

This document was retyped from the original it may contain typographical errors. However, the framework and contents of the ordinance is true and complete.

ORDINANCE NO. 2002- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GUADALUPE OF GUADALUPE, ARIZONA, AMENDING THE TOWN CODE TO REGULATE SMOKING AND PROVIDE FOR SMOKE-FREE PUBLIC PLACES AND SMOKE-FREE PUBLIC WORK PLACES. AMENDING CHAPTER 10, HEALTH AND SANITATION TO ADD NEW ARTICLE 10-5.

BE IT HEREBY ORDIAINDED:

Section One: The Town Code of Guadalupe, Chapter 10, entitled Health and Sanitation is hereby amended by adding Article 10-5.

Section Two: Article 10-5, entitled Health and Sanitation Pollution Control Ordinance, Smoke-Free Public Places and Smoke-Free Work Places and Regulation of Tobacco Products shall read as set forth hereafter.

10-5-1. Purpose.

Since the smoking of tobacco or any plant is a positive danger to the health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces, and in order to serve the public health, safety and welfare, the declared purpose of this article is to restrict the smoking of tobacco or any plant within enclosed places, in particular, public places and places of employment.

10-5-2. 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; or
- (2) 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.

(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.

10-5-3. Prohibition and regulation of smoking in Town-owned facilities.

(a) All enclosed public places, places of employment and employee work areas owned, leased or operated by the town 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 town.

10-5-4. Prohibition of smoking in enclosed public places.

No person shall smoke in any enclosed public place or place of employment except outdoors in designated smoking areas.

10-5-5. 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 town 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 town.

(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 town.

(c) The provisions of this section shall not apply to those areas listed in § 10-5-6.

(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.

10-5-6. 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:

(a) Private residences.

(b) Yaqui or other religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978 (42 USC 1996, PL 95-341) as amended.

(c) Hotel and motel rooms rented to guests which are on a separately partitioned ventilation system.

(d) 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.

(e) On-stage smoking as part of a stage production, ballet or similar exhibition.

(f) 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.

10-5-7. Posting requirements

"Smoking" or "No Smoking" 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 every place where smoking is controlled by this article.

10-5-8. Enforcement and penalties.

(a) Citations may be issued for violation of § 10-5-3, § 10-5-4, § 10-5-5 and § 10-5-7.

(b) Any person violating any of the provisions of § 10-5-3, § 10-5-4, § 10-5-5 and § 10-5-7 shall be liable for the imposition of a civil sanction not to exceed twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each successive offense. Each day a violation of § 10-5-3, § 10-5-4, § 10-5-5 and § 10-5-7 continues after a citation for the violation has been issued constitutes a separate violation.

(c) The town shall provide for payment by mail of civil fines under this article.

(d) Any owner, manager, operator or employer of any establishment controlled by this article shall, upon either observing or being advised of a violation of § 10-5-4, have the obligation to inform the violator of the appropriate requirements of this law and then request immediate compliance.

(e) Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to this article has the responsibility:

- (1) To properly set aside "no smoking" areas;
- (2) To properly post signs required hereunder; and
- (3) To take the action required by paragraph (e) of this section when observing or being advised of a violation.

(f) Any employer who knowingly and intentionally violates § 10-5-5 may be liable for a civil penalty not to exceed five hundred dollars (\$500). Each day such violation is committed or permitted to continue shall constitute and be punished as a separate offense.

(g) By enforcing this article, the town 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.

10-5-9. 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 any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion; and
- (7) *Vending machine* means any mechanical, electronic or other similar device which dispenses tobacco products.

10-5-10. Regulation of tobacco products through vending machines.

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

10-5-11. Storage and display of tobacco products.

(a) Access. 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.

(b) Penalty. Each instance of violation of this section shall constitute a separate civil offense. For the first civil offense at a retail site, the fine is one hundred dollars (\$100). For the second and third civil offense at a retail site, the fine is five hundred dollars (\$500). However, if more than three (3) violations occur at a retail site in any consecutive twelve (12) month period, the person or entity operating such retail site shall be subject to a minimum fine of five hundred dollars (\$500) or a maximum fine of two thousand five hundred dollars (\$2,500).

10-5-12. 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 be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section Three: Any portion of this Town Code, other town ordinance or rule in conflict herewith shall be repealed.

PASSED AND ADOPTED this _____ day of _____, 2002, by the Mayor and Town Council of the Town of Guadalupe.

MAYOR MAGARITA COTA

ROSEMARY ARELLANO, Town Clerk

DAVID E. LEDYARD, Town Attorney