

ORDINANCE NO. 1003

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, ARIZONA AMENDING THE TOWN OF WICKENBURG CODE BY AMENDING CHAPTER 10 OFFENSES, ARTICLE 1 UNLAWFUL ACTS, BY AMENDING SECTION 21 PROHIBITION OF SMOKING IN CERTAIN PLACES, RELATED TO SMOKING IN THE TOWN, PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT AND SETTING FORTH EXCEPTIONS, ALL TO CONFORM TO PROPOSITION 210 ADOPTED BY THE ELECTORATE OF THE STATE OF ARIZONA; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY

WHEREAS, Arizona voters passed Proposition 201 in 2006, codified into Arizona law as A.R.S. §36-601.01; and

WHEREAS, The Town desires to amend its Town Code to conform to the requirements of the Smoke-Free Arizona Act

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

Section 1. In General.

The Code of Wickenburg, Chapter 10 Offenses, Article 1 Unlawful Acts, is amended by amending Section 10-1-23 Prohibition of Smoking in Certain Places, to read as follows (deleted text appears in ~~strikeout~~; new text in ALL CAPS):

Section 10-1-23 ~~Prohibition of Smoking in Certain Places~~ PROHIBITION OF SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

A. Definitions: In this section unless the context otherwise requires:

1. “EMPLOYEE” MEANS ANY PERSON WHO IS EMPLOYED BY AN EMPLOYER FOR DIRECT OR INDIRECT MONETARY WAGES OR PROFIT, AND ANY PERSON WHO VOLUNTEERS HIS OR HER SERVICES FOR A NON-PROFIT ENTITY.
2. “EMPLOYER” MEANS A PERSON, BUSINESS, PARTNERSHIP, ASSOCIATION, THE STATE OF ARIZONA AND ITS POLITICAL SUBDIVISIONS, CORPORATIONS, INCLUDING A MUNICIPAL CORPORATION, TRUST, OR NON-PROFIT ENTITY THAT EMPLOYS THE SERVICE OF ONE OR MORE INDIVIDUAL PERSONS.
3. “ENCLOSED AREA” MEANS ALL SPACE BETWEEN A FLOOR AND CEILING THAT IS ENCLOSED ON ALL SIDES BY PERMANENT OR TEMPORARY WALLS OR WINDOWS (EXCLUSIVE OF DOORWAYS), WHICH EXTEND FROM THE FLOOR TO THE CEILING. ENCLOSED

AREA INCLUDES A REASONABLE DISTANCE FROM ANY ENTRANCES, WINDOWS AND VENTILATION SYSTEMS SO THAT PERSONS ENTERING OR LEAVING THE BUILDING OR FACILITY SHALL NOT BE SUBJECTED TO BREATHING TOBACCO SMOKE AND SO THAT TOBACCO SMOKE DOES NOT ENTER THE BUILDING OR FACILITY THROUGH ENTRANCES, WINDOWS, VENTILATION SYSTEMS OR ANY OTHER MEANS.

4. ~~"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.~~
4. "Owner" means the legal owner of the building, the director of the organization owning the building, the given time of the operation of the building or any business conducted therein.
5. "PHYSICALLY SEPARATED" MEANS ALL SPACE BETWEEN A FLOOR AND CEILING WHICH IS ENCLOSED ON ALL SIDES BY SOLID WALLS OR WINDOWS (EXCLUSIVE OF DOOR OR PASSAGEWAY) AND INDEPENDENTLY VENTILATED FROM SMOKE-FREE AREAS, SO THAT AIR WITHIN PERMITTED SMOKING AREAS DOES NOT DRIFT OR GET VENTED INTO SMOKE-FREE AREAS.
6. "PLACE OF EMPLOYMENT" MEANS AN ENCLOSED AREA UNDER THE CONTROL OF A PUBLIC OR PRIVATE EMPLOYER THAT EMPLOYEES NORMALLY FREQUENT DURING THE COURSE OF EMPLOYMENT, INCLUDING OFFICE BUILDINGS, WORK AREAS, AUDITORIUMS, EMPLOYEE LOUNGES, RESTROOMS, CONFERENCE ROOMS, MEETING ROOMS, CLASSROOMS, CAFETERIAS, HALLWAYS, STAIRS, ELEVATORS, HEALTH CARE FACILITIES, PRIVATE OFFICES AND VEHICLES OWNED AND OPERATED BY THE EMPLOYER DURING WORKING HOURS WHEN THE VEHICLE IS OCCUPIED BY MORE THAN ONE PERSON. A PRIVATE RESIDENCE IS NOT A "PLACE OF EMPLOYMENT" UNLESS IT IS USED AS A CHILD CARE, ADULT DAY CARE, OR HEALTH CARE FACILITY.
7. "PUBLIC PLACE" MEANS ANY ENCLOSED AREA TO WHICH THE PUBLIC IS INVITED OR IN WHICH THE PUBLIC IS PERMITTED, INCLUDING AIRPORTS, BANKS, BARS, COMMON AREAS OR APARTMENT BUILDINGS, CONDOMINIUMS OR OTHER MULTI-FAMILY HOUSING FACILITIES, EDUCATIONAL FACILITIES, ENTERTAINMENT FACILITIES OR VENUES, HEALTH CARE FACILITIES, HOTEL AND MOTEL COMMON AREAS, LAUNDROMATS, PUBLIC TRANSPORTATION FACILITIES, RECEPTION AREAS, RESTAURANTS, RETAIL FOOD PRODUCTION AND MARKETING ESTABLISHMENTS, RETAIL SERVICE ESTABLISHMENTS, RETAIL STORES, SHOPPING MALLS, SPORTS FACILITIES, THEATRES, AND WAITING ROOMS. A PRIVATE

RESIDENCE IS NOT A "PUBLIC PLACE" UNLESS IT IS USED AS A CHILD CARE, ADULT CARE, OR HEALTH CARE FACILITY.

8. "RETAIL TOBACCO STORE" MEANS A RETAIL STORE THAT DERIVES THE MAJORITY OF ITS SALES FROM TOBACCO PRODUCTS AND ACCESSORIES.
9. ~~"Smoke" or "Smoking" means inhaling, exhaling and burning tobacco or carrying any lighted smoking equipment for tobacco or any other weed plant.~~ "SMOKING" MEANS INHALING, EXHALING, BURNING, OR CARRYING OR POSSESSING ANY LIGHTED TOBACCO PRODUCT, INCLUDING CIGARS, CIGARETTES, PIPE TOBACCO AND ANY OTHER LIGHTED TOBACCO PRODUCT.
10. "SPORTS FACILITIES" MEANS ENCLOSED AREAS OF SPORTS PAVILIONS, STADIUMS, GYMNASIUMS, HEALTH SPAS, BOXING ARENAS, SWIMMING POOLS, ROLLER AND ICE RINKS, BILLIARD HALLS, BOWLING ALLEYS, AND OTHER SIMILAR PLACES WHERE MEMBERS OF THE GENERAL PUBLIC ASSEMBLE TO ENGAGE IN PHYSICAL EXERCISE, PARTICIPATE IN ATHLETIC COMPETITION, OR WITNESS SPORTING EVENTS.
11. "VETERAN AND FRANTERNAL CLUBS" MEANS A CLUB AS DEFINED IN A.R.S. §4-101(7)(a)(b) or (c).

B. ~~Smoking is prohibited in any designated no smoking area in an enclosed public place. An owner or the designated representative of any enclosed public place may prohibit smoking in the whole or any part of the enclosed public place by posting one (1) or more conspicuously placed no smoking signs or the international no smoking symbol. Said signs or symbols shall be posted in such a manner as to make it apparent to any reasonable person, the designated smoking area.~~ IN ALL PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE TOWN, EXCEPT:

1. PRIVATE RESIDENCES, EXCEPT WHEN USED AS A LICENSED CHILD CARE, ADULT DAY CARE, OR HEALTH CARE FACILITY.
2. HOTEL AND MOTEL ROOMS THAT ARE RENTED TO GUESTS AND ARE DESIGNATED AS SMOKING ROOMS; PROVIDED, HOWEVER, THAT NOT MORE THAN FIFTY PERCENT (50%) OF ROOMS RENTED TO GUESTS IN A HOTEL OR MOTEL ARE SO DESIGNATED.
3. RETAIL TOBACCO STORES THAT ARE PHYSICALLY SEPARATED SO THAT SMOKE FROM RETAIL TOBACCO STORES DOES NOT INFILTRATE INTO AREAS WHERE SMOKING IS PROHIBITED UNDER THE PROVISIONS OF THIS SECTION.
4. VETERANS AND FRATERNAL CLUBS WHEN THEY ARE NOT OPEN TO THE GENERAL PUBLIC.

5. SMOKING WHEN ASSOCIATED WITH A RELIGIOUS CEREMONY PRACTICED PURSUANT TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978.
6. OUTDOOR PATIOS SO LONG AS TOBACCO SMOKE DOES NOT ENTER AREAS WHERE SMOKING IS PROHIBITED THROUGH ENTRANCES, WINDOWS, VENTILATION SYSTEMS, OR OTHER MEANS.
7. A THEATRICAL PERFORMANCE UPON A STAGE OR IN THE COURSE OF A FILM OR TELEVISION PRODUCTION IF THE SMOKING IS PART OF THE PERFORMANCE OR PRODUCTION.

C. REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

1. THE PROHIBITION ON SMOKING IN PLACES OF EMPLOYMENT SHALL BE COMMUNICATED TO ALL EXISTING EMPLOYEES BY THE EFFECTIVE DATE OF THIS SECTION AND TO ALL PROSPECTIVE EMPLOYEES UPON THEIR APPLICATION FOR EMPLOYMENT.
2. NO EMPLOYER MAY DISCHARGE OR RETALIATE AGAINST AN EMPLOYEE BECAUSE THAT EMPLOYEE EXERCISES ANY RIGHTS AFFORDED BY THIS SECTION OR REPORTS OR ATTEMPTS TO PROSECUTE A VIOLATION OF THIS SECTION.

~~C. The owner or the designated representative of the following types of businesses may comply with Subsection B of this Section by methods of designating smoking and no-smoking areas other than by signs if said methods are reasonably calculated to apprise a potential or actual patron of any no-smoking areas.~~

- ~~1. Businesses primarily operated as a recreational facility.~~
- ~~2. Businesses primarily operated for the sale of food prepared for consumption on the premises.~~
- ~~3. Businesses engaged in retail of merchandise of any kind.~~
- ~~4. Suppliers of services to the general public.~~

~~D. Nothing in this Section shall require any business or supplier of services, where same is conducted or offered in an enclosed public place, to either allow or prohibit smoking within the enclosed public place.~~

G. D. POSTING OF SIGNS AND ASHTRAY REMOVAL.

~~Smoking in an enclosed AREA in a public place where clearly prohibited by sign or other methods as discussed in Subsection C of this section is a public nuisance. Said nuisance may be abated through any of the following conduct:~~ 1. "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING" SYMBOL (CONSISTING OF A PICTORIAL REPRESENTATION OF A BURNING CIGARETTE ENCLOSED IN A RED CIRCLE WITH A RED BAR ACROSS IT) SHALL BE CLEARLY AND CONSPICUOUSLY POSTED BY THE OWNER, OPERATOR, MANAGER, OR OTHER PERSON IN CONTROL OF THAT PLACE

IDENTIFYING WHERE SMOKING IS PROHIBITED BY THIS SECTION AND WHERE COMPLAINTS REGARDING VIOLATIONS MAY BE REGISTERED.

~~1. The offending smoker extinguishes his smoking material immediately upon request of another actual or potential patron of the establishment or by its owner's designated representative.~~

~~2. The offending smoker immediately leaves the no smoking area of the establishment.~~

2. EVERY PUBLIC PLACE AND PLACE OF EMPLOYMENT WHERE SMOKING IS PROHIBITED BY THIS SECTION SHALL HAVE POSTED AT EVERY ENTRANCE A CONSPICUOUS SIGN CLEARLY STATING THAT SMOKING IS PROHIBITED.

3. ALL ASHTRAYS SHALL BE REMOVED FROM ANY AREA WHERE SMOKING IS PROHIBITED BY THIS SECTION BY THE OWNER, MANAGER OR OTHER PERSON HAVING CONTROL OF THE AREA.

~~E. Failure of the offending smoker to abate the nuisance as hereinabove provided may result in prosecution of said person for commission of a petty offense. No person, however, will be formally charged or cited for violation of this Section unless and until a written complaint is made and signed by another person offended by the smoking. Complaints made pursuant to this section shall be submitted to the Wickenburg Police Department or to the Town Attorney on forms prepared and furnished by the Town do the following to be in compliance with this chapter~~

~~1. Post signs required by this chapter in conspicuous place, pursuant to Section 9.06.070 and;~~

~~2. Adopt a written smoking policy pursuant to Section 9.060.030; and~~

E.. IN ADDITION TO ANY OTHER DUTY CONTAINED HEREIN, ANY OWNER, MANAGER, EMPLOYER OR EMPLOYEE UPON EITHER OBSERVING OR BEING ADVISED OF A VIOLATION OF THIS CHAPTER, SHALL ADVISE THE VIOLATOR THAT SMOKING IS PROHIBITED UNDER TOWN ORDINANCE AND ADVISE THE SMOKER TO EXTINGUISH THE SMOKING MATERIAL AND SHALL CALL THE POLICE IF THE SMOKER REFUSE TO COMPLY.

F. Any person found guilty of violating any of the provisions of this chapter shall be found guilty of a petty offense and upon conviction thereof shall be fined not less than ~~twenty-five~~ ONE HUNDRED dollars (\$100.00), ~~nor~~ OR more than ~~three~~ FIVE hundred dollars (\$300.00/500.00). Each occurrence or day that a violation continues shall be a separate offense, punishable as described above. In no case shall a person convicted of a violation of this section be eligible for suspension of their fine.

~~I. A person found guilty of a violation of this Section, after having been complained against as set forth in Subsection F of this Section, shall be guilty of a petty offense and punished in accordance with the scheduled punishment for petty offenses as set forth in Title 13, Arizona Revised Statutes, as of the time of the offense was committed.~~

Section II. Repeal of Conflicting Ordinance.

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

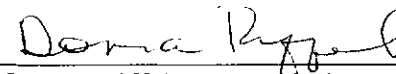
Section III. Providing for Severability.

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

PASSED AND ADOPTED by the Town Council of the Town of Wickenburg, Arizona, this 19 day of May, 2008.

By: 
R. R. BADOWSKI, MAYOR

ATTEST:

By: 
Donna Riffel, Town Clerk

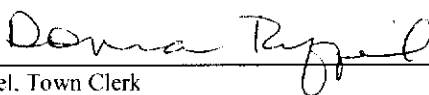
APPROVED AS TO FORM:

By: 
Susan D. Goodwin, Town Attorney
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.

Number of Councilmembers Present: 5
Number of Votes For: 6
Number of Votes Against: 0
Number of Abstentions: 0

CERTIFICATION

I, Donna Riffel, Town Clerk, HEREBY CERTIFY that the foregoing Ordinance Number 1003 was duly passed and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 19th day of May, 2008, and that a quorum was present at the meeting.


Donna Riffel, Town Clerk