

ORDINANCE P-3
ADOPTED May 10, 1988

MARICOPA COUNTY
SMOKING POLLUTION CONTROL
ORDINANCE NO. 3

Section 1. Purpose of Article.

Because smoking is a health danger, annoyance and discomfort to those who are present in smoky confined spaces, the purpose of this Article is to regulate smoking in enclosed public places and in places of employment in unincorporated areas of Maricopa County.

Section 2. Definitions.

- a. "Smoke" or "smoking" means burning any cigar, cigarette, tobacco or other combustible substance in any manner or any form.
- 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 retail stores, retail service establishments, grocery stores, shopping malls, theater lobbies, waiting rooms, reception areas, public and private schools, doctor's office buildings, pharmacies, indoor sports facilities and their lobbies, public transportation facilities, taxi cabs or other means of public transit, recreation centers, community centers, child care centers, hotel and motel public areas, banks, public rest rooms, indoor service lines, airport service lines and airport waiting lounges, all indoor facilities and any public places already regulated by A.R.S. { 36-601-01, restaurants, cafeterias, lunchrooms and eating establishments. A private residence is not a "public place".
- c. "Designated smoking area" means any area within an enclosed public place where smoking is specifically permitted. Except as provided in Section 6, no designated smoking area shall exceed in area and size any nonsmoking area within the enclosed public place, and any designated smoking area must be so situated as to allow nonsmoking individuals to conduct normal activity in a reasonably smoke-free environment
- d. "Bar" shall mean an area devoted primarily to alcoholic beverage service to which food service is only incidental.
- e. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit.

- f. "Employer" means any person or entity employing the services of an employee.
- g. "Place of employment" means any enclosed area under the control of a private or public employer which employees normally frequent during the course of employment, including, but not limited to, work areas, offices, employee lounges, conference and meeting rooms, employee cafeterias and lunchrooms, classrooms, auditoriums, hallways, stairways, waiting areas and restrooms. A private residence is not a "place of employment".

Section 3. Area of Regulation

This ordinance shall apply exclusively to unincorporated areas within Maricopa County.

Section 4. Regulation of Smoking in County-Owned Facilities

All enclosed facilities owned by Maricopa County shall be subject to this Article.

Section 5. Regulation of Smoking in Enclosed Public Places

Smoking is prohibited in restrooms, public buses, taxi cabs, the public areas of grocery stores, convenience markets, drug stores, pharmacies, office reception areas, lobbies of financial institutions, theaters, classrooms, auditoriums, exhibition halls, and in waiting or check out line areas within other enclosed public places.

Smoking is prohibited in all other enclosed public places, except in designated smoking areas.

The provisions of this Article shall not be construed to limit the ability of the owner, operator or manager of an enclosed public place to declare the whole or any portion of that enclosed public place to be smoke free.

Section 6. Regulation of Smoking in Restaurants.

- a. The operator of any eating establishment, restaurant, cafeteria or lunchroom must provide for and maintain a separate nonsmoking area of not less than 40% of the total indoor seating capacity and not less than 40% of the total outdoor seating capacity.
- b. The operator of each eating establishment shall expand the nonsmoking section to meet the needs of the nonsmoking public if requested.
- c. Hosts, hostesses, maitre d's, waiters, waitresses, owners or designated employees, if one is on duty, must ask guests upon making reservations or upon their arrival whether or not the guests prefer nonsmoking areas.

- d. The owner or operator of any restaurant, cafeteria, lunchroom or other eating establishment who believes that reservations of 40% of its seating capacity and floor space represents a nonsmoking proportion so large that it creates an economic hardship may appeal to the County Board of Supervisors. The Board of Supervisors shall have discretion to reduce the 40% requirement, but not to a level below 25%.

Section 7. Regulation of Smoking in Places of Employment

- a. Within three (3) months of the adoption of this Article, each employer in each place of employment within unincorporated parts of the County shall adopt, implement, and maintain a written smoking policy containing at a minimum the following requirements:
 - 1. Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, restrooms, waiting areas, medical facilities, hallways, stairways and elevators.
 - 2. Provision and maintenance of a separate and contiguous nonsmoking area of not less than one-half of the seating capacity and floor space in cafeterias, lunchrooms, and employee lounges.
 - 3. Any nonsmoking employee may object to his or her employer about smoke in his or her immediate work area. The policy adopted by the employer shall include a reasonable definition of the term "immediate work area". Using already available means of ventilation or partition of office space, the employer must use its best efforts to reasonably accommodate the preferences of nonsmoking and smoking employees.
 - 4. However, in doing so, no employer is required to make any expenditures or structural changes to the place of employment.
 - 5. If no accommodation satisfactory to all affected nonsmoking employees can be reached in any given work area, the preferences of nonsmoking employees shall prevail and the employer shall prohibit smoking in that work area. Where the employer prohibits smoking in a work area, it shall clearly mark that area with appropriate no smoking signs and upon request, provide signs to employee(s) for use in designating their areas.
- b. The employer shall announce its smoking policy within three (3) months of adoption of this Article to all its employees working in work places in the County and shall post its written policy conspicuously in all work places under the employer's jurisdiction.
- c. Notwithstanding the provisions of subsection (a) of this section, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

- d. No employee shall be terminate or subject to disciplinary action a s a result of his or her complaint about smoking in the work place.

Section 8. Smoking - Optional Areas.

Notwithstanding any other provision of this Article to the contrary, the following areas shall no be subject to the smoking restrictions of this Article:

- a. Private residences
- b. Bars, pool halls, and bowling alleys
- c. Hotel and motel rooms rented to guests
- d. Retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia
- e. On-stage smoking as part of a stage production, ballet or similar exhibition
- f. Restaurants, hotel and motel conference/meeting rooms, and public and private meeting rooms while these places are being used exclusively for private functions
- g. A private residence serving as a place of employment

Section 9. Posting Requirements

“Smoking” or “No Smoking” signs, whichever are appropriate, with letters of not less than one inch (1”) in height or the international “No Smoking: symbol (consisting of a picture of a burning cigarette inside a red circle with a read bar across it) 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.

Section 10. Enforcement and Penalties

- a. Any person who fails to comply with the requirements of this Ordinance is guilty of a violation and may be subject to a fine of a maximum of \$500.00
- b. Any county peace officer may issue a citation for violation of Sections 5, 6, and 7.
- c. Any owner, manager, operator, employer or employee of any establishment controlled by this Article shall, upon either observing or being advised of a violation of Section 5, have the obligation to inform the

violator of the appropriate requirements of this law and then request immediate compliance.

- d. 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 required “no smoking” areas;
 - 2. to properly post signs required hereunder; and
 - 3. to take the action required by { 10(c) when observing or being advised of a violation.

- e. By enforcing this Article, the department undertakes only to promote the general welfare. 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.

Section 11. Effective Date

This Article shall be effective on date of formal adoption in open public meeting by the Board of Supervisors.

Section 12. Severability

If any part of this Article is for any reason held to be unconstitutional, this will not affect the validity of the remaining parts of this Article.

Passed and adopted by the Board of Supervisors of Maricopa County, Phoenix, Arizona, this 10th day of May 1988.