

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date Prepared: January 24, 2011

Council Meeting Date: February 15, 2011

TO: Honorable Mayor and Council

FROM: Steve Kemp, City Attorney

SUBJECT: Amendments to Chapter 17 of the Peoria City Code (1992) pertaining to the definitions of smoking and public places to address the smoking of medical marijuana.

RECOMMENDATION: That the Mayor and Council adopt the proposed ordinance amending Chapter 17 of the Peoria City Code (1992) pertaining to definitions for smoking and public places.

SUMMARY: In November 2010, the voters of the State of Arizona enacted Proposition 203 providing for the use of medical marijuana. The proposition prohibits the use of medical marijuana in public places, however it does not define a public place. The proposed ordinance establishes definitions for public places consistent with state law and city code for the smoking of tobacco, with one additional exception.

While the smoking of tobacco is permitted in public parks and swimming pools, the proposed ordinance would prohibit smoking in those areas of public parks used by children, such as playground equipment, water features and padded areas and at City pools and aquatic centers, except in designated areas. This recognizes that the primary use of these facilities is by children whose parents and legal guardians may not wish to have exposed to smoke, while recognizing the privacy rights of qualified patients and individuals to smoke in other non-enclosed areas.

Should council adopt this ordinance, we will work with City staff to inform owners and operators of enclosed public places regarding these requirements. Nothing in this ordinance would prohibit a private party from imposing stricter standards than contained in this ordinance.

Therefore it is my recommendation that the Mayor and Council adopt the proposed ordinance amending Chapter 17 of the Peoria City Code (1992) pertaining to the adoption of definitions for smoking and public places.

FISCAL NOTE: None

ATTACHMENT:

- 1. Proposed Ordinance**

ORDINANCE NO. 2011-07

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 17 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 17-72 PERTAINING TO SMOKING IN ENCLOSED PUBLIC PLACES; DEFINITIONS AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-72 pertaining to Smoking in enclosed public places and which shall read as follows:

Sec. 17-72. Smoking in enclosed public places; definitions.

(a) "Smoking" means inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product or the inhaling, exhaling, burning, carrying or possessing Marijuana pursuant to a Medical Marijuana Card issued pursuant to A.R.S.36-2801, et seq..

(b) Prohibitions.

(1) Smoking is prohibited in rest rooms, public buses, the public areas of grocery stores, convenience markets, drugstores, pharmacies, and in waiting or checkout line areas within other enclosed public places. For purposes of this ordinance, all rest rooms within an enclosed public place shall be deemed non-smoking.

(2) Smoking is prohibited in all other enclosed public places, except in a designated smoking area or as otherwise expressly provided in this ordinance or state law.

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

(4) Smoking in city-owned public places. All enclosed public places owned, controlled, occupied or managed by the city shall be subject to this ordinance. Nothing in this Chapter shall restrict the City Manager from adopting more stringent standards governing smoking in city-owned public places pursuant to the City Charter.

(5) Private Residences that are used as a licensed child care, adult day care, or health care facility.

(6) Smoking of Medical Marijuana is prohibited in those areas of public and private parks containing playground equipment for use by children. Playground equipment includes swing sets; pull up and climbing bars; water features; cushioned play areas and any other area designed for play by children. The play area shall include a buffer of twenty-five feet from the actual play facilities.

(7) Smoking is prohibited in all public places as defined in Arizona Revised Statutes §36-601.01.A.9.

(c) Optional areas. Other provisions of this ordinance to the contrary notwithstanding, the following areas shall not be subject to the smoking restrictions of this ordinance:

(1) Private residences, except as provided in subsection (b) (5).

(2) Hotel and motel rooms rented to guests and designated as smoking rooms.

(3) Retail stores dealing exclusively in the sale of tobacco products and smoking paraphernalia, however, Medical Marijuana provided to a patient pursuant to a medical marijuana card may not be smoked in such retail stores.

(4) On stage smoking as a part of a stage production, ballet or similar exhibition, however, Medical Marijuana provided to a patient pursuant to a medical marijuana card may not be smoked as part of a stage production, ballet or similar exhibition.

(5) Outdoor patios so long as tobacco or marijuana smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.

(6) A private residence which serves as a work place or place of employment.

(7) Private clubs and private recreation facilities, however, Medical Marijuana provided to a patient pursuant to a medical marijuana card may not be smoked in such Private clubs and private recreation facilities.

~~_____ (7) Bars, which is defined as the holder of a license issued under A.R.S. § 4.206.01 by the Arizona Department of Liquor Control and which had a temporary or permanent certificate of occupancy issued by the City prior to March 1, 2004.~~

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance 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 of this Ordinance.

SECTION 3. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 15th day of February, 2011.

Dated: _____

Bob Barrett, Mayor

ATTEST:

Wanda Nelson, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

Published in Peoria Times

Publication Dates: February 18, 2011 and February 25, 2011

Effective Date: _____