

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE TITLE 6 (POLICE REGULATIONS) CHAPTER 11, SECTIONS 1 THROUGH 8, 10 THROUGH 14 AND 21 THROUGH 23 FOR VAPING.

WHEREAS, the nation has seen a significant increase in the use of vaping devices that emit vapors from nicotine, non-nicotine and other plant-based aerosols; and

WHEREAS, the City believes it is in the best interest of the public to regulate the use of vaping and vaping devices.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Text written in **BOLD ALL CAPS** indicates new language.
~~Strikethrough~~ fonts indicates deletions

SECTION 1: Title 6, Chapter 11 of the Mesa City Code Table of Contents is hereby amended as follows:

CHAPTER 11

SMOKING AND VAPING REGULATIONS AND HEALTHIER SMOKEFREE AND VAPORFREE ENVIRONMENTS

SECTION:

- 6-11-1: Purpose
- 6-11-2: Definitions
- 6-11-3: Regulation of Smoking **AND VAPING ON**, City Property
- 6-11-4: Regulation of Smoking **AND VAPING** in Public Places
- 6-11-5: Regulation of Smoking **AND VAPING** in Places of Employment
- 6-11-6: Where Smoking **AND VAPING** is Allowed
- 6-11-7: Sign Posting
- 6-11-8: Bars and Restaurants
- 6-11-9: (Reserved)
- 6-11-10: ~~Hardship Situations~~ **CHAPTER NOT TO EXCUSE NONCOMPLIANCE WITH OTHER MEASURES**
- 6-11-11: ~~Chapter not to Excuse Noncompliance with Other Measures~~ **ENFORCEMENT**
- 6-11-12: ~~Enforcement~~ **NONRETALIATION**
- 6-11-13: ~~Nonretaliation~~ **CITY MANAGER IMPLEMENTATION DECISIONS**
- 6-11-14: ~~City Manager Implementation Decisions~~ **RESERVED**

- 6-11-15: (Reserved)
6-11-17: (Reserved)
6-11-18: (Reserved)
6-11-19: (Reserved)
6-11-20: (Reserved)

SECTION 2: Title 6, Chapter 11, Section 1 of the Mesa City Code is hereby amended as follows:

6-11-1: PURPOSE:

Since the active smoking of tobacco, **VAPING OF A VAPING SUBSTANCE** and the inhalation of environmental tobacco smoke (~~ETS~~) are dangers to human health and the most prevalent cause of preventable death, disease, and disability, as well as are annoyances, inconveniences, discomforts, and general health hazards to those who are involuntarily exposed to such, and in order to serve the public health, safety, and welfare, the declared purpose of this Chapter is to protect people from dangerous, unnecessary, and/or involuntary health risks by prohibiting the smoking of tobacco, **VAPING OF VAPING SUBSTANCES OR any other plant BASED MATERIALS** in **THE** City or public places and places of employment, as defined in this Chapter

SECTION 3: Title 6, Chapter 11, Section 2 through 20 of the Mesa City Code is hereby amended by adding new definitions and modifying existing definitions related to Vaping as follows:

6-11-2: DEFINITIONS

ELECTRONIC OR E-CIGARETTE: A BATTERY-OPERATED OR ELECTRONIC DEVICE THAT EMITS DOSES OF VAPORIZED NICOTINE, OR NON-NICOTINE AEROSOLS, FOR THE USER TO INHALE. IT AIMS TO PROVIDE A SIMILAR SENSATION TO INHALING TOBACCO, NICOTINE CONTAINING PRODUCTS OR NON-NICOTINE VAPORS, WITHOUT THE SMOKE.

SMOKEFREE : No tobacco or other plant smoke and freedom from inhaling environmental tobacco smoke (~~ETS~~) or passive smoke, including secondhand smoke generated by an active smoker or sidestream smoke or fumes from any such burning material, device, or ashtray that continues to emit such tobacco smoke or fumes from lighted or extinguished smoking materials.

TOBACCO AND/OR VAPING SHOP: Means:

- (A) An exclusively retail business,
- (B) That is not part of a larger store,
- (C) That derives at least ninety percent (90%) of its gross annual revenue, for every consecutive twelve-month period, from the retail sale of **VAPING AND OR** tobacco products and smoking equipment.

VAPE OR VAPING: THE ACT OF INHALING AND EXHALING THE AEROSOL, OFTEN REFERRED TO AS VAPOR, WHICH IS PRODUCED BY AN E-CIGARETTE OR SIMILAR DEVICE, THROUGH ONE'S MOUTH FOR THE PURPOSE OF INHALING AND EXHALING VAPORS OR BLOWING VAPOR RINGS.

VAPING DEVICE: ANY DEVICE, INCLUDING COMPONENT PARTS OR ACCESSORIES TO THAT DEVICE, THAT DELIVERS OR IS CAPABLE OF DELIVERING NICOTINE TO THE PERSON INHALING FROM THE DEVICE, INCLUDING, BUT NOT LIMITED TO, AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC PIPE, ELECTRONIC HOOKAH, E-CIGARETTE, VAPE-PEN, OR ANY OTHER DEVICE THAT DELIVERS NICOTINE, NON-NICOTINE, OTHER TOBACCO PRODUCTS, E-JUICE, E-LIQUID, OILS OR WAXES TO A PERSON.

VAPING PRODUCTS: MEANS VAPING DEVICE AND INCLUDES ADVANCED PERSONAL VAPORIZERS (ALSO KNOWN AS 'MODS'). THE E-LIQUID IN VAPORIZER PRODUCTS USUALLY CONTAINS A PROPYLENE GLYCOL OR VEGETABLE GLYCERIN-BASED LIQUID WITH NICOTINE, FLAVORING AND OTHER CHEMICALS AND METALS, BUT NOT TOBACCO.

VAPING SUBSTANCE: MEANS ANY E-LIQUID USED IN ANY VAPING DEVICE CONTAINING PROPYLENE GLYCOL, OILS, NICOTINE, NON-NICOTINE, PLANT OR VEGETABLE GLYCERIN-BASED LIQUID WITH NICOTINE OR NON-NICOTINE, FLAVORING AND OTHER CHEMICALS AND METALS, BUT NOT TOBACCO.

VAPORFREE: FREEDOM FROM INHALING VAPORS GENERATED BY AN ACTIVE E-CIGARETTE OR ANY VAPING DEVICE.

SECTION 4: Title 6, Chapter 11, Sections 3 through 8 and 10 through 14 of the Mesa City Code is hereby amended to deal with Vaping as follows:

6-11-3: **REGULATION OF SMOKING AND VAPING ON; CITY PROPERTY:**

All buildings and vehicles owned, leased, or occupied by the City of Mesa shall be subject to the provisions of this Chapter, as well as outdoor areas or facilities, the primary intended use of which requires persons to assemble, such as group seating or standing or waiting in lines, thus exposing them to inhalation of **ENVIRONMENTAL TOBACCO SMOKE ~~ETS~~, OR VAPORS FROM A VAPING DEVICE OR AN E-CIGARETTE**, excepting designated smoking **AND/OR VAPING** areas as per Section 6-11-5(A)3.

6-11-4: REGULATION OF SMOKING **AND VAPING** IN PUBLIC PLACES:

No person shall smoke **OR VAPE** in any public place when the public gathers together for any purpose or event, except in a bar whose owner chooses to allow smoking **AND/OR VAPING**, in a designated smoking **AND/OR VAPING** area meeting all the requirements of this Chapter, ~~or pursuant to a hardship exception or phase-in as prescribed in this Chapter.~~

6-11-5: REGULATION OF SMOKING **AND VAPING** IN PLACES OF EMPLOYMENT:

(A) ~~On or before March 1, 1997, each~~ **EACH** employer in each place of employment within the city shall adopt, implement, maintain, and announce to its employees a smoking **AND VAPING** policy containing at a minimum the following requirements:

1. Except as set forth below, all workplace areas shall be **“VAPORFREE” AND** "smokefree" as previously defined in Section 6-11-2.
2. Smoking **AND VAPING** is prohibited in conference rooms, meeting rooms, classrooms, auditoriums, cafeterias, kitchens, lunchrooms, employees' lounges, rest rooms provided by employers for employee use, and in waiting areas, including outdoor waiting lines, hallways, stairways, elevators, and areas common to all employees.
3. A separate smoking **AND VAPING** area outdoors which does not require others to walk through it upon entering or a smoking **AND VAPING** area indoors which is separately constructed and negatively pressure ventilated using a separate cooling and/or heating ventilation system may be provided at the option of the employer. However, if an employee complains to the employer or the City that smoke **OR AEROSOLE FROM A VAPING DEVICE** is drifting or being vented 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 **AND VAPING** area.
4. Nothing in Chapter 11 shall require an employer to construct, purchase, or otherwise provide or facilitate any smoking **OR VAPING** area, and nothing in Chapter 11 shall preclude the designation of the total premises as smokefree **AND VAPORFREE** 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 **OR VAPING** violations in the workplace.

6-11-6: WHERE SMOKING **AND VAPING** IS ALLOWED:

- (A) A private residence or public housing dwelling unit, but the common areas and common open space, as defined in Title 11, Mesa City Code, of public housing projects and private multiple- and single-residence developments that are accessible to the public or the residents of the project or development (such as lobbies, playgrounds or "tot lots," elevators, and recreation areas, whether located indoors or outdoors) are required to be smokefree **AND VAPORFREE** when the public or residents gather in those areas, as are private residences required to be smokefree **AND VAPORFREE** 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 **AND/OR VAPING** 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, conducting private functions where the public is not invited, welcomed, or served, hence not charged for services, will be expected to set their own policies relative to smoking **AND VAPING** control within their private facilities. Private clubs do not include establishments holding public liquor licenses from the Arizona Department of Liquor Licenses and Control, or clubs formed to circumvent this Chapter where persons pay nominal dues or the "members" do not control the operation of the "club."
- (D) Where smoking, ~~or~~ smoking materials, **VAPING, VAPING DEVICES AND VAPING PRODUCTS** are being used to exercise protected First Amendment activity, such as ~~smoking materials used for~~ bona fide religious purposes.
- (E) Tobacco **AND/OR VAPING** shops. However, if a tobacco **AND/OR VAPING** shop shares a common ventilation system with an area required to be smokefree **AND VAPORFREE** under this Chapter, the tobacco **AND/OR VAPING** shop must meet the requirements of a designated smoking area before smoking **AND/OR VAPING** can occur there.
- (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 shares a common ventilation system with an area required to be smokefree **AND VAPORFREE** under this Chapter, the conference or meeting room where smoking **AND/OR VAPING** is allowed must meet the requirements of a designated smoking **AND/OR VAPING** area before smoking **AND/OR VAPING** can occur there.
- (G) In a designated smoking **AND/OR VAPING** area meeting the requirements of this Chapter.
- ~~(H) In a building or facility operating under a hardship exception or phase-in, as allowed pursuant to an order of the Building Safety Director under this Chapter.~~
- (H) In any building, facility, or area not required to be smokefree **AND VAPORFREE** under

this Chapter.

6-11-7: SIGN POSTING:

- (A) "No Smoking" signs, "Smokefree" signs, **"VAPORFREE" SIGNS, "NO VAPING" SIGNS**, "This is a Nonsmoking Establishment" sign, 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 **AND VAPING** is prohibited by this Chapter, including each entry point. The owner, manager, operator, or other person having control of a business or facility shall remove all ashtrays and other smoking paraphernalia from all areas required to be smokefree under this Chapter.
- (B) Where smoking **AND VAPING** is permitted indoors under this Chapter, the owner shall conspicuously post a sign stating "Designated Smoking **AND VAPING** Area" at all entrances to that area. All bars that choose to allow smoking **AND VAPING** throughout their facility shall post a sign on all outside entry doors stating "This is a Smoking **AND VAPING** Establishment, and Does Not Provide a Nonsmoking **OR VAPORFREE** Area." All signs designating smoking **AND VAPING** areas or smoking **AND/OR VAPING** establishments under this Chapter shall also state that "Minors May Not Enter Unless Accompanied and Supervised by a Parent or Legal Guardian." It is unlawful for an owner, manager, operator, or other person in control of a business or facility to allow minors to enter any area where smoking **AND/OR VAPING** is permitted under this Chapter unless each minor is accompanied and supervised by a parent or legal guardian.
- (C) If a building or facility has both smokefree **AND VAPORFREE** areas and a designated smoking **AND VAPING** area, the owner, manager, operator, or other person in control of that building shall conspicuously post a sign at all initial entry points clearly indicating that "This Establishment Provides Both Smoking **AND VAPING** and Nonsmoking **AND VAPORFREE** Areas." The owner, manager, operator, or other person in control of such a building or facility shall also clearly indicate inside the building or facility, through the signs required in paragraphs (A) and (B) above, in which areas smoking **AND VAPING** is permitted and in which areas smoking **AND VAPING** is prohibited.

6-11-8: BARS AND RESTAURANTS:

- (A) Smoking **AND/OR VAPING** is allowed throughout all bars and their grounds (other than accessory bars in restaurants) providing it does not affect nonsmoking **AND/OR VAPORFREE** areas.
- (B) All restaurants shall be smokefree **AND VAPOR FREE**, except the restaurant owner may choose to allow smoking **AND/OR VAPING**:
 - ✚ In an accessory bar if it is a designated smoking **AND/OR VAPING** area meeting all the requirements of this Chapter.

~~6-11-10: ———~~ **HARDSHIP SITUATIONS:**

~~(A) — Hardship Phase in. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter may apply to the Building Safety Director for a phase-in of part or all of the structural, HVAC, signage, and other requirements of this Chapter applicable to designated smoking areas. The Building Safety Director may grant a phase-in period of up to one (1) year. Hardship applicants shall bear the burden of showing that immediate implementation of the requirements of this Chapter would create an undue financial hardship.~~

~~1. For purposes of this Section, an "undue financial hardship" means that the owner does not have current funds, or the current ability to borrow and repay funds, necessary and sufficient to remodel the owner's facility to comply with this Chapter.~~

~~2. A hardship phase-in application shall contain the following:~~

~~(a) An estimate from an appropriately licensed contractor of the costs of complying with this Chapter;~~

~~(b) Mesa sales tax and other financial statements for the most recent annual period purporting to show an undue financial hardship on the applicant;~~

~~(c) A time and task schedule for complying with all requirements of this Chapter should a hardship phase-in be granted;~~

~~(d) A sworn statement explaining how the applicant will protect the health of employees and the public from secondhand and sidestream smoke during a phase-in period;~~

~~(e) 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;~~

~~(f) A description of all efforts the applicant has made, and which reasonably could be made, to operate the business or facility successfully within a smokefree environment.~~

~~(B) — Hardship Smoking Exception. As of December 20, 1996, the owner of an existing business or facility required to be smokefree under this Chapter but wishing to allow smoking throughout the owner's business or facility may apply to the Building Safety Director for a hardship smoking exception allowing smoking in an area or areas otherwise required to be smokefree under this Chapter. Applicants shall bear the burden of showing that operating smokefree in part or all of their premises has created an undue financial hardship.~~

~~1. For purposes of this Section, evidence of a fifteen percent (15%), or more, reduction in gross revenue over the applicable period of time shall constitute prima facie evidence and a rebuttable presumption of an "undue financial hardship."~~

~~2. An application for a hardship smoking exception shall contain the following:~~

- ~~(a) A description of all efforts the applicant has made, or which reasonably could be made, to operate the business or facility successfully within a smokefree environment.~~
- ~~(b) Mesa sales tax statements comparing sales receipts for a four month period of compliance under this Chapter and the same four month period in the year prior to compliance, or other comparable period acceptable to the Building Safety Director.~~
- ~~(c) A sworn statement that the applicant shall comply with the terms of the Building Safety Director's hardship exception order, including structural, HVAC, periodic reevaluation of the grounds for a smoking hardship exception, and such other requirements the Building Safety Director may deem reasonably necessary to protect the health of employees and the public.~~

~~(C) Application:~~

- ~~1. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking phase in, that person shall apply to the Building Safety Director within sixty (60) days of December 20, 1996.~~
- ~~2. As of December 20, 1996, if a person owns a business or facility subject to this Chapter and wishes to apply for a hardship smoking exception, that person shall apply to the Building Safety Director within one year of December 20, 1996.~~
- ~~3. All operations within new businesses or new facilities constructed or remodeled after December 20, 1996 shall comply with the provisions of this Chapter, and are not eligible for a hardship exception or phase in.~~
- ~~4. If a person submits a complete application for a hardship phase in or exception within the time frames set forth above, and works in good faith to fulfill the requirements of this Chapter and the orders of the Building Safety Director, the Building Safety Director may temporarily permit smoking in areas otherwise required to be smokefree under this Chapter until the Building Safety Director finally grants or denies the application.~~
- ~~5. If a person fails to submit a complete application for a hardship phase in or exception within the time frames set forth above, or fails to fulfill the requirements of this Chapter or the orders of the Building Safety Director in processing such application, the business or facility must be smokefree as required under this Chapter, or the owner, manager, tenant, and other person(s) in control of the premises are subject to enforcement action under this Chapter.~~

~~(D) Investigation and Decision. The Building Safety Director, or designee, may hold an administrative hearing to review a hardship application under this Section, and the Building Safety Director may conduct such other investigation and review as the Building Safety Director deems necessary. The applicant shall cooperate with the Building Safety Director's~~

~~investigation.~~

- ~~1. The Building Safety Director may grant a hardship phase in or hardship smoking exception subject to such terms and conditions as the Building Safety Director deems reasonably necessary to protect the health and safety of employees and the nonsmoking public, in light of the "Purpose" section of this Chapter (6-11-1), and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1) (see footnote two [2] pages forward).~~
- ~~2. The decision of the Building Safety Director 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.~~

~~(E) 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 December 20, 1996, 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.~~

~~6-11-44~~**10: 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 (such as Occupational Safety and Health Administration standards), or any rule or regulation adopted pursuant thereto.

~~6-11-42~~**11: ENFORCEMENT:**

- (A) Against the Smoker **OR USER OF A VAPING DEVICE**. Any person who smokes **OR USES A VAPING DEVICE** in an area required to be smokefree **OR VAPORFREE** under this Chapter shall be subject to citation for a petty offense, **ADJUDICATED IN THE MESA MUNICIPAL COURT**. For the first petty offense, the fine ~~is one hundred dollars (\$100.00)~~ **SHALL NOT BE LESS THAN \$150 AND NOT MORE THAN \$1,500**. For the second petty offense, the fine **SHALL NOT BE LESS THAN \$250 AND NOT MORE THAN \$2,500**~~is two hundred dollars (\$200.00)~~. For the third petty offense, the fine **SHALL NOT BE LESS THAN \$500 AND NOT MORE THAN \$2,500**~~is three hundred dollars (\$300.00)~~. For each petty offense thereafter, the violator shall be subject to Class One criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of ~~five hundred dollars (\$500.00)~~, a maximum fine of ~~two thousand five hundred dollars (\$2,500.00)~~, six (6) months in jail, or both such fine and imprisonment.
- (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 individually 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 **AND/OR A VAPORFREE** environment where required under this Chapter, the **CITY MANAGER** ~~Building Safety Director~~, or designee, **OR POLICE OFFICER** may issue and serve upon the responsible party a notice of civil violation stating the nature of the violation. The notice shall be in the form established by the **CITY MANAGER OR DESIGNEE** ~~Building Safety Director~~. 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 **CITY AS DESIGNATED ON THE NOTICE OF CIVIL VIOLATION** ~~Building Safety Director~~, or designee, or request a hearing on the violation by filing a written request for hearing with the **CIVIL HEARING OFFICER AS DEFINED IN THE MESA CITY CODE SECTION 8-6-2 OR THE MESA MUNICIPAL COURT** ~~Building Safety Director~~. 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. If a hearing is requested, the ~~City Manager shall appoint a Hearing Officer~~ **CIVIL HEARING OFFICER OR THE MESA MUNICIPAL COURT SHALL SCHEDULE A HEARING**.
 4. Each instance of noncompliance with this Chapter or each instance of failure to maintain a smokefree **AND/OR VAPORFREE** environment where required under this Chapter shall constitute a separate civil offense. For the first civil offense, the fine **SHALL NOT BE LESS THAN \$150 AND NOT MORE THAN \$1,500** ~~is one hundred dollars (\$100.00)~~. For the second civil offense, the fine **SHALL NOT BE LESS THAN \$250 AND NOT MORE THAN \$2,500** ~~is two hundred dollars (\$200.00)~~. For the third civil offense, the fine **SHALL NOT BE LESS THAN \$500 AND NOT MORE THAN \$2,500** ~~is three hundred dollars (\$300.00)~~. For each offense thereafter, the violator shall be subject to criminal misdemeanor prosecution in the Mesa Municipal Court as an habitual offender. For each violation as an habitual offender, the defendant is subject to a minimum fine of ~~five hundred dollars (\$500.00)~~, a maximum fine of ~~two thousand five hundred dollars (\$2,500.00)~~, six (6) months in jail, or both such fine and imprisonment.
 5. If the **CIVIL** Hearing Officer or ~~judge~~ **MESA MUNICIPAL COURT** determines that a violation of this Chapter has occurred, they shall issue an order imposing a sanction in accordance with ~~the schedule in~~ paragraph 4 above and in addition, shall assess against the responsible party the City's personnel, mailing, and other costs incurred in investigating and hearing the case.
- (C) Inspection and Investigation. To the maximum extent allowed by law, the ~~Building Safety Director~~ **CITY MANAGER**, or designee, is authorized to inspect for compliance with all requirements of this Chapter and the Mesa City Code, including all technical requirements the ~~Building Safety Director~~ **CITY MANAGER OR DESIGNEE** is authorized to develop under this Chapter and any hardship order the ~~Building Safety Director~~ **CITY MANAGER OR DESIGNEE** may issue under this Chapter. The ~~Building Safety Director's~~ **CITY MANAGER'S** authority includes, but is not limited to, requiring information from persons

subject to the Mesa City Code and investigating the truth of that information, as necessary to determine compliance with the City Code. Persons regulated under this Chapter shall retain for at least three (3) years all information necessary to validate compliance with this Chapter.

~~(D) Suspension, Revocation of Hardship Exception or Phase in. A material change in circumstances or failure of any person to comply at all times with all terms and conditions of a hardship exception or phase in shall be grounds for revocation or suspension of the hardship exception or phase in that was granted. The Building Safety Director is authorized to initiate revocation or suspension proceedings pursuant to the civil hearing procedures in this Section.~~

6-11-1312: NONRETALIATION:

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, customer, or other person because such person exercises any right to a smokefree **AND VAPORFREE** environment afforded by this Chapter.

6-11-1413: CITY MANAGER IMPLEMENTATION DECISIONS:

Any affected person with questions about the implementation of this Chapter and desiring written guidance indicating how the City will apply this Chapter may write to the Mesa City Manager, P.O. Box 1466, Mesa, AZ. The City Manager is authorized to provide binding, written direction in response to such requests. Such direction shall be consistent with the purposes of this Chapter, as reflected in Section 6-11-1, and the preamble circulated among the voters as part of Proposition 200 (Initiative 95-1)*. The City Manager's directions shall also be consistent with the City Charter's requirement that the City Manager faithfully execute all laws of the City, the City Charter, and all acts of the City Council. The City Manager's directions under this Section are subject to challenge in the Maricopa County Superior Court under the special action provisions, Volume 17B, A.R.S., to the extent and in the manner provided therein.

SECTION 5: Title 6, Chapter 11, Article II of the Mesa City Code Table of Contents is hereby amended as follows:

ARTICLE II

STORAGE AND DISPLAY OF TOBACCO **AND/OR VAPING** PRODUCTS

SECTION:

6-11-21: DEFINITIONS

6-11-22: STORAGE AND DISPLAY OF TOBACCO **AND/OR VAPING** PRODUCTS

6-11-23: PENALTY

SECTION 5: Title 6, Chapter 11, Sections 21 of the Mesa City is hereby amended to add a new

definition for Vaping Products as follows:

6-11-21: DEFINITIONS:

3. “VAPING PRODUCTS” MEANS AS DEFINED IN SECTION 6-11-2.

SECTION 6: Title 6, Chapter 11, Sections 22 and 23 of the Mesa City is hereby amended as follows:

6-11-22: STORAGE AND DISPLAY OF TOBACCO **AND/OR VAPING** PRODUCTS:

- (A) No person who owns, conducts, operates, or maintains a business where tobacco **AND/OR VAPING** products are sold, nor any person who sells or offers for sale tobacco **AND/OR VAPING** products, shall store or display, or cause to be stored or displayed, such tobacco **AND VAPING** products in an area or manner that is accessible to the public without employee assistance.
- (B) A person is exempt from the requirement of this Section if both:
1. The business where tobacco **AND VAPING** products are sold prohibits entry of individuals under the age of eighteen (18) at all times; and
 2. Photographic identification is required from any individual who appears to be twenty-six (26) years of age or younger prior to entering the business where tobacco **AND/OR VAPING** products are sold.

6-11-23: PENALTY:

Each instance of violation of this Article shall constitute a separate civil offense. **ANY PERSON WHO VIOLATES THIS ARTICLE SHALL BE SUBJECT TO CITATION FOR A PETTY OFFENSE TO BE ADJUDICATED IN THE MESA MUNICIPAL COURT.** For the first civil offense at a retail site, the fine **SHALL NOT BE LESS THAN \$150 AND NOT MORE THAN \$1,500** ~~is one hundred dollars (\$100)~~. For the second **CIVIL OFFENSE AT THE RETAIL SITE, THE FINE SHALL NOT BE LESS THAN \$250 AND NOT MORE THAN \$2,500.** ~~FOR THE~~ and third civil offense at a retail site, the fine **SHALL NOT BE LESS THAN \$500 AND NOT MORE THAN \$2,500** ~~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)~~. The City, ~~through its Code Compliance Supervisor, or designee,~~ will follow the civil offense procedures set forth in Section 6-11-11(B), ~~Mesa City Code~~.

SECTION 7. EFFECTIVE DATE. The effective date of this Ordinance shall be June 9, 2020.

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 9th day of December, 2019.

APPROVED:

Mayor

ATTEST:

City Clerk