/4 VOTE IS REQUIRED TO APPROVE THE APPLICANT'S REQUEST.**

Councilmember Pomeroy indicated that he had a potential conflict of interest in connection with the matter now under discussion which he wanted recorded in the minutes of the meeting, and because of such conflict of interest, he would refrain from voting upon or otherwise participating in any manner in connection with same.

Mr. Balmer said that staff has received a revised subdivision map reflecting a reduction in the number of lots. Mr. Balmer explained that the neighborhood protest has not yet been withdrawn and therefore a 3/4 vote is required.

- h. **Z96-101** The 7100 block of East McKellips Road (north side). Rezone from R1-35 to R-2-PAD (15± acres). This case involves development of a 118-lot patio home project. Gerald & Elaine Petersen Trust, owner; The DeHaven Company, applicant. **A 3/4 VOTE IS REQUIRED TO APPROVE THIS REQUEST. THE APPLICANT HAS REQUESTED A CONTINUANCE TO THE JANUARY 21, 1997 COUNCIL MEETING.**

Mr. Balmer noted the applicant's request for a continuance to the January 21, 1997 Regular Council Meeting.

Mayor Brown stated that this item will be added to the consent agenda for the purpose of continuance.

- k. **Z96-104** The 100 and 200 blocks of North 22nd Place (east side). Rezone from C-3 and R1-6 to R-2-PAD (14± acres). This case involves the development of a 145-unit single-residence subdivision. Sur-Way Concrete Construction, owner; American Development Corporation, applicant.

In response to a question from Councilmember Giles, Mr. Balmer provided background information concerning the infill project and explained the cluster home design.

- m. **Z96-106** The northeast corner of Grove and Westwood (3± acres). Rezone from C-2-DMP (Conceptual BIZ) to C-2-BIZ-DMP. This case involves the development of a seven-story, 124-room LaQuinta Inn. Sabin Investing, Inc., owner; David K. Jones P.C., applicant.

In response to a question from Councilmember Stapley, Mr. Balmer advised that the case has been included on the consent agenda due to the split vote from the Planning and Zoning Board. Mr. Balmer noted the new site for the LaQuinta Inn request and said that staff is recommending approval of the case.

Mayor Brown stated that this item will be added to the consent agenda.

9. Prescheduled public opinion appearances (maximum of three speakers for five minutes per speaker).

There were no prescheduled public opinion appearances.

10. Items from citizens present (maximum of three speakers for five minutes per sneaker).

Kat Gallant, 1620 West University Drive, a Mesa citizen and business owner, spoke concerning the recently filed initiative pertaining to Mesa's smoking regulations and expressed concern should Council choose not to call a Special Election.

John DeShetler, 4811 East Julep, presented a letter from the Valley Business Owners (VBO) stating opposition to proposed changes by Council to Mesa's smoking regulations. Mr. DeShetler encouraged Council to call a Special Election to vote on the recently filed Initiative No. I96-4.

11. Adjournment

Without objection, the meeting was adjourned at 9:26 a.m.

WAYNE BROWN, MAYOR

ATTEST:

BARBARA JONES, CITY CLERK

Attachment

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 13th day of December, 1996. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 20th day of January 1997

BARBARA JONES, CITY CLERK

ATTACHMENT

REFERENCE: Amends Proposition 200; continues to ban smoking in most restaurants; allows smoking in more bars and other businesses; modifies enforcement procedures; establishes hardship exceptions and phase-ins.

ORDINANCE No.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO SMOKING AND PUBLIC HEALTH; AMENDING SECTIONS 6-11-2, 6-11-4, 6-11-5, 6-11-6, 6-11-7, AND 6-11-8, MESA CITY CODE; AMENDING TITLE 6, CHAPTER 11, MESA CITY CODE, BY ADDING SECTIONS 6-11-9, 6-11-10, 6-11-11, 6-11-12, 6-11-13, AND 6-11-14; PROVIDING FOR SEVERABILITY; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING FOR AN EMERGENCY.

1 Be it ordained by the City Council of the City of Mesa, Maricopa County, Arizona:

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3 Section 1: Section 6-11-2, Mesa City Code, is amended to read:

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5 6-11-2: Definitions

6

7 ACCESSORY BAR: A PLACE WITHIN A RESTAURANT FOR THE INCIDENTAL SERVICE OF
8 ALCOHOLIC BEVERAGES FOR ON-SITE CONSUMPTION.

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10 ~~Bar: A place primarily devoted to alcoholic beverage service authorized under a Series 06~~

11 ~~license issued by the Arizona Department of Liquor Licenses and Control. Although a~~

12 ~~restaurant, may contain a bar area, the term "bar" shall not include the restaurant dining~~

13 ~~area which shall conform to all regulations in Section 6-11-4. THOSE BUSINESS PREMISES~~

14 WHERE THE ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL HAS LICENSED THE

15 RETAIL SALE AND ON-SITE CONSUMPTION OF ALCOHOLIC BEVERAGES, AND FIFTY PERCENT

16 (50%) OR MORE OF THE BUSINESS' GROSS ANNUAL REVENUES, FOR ANY CONSECUTIVE TWELVE

17 MONTH PERIOD, ARE DERIVED FROM THE SALE OF LIQUOR.

18

19 DESIGNATED SMOKING AREA: MEANS

20 (A) AN INDOOR AREA WHERE SMOKING IS ALLOWED THAT IS PHYSICALLY SEPARATED AND

21 INDEPENDENTLY VENTILATED FROM SMOKEFREE AREAS, SO THAT AIR WITHIN DESIGNATED

22 SMOKING AREAS DOES NOT DRIFT OR MIGRATE TO ANY SMOKEFREE AREAS. THE

23 SUPERINTENDENT OF BUILDING INSPECTIONS IS AUTHORIZED TO MAKE REASONABLE

24 REQUIREMENTS, CONSISTENT WITH THE MESA BUILDING CODE AND THIS CHAPTER,

25 APPLYING THE TERMS "PHYSICALLY SEPARATED" AND "INDEPENDENTLY VENTILATED" TO

26 ACCOMPLISH THIS GOAL. HOWEVER, UNDER NO CIRCUMSTANCES SHALL THE

27 DESIGNATED SMOKING AREA EXCEED IN SIZE THE SMOKEFREE AREA IN THAT FACILITY. THE

28 SMOKING AREA SHALL NOT INCLUDE THE ENTRY LOBBY, WAITING AREAS, RESTROOMS, OR

29 AREAS WHERE MINORS MAY CUSTOMARILY CONGREGATE IN THAT FACILITY. THE

30 DESIGNATED SMOKING AREA SHALL BE CONSTRUCTED SO THAT NONSMOKING

CUSTOMERS CAN RECEIVE ALL SERVICES PROVIDED BY THAT BUSINESS WITHOUT WALKING

THROUGH THE SMOKING AREA.

33 (B) MOREOVER, A DESIGNATED SMOKING AREA MAY ALSO INCLUDE THE OUTDOOR

34 GROUNDS OF A BUILDING, STRUCTURE, OR OTHER INDOOR FACILITY REQUIRED TO BE

35 SMOKEFREE UNDER THIS CHAPTER WHEN THE DESIGNATED SMOKING AREA IS AT LEAST

2 FIFTEEN FEET (15) AWAY FROM NONSMOKING PATRONS AND THE PUBLIC ENTRANCES AND
3 EXITS OF THE FACILITY.

4 Employee: Any person who is employed by any "employer" for direct or indirect monetary
5 wages or profits.

6
7 Employer: Any person or entity employing the service of an "employee."

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

20 A PUBLIC PLACE SHALL ALSO INCLUDE ALL PLACES IDENTIFIED UNDER ARIZONA OR FEDERAL
21 LAW AS A PLACE OF PUBLIC ACCOMMODATION.

22
23 Place of employment: Any area under control of a private or public employer.

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25 Restaurant: A facility regularly open for the ~~primary~~ purpose of serving food prepared for
26 consumption, either on or off the premises, to customers for compensation, including those
27 that also serve alcoholic beverages FROM AN ACCESSORY BAR. FOR PURPOSES OF THIS
28 CHAPTER ONLY, A "RESTAURANT" SHALL HAVE ANNUAL GROSS REVENUE FROM THE SALE OF
29 FOOD OF FIFTY PERCENT (50%) OR MORE FOR ANY CONSECUTIVE TWELVE MONTH PERIOD.

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31 Smoke or smoking: Means and includes:

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33 (A) Carrying or placing of a lighted cigarette, lighted cigar, or lighted pipe or any
34 other lighted smoking equipment in one's mouth for the purpose of inhaling
35 and exhaling smoke or blowing smoke rings;

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37 (B) Placing of a lighted cigarette, cigar, or pipe or any other lighted smoking
38 equipment in an ashtray or other receptacle and allowing smoke to diffuse in
39 the air;

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41 (C) Carrying or placing of a lighted cigarette, cigar, or pipe or any other lighted
42 smoking equipment in one's hands or any appendage or devices and allowing
43 smoke to diffuse in the air.

44
45 Smokefree: No tobacco or other plant smoke and freedom from inhaling
46 environmental tobacco smoke (ETS) or passive smoke, including secondhand
47 smoke generated by an active smoker or sidestream smoke or fumes from any

2 such burning material, device, or ashtray that continues to emit such tobacco
3 smoke or fumes from lighted or extinguished smoking materials.

4 SUPERINTENDENT OF BUILDING INSPECTIONS: THE PUBLIC OFFICER APPOINTED TO
5 THAT POSITION BY THE CITY MANAGER, OR SUCH OTHER PERSON AS THE CITY
6 MANAGER SHALL DESIGNATE.

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8 TOBACCO SHOP: MEANS

9 (A) AN EXCLUSIVELY RETAIL BUSINESS,
10 (B) THAT IS NOT PART OF A LARGER STORE, AND
11 (C) THAT DERIVES AT LEAST SEVENTY-FIVE PERCENT (75%) OF ITS MONTHLY GROSS
12 REVENUE FROM THE RETAIL SALE OF TOBACCO PRODUCTS AND SMOKING
13 EQUIPMENT.

14
15 Section 2: Section 6-11-4, Mesa City Code, is amended to read:

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17 6-11-4: Regulation of Smoking in Public Places:

18 No person shall smoke in any public place ~~where the public gathers~~
19 ~~together for any legal purpose or event~~, as previously defined under Section 6-11-2(C)
20 2(C), EXCEPT IN A DESIGNATED SMOKING AREA OR PURSUANT TO A HARDSHIP
21 EXCEPTION OR PHASE-IN AS PRESCRIBED IN THIS CHAPTER. ~~in the City of Mesa. Any~~
22 ~~violation of this Section is a petty offense punishable by a fine of not less than fifty~~
23 ~~dollars (\$50.00) or more than two hundred dollars (\$200.00), which shall be so~~
24 ~~imposed.~~

25
26 Section 3: Section 6-1 1-5, Mesa City Code, is amended to read:

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28 6-11-5: Regulation of Smoking in Places of Employment:

- 29
30 (A) On or before ~~July~~ MARCH 1, 19967, each employer in each place of
31 employment within the City shall adopt, implement, maintain, and
32 announce to its employees a smoking policy containing at a minimum the
33 following requirements:
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- 35 1. EXCEPT AS SET FORTH BELOW, Aall workplace areas shall be "smokefree" as
36 PREVIOUSLY DEFINED IN ~~per~~ Section 6-11-2(~~11~~).
 - 37
38 2. Smoking is prohibited in conference rooms, meeting rooms, classrooms,
39 auditoriums, cafeterias, lunchrooms, employees' lounges, rest rooms
40 provided by employers for employee use, and in waiting areas, including
41 outdoor waiting lines, hallways, stairways, and elevators.
 - 42
43 3. A separate smoking area outdoors which does not require others to walk
44 through it upon entering or a smoking area indoors which is separately
45 constructed and negatively pressure ventilated using a separate cooling
46 and/or heating ventilation system may be provided at the option of the
47 employer. HOWEVER, IF AN EMPLOYEE COMPLAINS TO THE EMPLOYER THAT
48 SMOKE IS DRIFTING 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. .

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.

(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.

(C) NOTHING IN THIS CHAPTER SHALL REQUIRE A BUSINESS ALL OF WHOSE EMPLOYEES AND VOLUNTEERS SMOKE TO MAINTAIN A SMOKEFREE ENVIRONMENT IN THEIR PLACE OF EMPLOYMENT EXCEPT IN THOSE AREAS, IF ANY, THAT ARE OPEN TO THE PUBLIC. ~~The Fire Chief or his designee is authorized to investigate any complaints of violation of this Section. Upon a determination of reasonable cause that a violation exists,, the Fire Chief or his designee may issue and serve upon the employer or the employer's agent a notice of violation stating with reasonable particulars the nature of the violation. Within fifteen (15) days of service of said notice, the employer shall in writing either submit a compliance plan to the Fire Chief or request a hearing on the violation by filing a written request with the City Manager. If a hearing is requested, a Hearing Officer appointed by the City Manager or his designee shall designate a time and place for the hearing and shall serve upon the employer a notice thereof not less than ten (10) days before the date of the hearing. For purposes of this Subsection, service on the employer or the employer's agent shall be made by mailing a copy thereof to the place of business of the employer by certified or registered mail. Service shall be deemed completed when so mailed.~~

~~(D) At the hearing it shall be the burden of the City to prove by a preponderance of the evidence that a violation has occurred. Format rules of evidence shall not apply, and the Hearing Officer may admit whatever evidence he deems probative.~~

~~(E) If the Hearing Officer determines that a violation has occurred, the Hearing Officer shall issue an order declaring continued noncompliance with this Section to be an offense and shall impose a civil sanction of two hundred dollars (\$200.00) against the employer. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.~~

~~(F) Failure to respond timely to a notice of violation as described in Subsection (C) shall result in a default judgment imposing the penalties provided for in Subsection (E) being entered against the violator.~~

Section 4: Section 6-11-6, Mesa City Code, is amended to read:

6-11-6: Where Smoking Is Not Regulated:

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Notwithstanding any other provisions of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Chapter:

- (A) A private residence or public housing PROJECT, BUT THE COMMON AREAS OF PUBLIC HOUSING PROJECTS AND PRIVATE MULTI-HOUSING PROJECTS ACCESSIBLE TO THE PUBLIC OR TO ALL THE RESIDENTS OF THE PROJECT (SUCH AS LOBBIES, HALLWAYS, AND RECREATION AREAS) ARE REQUIRED TO BE SMOKEFREE, AS ARE PRIVATE RESIDENCES WHEN USED AS COMMERCIAL CHILD CARE OR HEALTH CARE FACILITIES.
- (B) Hotel and motel rooms rented to guests which may include rooms specified as permitting smoking within rooms so designated.
- (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, and CONDUCTING private functions where the GENERAL 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.
- (D) ANY PROTECTED FIRST AMENDMENT ACTIVITY, SUCH AS ON-STAGE SMOKING DURING A PLAY OR SMOKING MATERIALS USED FOR BONA FIDE RELIGIOUS PURPOSES. ~~A bar as per definition in Section 6-11-2(F) after applying for and receiving a variance as per Section 6-11-4 of Title 6, Chapter 11 of the Mesa City Code.~~
- (E) TOBACCO SHOPS. HOWEVER, IF A TOBACCO SHOP IS PART OF A COMMON VENTILATION SYSTEM WITH AREAS REQUIRED TO BE SMOKEFREE UNDER THIS CHAPTER, THE TOBACCO SHOP MUST FULFILL THE REQUIREMENTS OF A DESIGNATED SMOKING AREA BEFORE SMOKING CAN OCCUR.
- (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 IS PART OF A COMMON VENTILATION SYSTEM WITH AREAS REQUIRED TO BE SMOKEFREE UNDER THIS CHAPTER, THE CONFERENCE OR MEETING ROOM WHERE SMOKING IS ALLOWED MUST FULFILL THE REQUIREMENTS OF A DESIGNATED SMOKING AREA BEFORE SMOKING CAN OCCUR.

Section 5: Section 6-11-7, Mesa City Code, is amended to read:

6-11-7: Sign Posting ~~And Acting on Violations:~~

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- (A) "No Smoking" signs, "SMOKEFREE" SIGNS, 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 ~~controlled~~ PROHIBITED by this Chapter, including each entry point. THE OWNER, MANAGER, OPERATOR, OR OTHER PERSON HAVING CONTROL OF AN AREA DESIGNATED AS SMOKEFREE UNDER THIS CHAPTER SHALL REMOVE ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM SUCH AREAS.
 - (B) WHERE SMOKING IS ALLOWED INDOORS UNDER THIS CHAPTER, THE OWNER SHALL CONSPICUOUSLY POST A SIGN ON ALL ENTRY DOORS TO THE SMOKING AREA WARNING THOSE WHO ENTER THAT THIS IS A SMOKING AREA AND THAT MINORS ARE PROHIBITED UNLESS ACCOMPANIED AND SUPERVISED BY AN ADULT.
 - (C) All such signs and/or symbols shall have letters or symbols thereon no smaller than three inches (3") in height. ~~Any owner, manager, operator, or employer of any establishment controlled by this Chapter, upon either observing or being advised of a violation of Sections 6-11-4, 6-11-5, or 6-11-7, shall have the obligation to inform the violator of the appropriate requirements of this Chapter and then request immediate compliance. If voluntary compliance is refused or is not otherwise indicated, such noncompliance shall then be promptly reported to the City department or office so designated to receive such violation complaints.~~
 - (D) IT IS UNLAWFUL FOR AN OWNER, MANAGER, OPERATOR OR OTHER PERSON IN CONTROL OF A FACILITY WITH A DESIGNATED INDOOR SMOKING AREA TO ALLOW MINORS TO ENTER THAT AREA WHEN THEY ARE NOT ACCOMPANIED AND SUPERVISED BY AN ADULT. ~~Any person who smokes in violation of this Chapter shall be cited for a petty offense, punishable by a fine not to exceed two hundred dollars (\$200.00).~~
 - ~~(E) If any section, paragraph, clause, or provision of this Chapter shall for any reason be held to be invalid or unenforceable, such decision shall not affect any other of the remaining provisions of this Chapter.~~
 - (F) ~~For questions of further definition and/or interpretation of this Chapter, the Mesa City Manager will serve as the arbiter. Resulting decisions will be based upon the intent of this Chapter and its consistency with existing Mesa City ordinances.~~

42 Section 6: Section 6-11-8, Mesa City Code, is amended to read:

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44 6-11-8: BARS AND RESTAURANTS:

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46 (A) Smoking is allowed ~~in Class 6~~ THROUGHOUT ALL bars AND THEIR GROUNDS
47 ~~through August 31, 1996. Beginning September 1, 1996, all Class 6 bars~~
48 ~~shall be smokefree unless a variance is obtained under this Section.~~

(B) ALL RESTAURANTS SHALL BE SMOKEFREE, EXCEPT THE FOLLOWING:

1. RESTAURANTS WITH AN OCCUPANCY LIMIT OF FIFTY (50) PERSONS OR LESS UNDER THE MESA BUILDING CODE;
2. RESTAURANTS WITH AN ACCESSORY BAR MAY ALLOW SMOKING IN THE ACCESSORY BAR IF IT IS A DESIGNATED SMOKING AREA, OR IN ANY OTHER DESIGNATED SMOKING AREA WITHIN OR OUTSIDE THE RESTAURANT.
3. RESTAURANTS THAT APPLY FOR, ARE GRANTED, AND COMPLY WITH A HARDSHIP EXCEPTION OR PHASE-IN UNDER THIS CHAPTER. ~~A Class 6 bar owner may apply to the Mesa Fire Department for a variance allowing smoking in the bar area where liquor is served. The Mesa Fire Department shall grant a variance when a bar owner demonstrates:~~
 1. ~~The bar meets all Fire Code standards;~~
 2. ~~A floor to ceiling wall qualifying as a smoke barrier under the Mesa Building Code completely separates the bar smoking area from other sections of the building;~~
 3. ~~All doors allowing ingress to the bar smoking area shall be tight fitting, self closing, and self sealing. They shall include conspicuous signage indicating that one is entering a bar smoking area and that minors are prohibited unless accompanied by an adult or legal guardian;~~
 4. ~~The heating, ventilating, and air conditioning (HVAC) system (s) serving the bar shall meet at least one (1) of the following standards:~~
 - (a) ~~A separate single pass system serves the bar smoking area that complies with technical specifications promulgated by the Superintendent of Building Inspections;~~
 - (b) ~~The HVAC system serving the bar smoking area meets the indoor air quality criteria detailed in the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 62a 1990 entitled, "Ventilation for Acceptable Air Quality." The Superintendent of Building Inspections shall adopt such technical standards as are necessary to implement ASHRAE 62a 1990. This standards includes two (2) methods for compliance:~~
 1. ~~Ventilation Rate Procedure, Paragraph 6.1 of ASHRAE 62a 1990. The ventilation rate procedure shall use a ventilation rate of thirty (30) cubic feet per minute (CFM) of outside air per person with a maximum occupancy load in the facility as limited by the current Mesa Building Code. The total occupancy load of the bar smoking area may be reduced to meet this criterion, but the new occupancy load limit must be posted per the Mesa Building Code.~~

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ii. ~~Indoor Air Quality Procedure, Paragraph 6.2 of ASHRAE 62a 1990. The indoor air quality procedure shall analyze the indoor air quality in the bar smoking area and adjacent spaces to limit indoor pollutants to the limits of those contaminants listed in Table 1 of ASHRAE 62a 1990 if return air is used from the adjacent spaces. Any combination of recirculation, filtration, and outside air is acceptable if that combination meets the maximum limits referenced above. If the HVAC system serves both the adjacent nonsmoking areas and the bar smoking area, all adjacent areas served by that system and the bar smoking area must be analyzed and in compliance.~~

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(e) ~~A separate HVAC system serves the bar smoking area that meets the requirements of the Mesa Building Code and the technical standards adopted by the Superintendent of Building Inspections to implement the Mesa Building Code. The bar smoking area shall be negatively pressurized relative to adjacent nonsmoking areas accessible to the bar smoking area through openings. Supply air from adjacent nonsmoking areas to the bar smoking area is acceptable, but no return air shall circulate from the bar smoking area to nonsmoking areas.~~

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5.(C) ~~The HVAC systems required under this Section CHAPTER shall be tested as follows:~~

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(a) ~~All HVAC systems shall be tested by a certified test and balance agency after completion of construction. The test shall comply with the variance alternative selected and shall demonstrate compliance with the specified technical standards and parameters ESTABLISHED BY THE SUPERINTENDENT OF BUILDING INSPECTION. The testing shall include verification of all air quantities (supply air, return air, and exhaust air), and pressure drop across the barrier wall. The HVAC system shall be tested every five (5) THREE (3) years thereafter to verify that the HVAC system fulfills the conditions required for the variance, AND ALL MAINTENANCE AND TESTING RECORDS SHALL BE MAINTAINED FOR FIVE (5) YEARS AND SUBMITTED TO THE CITY OF MESA UPON REQUEST.~~

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(b) ~~In addition, the HVAC system specified in subparagraph B4(b) shall be tested for the contaminant counts of the contaminants listed in Table 1, ASHRAE 62a 1990. The contaminant counts shall be tested and analyzed by a certified industrial hygienist using a certified laboratory. The collection period shall be not less than twenty four (24) hours. During the interim five (5) year period between certification tests under subparagraph B5(a), the HVAC system specified in subparagraph B4(b) shall be maintained and the maintenance records shall be submitted to the City of Mesa upon request. These maintenance records shall include, but are not limited~~

to, preventative maintenance, filter changes, and verification of air flow quantities.

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Section 7: Title 6, chapter 11, Mesa City Code, is amended by adding section 6-11-10, to read:

6-11-10: HARDSHIP SITUATIONS

- (A) HARDSHIP PHASE-IN. ANY EXISTING BUSINESS, AS OF THE EFFECTIVE DATE OF THIS ORDINANCE, REQUIRED TO BE SMOKEFREE, IN PART OR IN WHOLE, MAY APPLY TO THE SUPERINTENDENT OF BUILDING INSPECTIONS FOR A PHASE-IN OF PART OR ALL OF THE STRUCTURAL, HVAC, SIGNAGE, AND OTHER REQUIREMENTS OF THIS CHAPTER APPLICABLE TO THAT FACILITY. THE SUPERINTENDENT MAY GRANT A PHASE-IN PERIOD OF UP TO THREE (3) YEARS. HARDSHIP APPLICANTS SHALL BEAR THE BURDEN OF SHOWING THAT IMMEDIATE IMPLEMENTATION OF THE REQUIREMENTS OF THIS CHAPTER WOULD CREATE AN UNDUE FINANCIAL HARDSHIP. A HARDSHIP PHASE-IN APPLICATION SHALL CONTAIN THE FOLLOWING:
1. AN ESTIMATE FROM AN APPROPRIATELY LICENSED CONTRACTOR OF THE COSTS OF COMPLYING WITH THIS CHAPTER;
 2. MESA SALES TAX STATEMENTS FOR THE MOST RECENT ANNUAL PERIOD;
 3. A TIME AND TASK SCHEDULE FOR COMPLYING WITH ALL REQUIREMENTS OF THIS CHAPTER SHOULD A HARDSHIP PHASE-IN BE GRANTED;
 4. A SWORN STATEMENT EXPLAINING HOW THE APPLICANT WILL PROTECT THE HEALTH OF EMPLOYEES AND THE PUBLIC FROM SECOND-HAND AND SIDE STREAM SMOKE DURING A PHASE-IN PERIOD;
 5. 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.
- (B) HARDSHIP SMOKING EXCEPTION. ANY EXISTING BUSINESS OR PLACE REQUIRED TO BE SMOKEFREE UNDER THIS CHAPTER, AS OF THE EFFECTIVE DATE OF THIS ORDINANCE, BUT WISHING TO ALLOW SMOKING MAY APPLY TO THE SUPERINTENDENT OF BUILDING INSPECTION FOR A HARDSHIP SMOKING EXCEPTION. APPLICANTS SHALL BEAR THE BURDEN OF SHOWING THAT THE INABILITY TO ALLOW SMOKING ON THEIR PREMISES HAS CREATED AN UNDUE FINANCIAL HARDSHIP. FOR PURPOSES OF THIS SECTION, EVIDENCE OF A FIFTEEN PERCENT (15%) REDUCTION IN REVENUE OVER THE APPLICABLE PERIOD OF TIME SHALL CONSTITUTE PRIMA FACIE EVIDENCE AND A REBUTTABLE PRESUMPTION OF AN UNDUE HARDSHIP. AN APPLICATION FOR A HARDSHIP SMOKING EXCEPTION SHALL CONTAIN THE FOLLOWING:
1. MESA SALES TAX STATEMENTS COMPARING SALES RECEIPTS FOR A FOUR MONTH PERIOD OF COMPLIANCE UNDER THIS ORDINANCE AND THE SAME FOUR MONTH PERIOD IN THE YEAR PRIOR TO COMPLIANCE, OR OTHER COMPARABLE PERIOD;

2. A SWORN STATEMENT THAT THE STRUCTURAL, HVAC, AND ALL OTHER REQUIREMENTS OF THIS CHAPTER FOR DESIGNATED SMOKING AREAS (6-11-2) SHALL BE COMPLETELY FULFILLED IF A HARDSHIP SMOKING EXCEPTION IS GRANTED AND THE SUPERINTENDENT OF BUILDING INSPECTIONS REQUIRES A DESIGNATED SMOKING AREA.

(C) APPLICATION.

1. AS OF THE EFFECTIVE DATE OF THIS ORDINANCE, IF A PERSON OWNS A STRUCTURE SUBJECT TO THIS CHAPTER AND WISHES TO APPLY FOR A HARDSHIP SMOKING PHASE-IN, THAT PERSON SHALL APPLY TO THE SUPERINTENDENT OF BUILDING INSPECTION WITHIN ONE-HUNDRED TWENTY (120) DAYS OF THE EFFECTIVE DATE OF THIS ORDINANCE.
2. AS OF THE EFFECTIVE DATE OF THIS ORDINANCE, IF A PERSON OWNS A STRUCTURE SUBJECT TO THIS CHAPTER AND WISHES TO APPLY FOR A HARDSHIP SMOKING EXCEPTION, THAT PERSON SHALL APPLY TO THE SUPERINTENDENT OF BUILDING INSPECTION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ORDINANCE.
2. AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, ALL NEW CONSTRUCTION OR REMODELING OF EXISTING STRUCTURES SHALL NOT BE ELIGIBLE FOR A HARDSHIP EXCEPTION OR PHASE-IN AND SHALL COMPLY WITH THE SMOKEFREE PROVISIONS OF THIS ORDINANCE.

(C) INVESTIGATION. THE SUPERINTENDENT OF BUILDING INSPECTION, OR DESIGNEE, MAY HOLD AN ADMINISTRATIVE HEARING TO REVIEW A HARDSHIP APPLICATION UNDER THIS SECTION, AND THE SUPERINTENDENT MAY CONDUCT SUCH OTHER INVESTIGATION AND REVIEW AS THE SUPERINTENDENT DEEMS NECESSARY. THE APPLICANT SHALL COOPERATE WITH THE SUPERINTENDENT'S INVESTIGATION.

1. THE SUPERINTENDENT OF BUILDING INSPECTION MAY GRANT A HARDSHIP PHASE-IN OR HARDSHIP SMOKING EXCEPTION SUBJECT TO SUCH TERMS AND CONDITIONS AS THE SUPERINTENDENT DEEMS REASONABLY NECESSARY TO PROTECT THE HEALTH AND SAFETY OF EMPLOYEES AND THE NONSMOKING PUBLIC.
2. THE DECISION OF THE SUPERINTENDENT OF BUILDING INSPECTION 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.

(D) 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 THE EFFECTIVE DATE OF THIS ORDINANCE, 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.

Section 8: Title 6, chapter 11, Mesa City Code, is amended by adding section 6-11-11 to read:

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, OR ANY RULE OR REGULATION ADOPTED PURSUANT THERETO.

Section 9: Title 6, chapter 11, Mesa City Code, is amended by adding section 6-11-12, to read:

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, PUNISHABLE BY A FINE NOT TO EXCEED TWO HUNDRED DOLLARS (\$200).

(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 SEVERALLY LIABLE FOR COMPLIANCE WITH THIS CHAPTER.

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 AS REQUIRED BY THIS CHAPTER, THE SUPERINTENDENT OF BUILDING INSPECTION, OR DESIGNEE, MAY ISSUE AND SERVE UPON THE RESPONSIBLE PARTY A NOTICE OF CIVIL VIOLATION STATING WITH REASONABLE PARTICULARS THE NATURE OF THE VIOLATION. THE NOTICE SHALL BE IN THE FORM ESTABLISHED BY THE SUPERINTENDENT OF BUILDING INSPECTION. 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.

2. WITHIN TEN (10) DAYS OF SERVICE OF SAID NOTICE, THE RESPONSIBLE PARTY SHALL EITHER PAY THE FINE TO THE SUPERINTENDENT OF BUILDING INSPECTION OR REQUEST A HEARING ON THE VIOLATION BY FILING A WRITTEN REQUEST FOR HEARING WITH THE SUPERINTENDENT. IF A HEARING IS REQUESTED, THE CITY MANAGER SHALL APPOINT A HEARING OFFICER. 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.

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.

2 4. EACH INSTANCE OF NONCOMPLIANCE WITH THIS CHAPTER OR EACH
3 INSTANCE OF FAILURE TO MAINTAIN A SMOKEFREE ENVIRONMENT SHALL
4 CONSTITUTE A SEPARATE CIVIL OFFENSE FOR THE FIRST CIVIL OFFENSE, THE
5 FINE IS TWO HUNDRED DOLLARS (\$200). FOR THE SECOND CIVIL OFFENSE, THE
6 FINE IS THREE HUNDRED DOLLARS (\$300). FOR THE THIRD CIVIL OFFENSE, THE
7 FINE IS FOUR HUNDRED DOLLARS (\$400). FOR EACH OFFENSE THEREAFTER,
8 THE VIOLATOR SHALL BE SUBJECT TO CRIMINAL MISDEMEANOR
9 PROSECUTION IN THE MESA MUNICIPAL COURT AS AN HABITUAL OFFENDER.
10 FOR EACH VIOLATION AS AN HABITUAL OFFENDER, THE DEFENDANT IS
11 SUBJECT TO A MINIMUM FINE OF FIVE HUNDRED DOLLARS (\$500), A
12 MAXIMUM FINE OF TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), SIX (6)
13 MONTHS IN JAIL, OR BOTH SUCH FINE AND IMPRISONMENT.

14 5. IF THE HEARING OFFICER OR JUDGE DETERMINES THAT A VIOLATION OF THIS
15 CHAPTER HAS OCCURRED, THEY SHALL ISSUE AN ORDER IMPOSING A
16 SANCTION IN ACCORDANCE WITH THE SCHEDULE IN PARAGRAPH 4 ABOVE,
17 AND IN ADDITION ASSESS AGAINST THE RESPONSIBLE PARTY THE CITY'S
18 PERSONNEL, MAILING, AND OTHER COSTS INCURRED IN INVESTIGATING AND
19 HEARING THE CASE.

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21 (C) INSPECTION AND INVESTIGATION. THE SUPERINTENDENT OF BUILDING
22 INSPECTION, OR DESIGNEE, IS AUTHORIZED TO INSPECT FOR COMPLIANCE WITH
23 ALL REQUIREMENTS OF THIS CHAPTER, INCLUDING ALL TECHNICAL
24 REQUIREMENTS THE SUPERINTENDENT IS AUTHORIZED TO DEVELOP UNDER THIS
25 CHAPTER AND ANY HARDSHIP ORDER THE SUPERINTENDENT MAY ISSUE UNDER
26 THIS CHAPTER. THE SUPERINTENDENT'S AUTHORITY INCLUDES, BUT IS NOT
27 LIMITED TO, REQUIRING INFORMATION FROM PERSONS SUBJECT TO THIS
28 CHAPTER, AND INVESTIGATING THE TRUTH OF THAT INFORMATION, AS NECESSARY
29 TO DETERMINE COMPLIANCE WITH THIS CHAPTER.

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31 (D) SUSPENSION, REVOCATION OF HARDSHIP EXCEPTION OR PHASE-IN. FAILURE OF
32 ANY PERSON TO COMPLY AT ALL TIMES WITH ALL TERMS AND CONDITIONS OF
33 A HARDSHIP EXCEPTION OR PHASE-IN SHALL ALSO BE GROUNDS FOR
34 REVOCATION OR SUSPENSION OF THE HARDSHIP EXCEPTION OR PHASE-IN THAT
35 WAS GRANTED. THE SUPERINTENDENT OF BUILDING INSPECTIONS IS AUTHORIZED
36 TO INITIATE REVOCATION OR SUSPENSION PROCEEDINGS PURSUANT TO THE
37 CIVIL HEARING PROCEDURES IN THIS SECTION.

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39 Section 10: Title 6, chapter 11, Mesa City Code, is amended by adding section 6-
40 11-13, to read:

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42 6-11-13: NONRETALIATION

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44 NO PERSON OR EMPLOYER SHALL DISCHARGE, REFUSE TO HIRE, OR IN ANY MANNER
45 RETALIATE AGAINST ANY EMPLOYEE, APPLICANT FOR EMPLOYMENT, CUSTOMER, OR
46 OTHER PERSON BECAUSE SUCH PERSON EXERCISES ANY RIGHT TO A SMOKEFREE
47 ENVIRONMENT AFFORDED BY THIS CHAPTER.
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2 Section 11: Title 6, chapter 11, Mesa City Code, is amended by adding section 6-
3 11-14, to read:

4 6-11-14: CITY MANAGER IMPLEMENTATION DECISIONS

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6 ANY AFFECTED PERSON WITH QUESTIONS ABOUT THE IMPLEMENTATION OF THIS
7 CHAPTER AND DESIRING WRITTEN GUIDANCE INDICATING HOW THE CITY WILL APPLY
8 THIS CHAPTER MAY WRITE TO THE MESA CITY MANAGER, P.O. BOX 1466, MESA, AZ.
9 THE CITY MANAGER IS AUTHORIZED TO PROVIDE BINDING, WRITTEN DIRECTION IN
10 RESPONSE TO SUCH REQUESTS. SUCH DIRECTION SHALL BE CONSISTENT WITH THE
11 PURPOSES OF THIS ORDINANCE, AS REFLECTED IN THE PREAMBLE CIRCULATED
12 AMONG THE VOTERS AS PART OF PROPOSITION 200 (INITIATIVE 96-1). THE CITY
13 MANAGER'S DIRECTIONS SHALL ALSO BE CONSISTENT WITH THE CITY CHARTER'S
14 REQUIREMENT THAT THE CITY MANAGER FAITHFULLY EXECUTE ALL LAWS OF THE CITY,
15 THE CITY CHARTER, AND ALL ACTS OF THE CITY COUNCIL. THE CITY MANAGER'S
16 DIRECTIONS UNDER THIS SECTION ARE SUBJECT TO CHALLENGE IN THE MARICOPA
17 COUNTY SUPERIOR COURT UNDER THE SPECIAL ACTION PROVISIONS, VOLUME 17B,
18 A.R.S., TO THE EXTENT AND IN THE MANNER PROVIDED THEREIN.

19
20 Section 12: Severability.

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22 If a provision of this ordinance or its application to any person or circumstance is
23 held invalid, the invalidity does not affect other provisions or applications of the
24 ordinance that can be given effect without the invalid provision or application,
25 and to this end the provisions of this ordinance are severable.

26
27 Section 13: Emergency.

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29 This act is an emergency measure that is necessary to preserve the public peace,
30 health, and safety. An economic impact study, commissioned by the City, shows
31 that the current smoking ordinance is causing financial hardship. This has been
32 confirmed through public hearings and other public input. Public health data
33 collected at these same public hearings show that, while secondhand and
34 sidestream smoke pose a serious health risk, the public health can be protected
35 through less restrictive and financially burdensome means than the current
36 smoking ordinance. Therefore, this act is operative immediately as provided by
37 law.

Passed and Adopted by the City Council of the City of Mesa, Maricopa County,
Arizona, this Day of 199 .

ATTESTED:

APPROVED:

City Clerk

Mayor