

RESOLUTION NO. 2019-1994

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT ENTITLED “AMENDMENT TO GOODYEAR CITY CODE, CHAPTER 11 (OFFENSES), AND CHAPTER 1, ARTICLE 1-8 (PENALTY) RELATED TO VAPING REGULATIONS, RESTRICTIONS AND PENALTIES, DATED SEPTEMBER 2019.”

Be it resolved by the Mayor and Council of the city of Goodyear, Maricopa County, Arizona, as follows:

SECTION 1. DECLARATION OF PUBLIC RECORDS

That certain document entitled, “Amendment to Goodyear City Code, Chapter 11 (Offenses) and Chapter 1, Article 1-8 (Penalty) Related to Vaping Regulations, Restrictions and Penalties, dated September 2019”, a copy of which is attached hereto as Exhibit A, is hereby declared a public record.

SECTION 2. PURPOSE

The aforementioned document is declared a public record in connection with the adoption of Ordinance No. 2019-1449.

SECTION 3. COPIES FILED WITH THE CITY CLERK

Three copies of the aforementioned document being declared a public record herein are ordered to remain on file with the City Clerk and to be available for public use and inspection during regular business hours.

PASSED AND ADOPTED by the Mayor and Council of the city of Goodyear, Maricopa County, Arizona, this _____ day of _____, 20____.

Georgia Lord, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, the undersigned Darcie McCracken, being the duly appointed, qualified City Clerk of the city of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No. 2019-1994 is a true, correct and accurate copy of Resolution No. 2019-1994, passed and adopted at a regular meeting of the Council of the city of Goodyear, Maricopa County, Arizona, held on the _____ day of _____, 20____, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 20____.

seal

City Clerk

EXHIBIT 'A' TO RESOLUTION 2019-1994

**AMENDMENT TO GOODYEAR CITY CODE CHAPTER 11 (OFFENSES)
AND CHAPTER 1, ARTICLE 1-8 (PENALTY)
RELATED TO VAPING REGULATIONS, RESTRICTIONS AND PENALTIES
SEPTEMBER 2019**

Pursuant to Ordinance No. 2019-1449 adopted by Goodyear City Council on September 23, 2019, Goodyear City Code Subsection 11-1-17 shall be deleted and replaced with the following:

11-1-17 SMOKING AND VAPING PROHIBITED IN CITY ENCLOSED FACILITIES AND VEHICLES.

(A) The purpose of this section is to protect the public health, safety and welfare of the public frequenting enclosed city facilities or city vehicles and employees of the city who utilize city enclosed facilities or city vehicles by establishing restrictions on the use of smoking devices, as defined in this section, in city enclosed facilities and vehicles of the city.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AEROSOL. A suspension of fine solid or liquid particles in gas.

CITY ENCLOSED FACILITIES. Any vehicle, enclosed building or structure that is owned, leased or operated by the city, including, but not limited to, City Hall, Police Department, Fire Department Finance, Court Public Works Wastewater Treatment Plant and Goodyear Community Center.

ENCLOSED. Any vehicle, or building enclosed on all sides and covered with a roof with the only access to the outside being through doors or windows.

SMOKE or SMOKING. The act of inhaling, exhaling, burning, vaping, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, water pipe, Smoking Device, or any other device that delivers nicotine or other Tobacco Product to a person.

SMOKING DEVICE. Any 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 or other Tobacco Product (as defined in this section) to a person. Notwithstanding any provision of this subsection to the contrary, "Smoking Device" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately.

TOBACCO PRODUCT. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, dipping tobacco, pipe tobacco, snuff, and electronic or mechanical versions of these items. “Tobacco Product” does not include drugs, or combination products authorized for sale by the State of Arizona or by the United States Food and Drug Administration, as those terms are defined by the State of Arizona or the Federal Food, Drug, and Cosmetic Act.

VAPE OR VAPING. The act of inhaling and exhaling the aerosol, often referred to as vapor, which is produced by a Smoking Device.

VEHICLE. A device in, on or by which a person or property is or may be transported or drawn on a public highway. “Vehicle” does not include: (i) Electric bicycles and devices moved by human power; (ii) Devices used exclusively on stationary rails or tracks; (iii) Personal delivery devices; (iv) scrap vehicles.

(C) It shall be prohibited and unlawful for any person to smoke or use any Smoking Device in any city enclosed facility or vehicle.

(D) Any person found guilty of violating the requirements of this section, shall be guilty of a petty offense and shall be punishable by a fine of \$50 plus surcharges for each violation of this section.

Pursuant to Ordinance No. 2019-1449 adopted by Goodyear City Council on September 23, 2019, Goodyear City Code Subsection 11-1-18 shall be deleted and replaced with the following:

11-1-18 PUBLIC NON-SMOKING.

(A) Purpose. The Mayor and Council of the City of Goodyear, Maricopa County, Arizona declare that the purpose of this section is to protect the working environment of its citizens and improve the public health of all citizens, business and visitors by prohibiting smoking in public places and places of employment.

(B) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. A business establishment devoted primarily to alcoholic beverage service to which food service is only incidental, i.e. where state sales tax receipts from the sale of alcoholic beverages equals or exceeds 55% of the total state sales tax receipts, including food.

BUSINESS. Any employment, occupation, profession or commercial activity or enterprise engaged in for gain, benefit, advantage or livelihood.

EMPLOYEE. Any person in the service of another, working for salary or wages or on a volunteer basis.

EMPLOYER. Any person or entity that employs the services of others.

ENCLOSED AREA. All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.

PHYSICALLY SEPARATED. An enclosed area with doors that are self-closing, self-latching and self-sealing and maintained to be operated as originally installed and the use of air curtains or similar ventilation methods are not to be used to meet the requirement for opening protection. Doors are to remain closed except for the immediate passage of patrons, guests and employees.

PLACE OF EMPLOYMENT. Any 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, classrooms, employee cafeterias, employee stairways and hallways, waiting areas, restrooms and vehicles. A private residence is not a place of employment (unless it is used as a child care, adult day care or health care facility).

PUBLIC PLACE. Any enclosed area to which the public is invited or in which the public is permitted, which is available to and customarily used by the public, including, but not limited to:

- (a) Airport service lines and airport waiting lounges;
- (b) Aquariums, galleries, libraries, museums, and exhibit halls;
- (c) Banks, financial institutions;
- (d) Child care centers (public and private);
- (e) Churches and other places of worship;
- (f) Community centers;
- (g) Health facilities, medical office buildings;
- (h) Hotel and motel public areas;
- (i) Laundromats;
- (j) Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple unit residential facilities;

(k) Public and private educational facilities, except as otherwise regulated in section 11-1-36;

(l) Public restrooms;

(m) Public transportation facilities, taxicabs or other means of public transit, ticket, boarding and waiting areas of public transit depots;

(n) Reception areas, waiting rooms, indoor and outdoor service lines;

(o) Restaurants, cafeterias, lunchrooms and eating establishments, food service operations;

(p) Retail food production and marketing/grocery establishments;

(q) Retail service establishments;

(r) Retail stores, shopping malls, drugstore pharmacies;

(s) Theaters and waiting rooms, sports arenas and their lobbies, auditoriums, bingo halls, pool halls, bowling alleys;

(t) All indoor facilities and any public places already regulated by A.R.S. § 36-601.01.

RESTAURANT. Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

RETAIL TOBACCO STORE. A retail store utilized primarily for the sale of tobacco and/or vape products and accessories and in which the sale of other products is merely incidental.

SEPARATELY VENTILATED. An enclosed area with an independent heating, ventilating and air conditioning system with separate ductwork relative to any adjacent area where smoking is prohibited.

SERVICE LINE. Any indoor or outdoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

SMOKE or SMOKING. The act of inhaling, exhaling, burning, vaping, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, water pipe, Smoking Device, or any other device that delivers nicotine or other Tobacco Product to a person.

SMOKING DEVICE. Any 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 or other Tobacco Product (as defined in this section) to a person. Notwithstanding any provision of this subsection to the contrary, “Smoking Device” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately.

SPORTS ARENA. Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

TOBACCO PRODUCT. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, dipping tobacco, pipe tobacco, snuff, and electronic or mechanical versions of these items. “Tobacco Product” does not include drugs, or combination products authorized for sale by the State of Arizona or by the United States Food and Drug Administration, as those terms are defined by the State of Arizona or the Federal Food, Drug, and Cosmetic Act.

VAPE OR VAPING. The act of inhaling and exhaling the aerosol, often referred to as vapor, which is produced by a Smoking Device.

(C) Regulation of smoking and vaping in public places, businesses, places of employment and restaurants.

(1) Unless otherwise indicated in this section, smoking is prohibited in any public place, business or place of employment as defined in subsection (B) of this section.

(2) Smoking is prohibited in all restaurants, cafeterias, lunchrooms, eating establishments, and other food service operations.

(3) Smoking is prohibited within 25 feet of the main entrance and within ten feet of any secondary, side or back entrance of any enclosed area where smoking is prohibited.

(4) The provisions of this section shall not be construed to limit the ability of the owner, operator or manager of a public place to declare the whole or any portion of that public place to be smoke free.

(5) This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(D) Smoking optional areas. Notwithstanding any other provisions of this section to the contrary, the following areas shall not be subject to the smoking or vaping restrictions of this section:

(1) Private residences, except when used as a child care, adult day care or health care facility;

- (2) No more than 20% of hotel and motel rooms rented to guests may be designated as smoking areas unless they are on a separately partitioned ventilation system;
- (3) Retail tobacco stores that deal exclusively in the sale of Tobacco Products and smoking paraphernalia and that are separately ventilated from other attached businesses;
- (4) On stage smoking as part of a stage production, ballet or similar exhibition;
- (5) Restaurants, hotel and motel conference/meeting rooms and public and private meeting rooms while these places are being used exclusively for private functions, so long as they are separately ventilated and have a door that remains closed except for the immediate passage of guests and employees from the rest of the facility;
- (6) A private residence serving as a place of employment;
- (7) Outdoor areas of places of employment except those covered in subsection (C) of this section;
- (8) Fraternal lodges and organizations or any organization licensed by the State of Arizona as a private club;
- (9) Bars, as defined in subsection (B), that are physically separated and separately ventilated from a smoking prohibited area.

(E) Posting requirements.

- (1) No Smoking or Vaping signs or the international No Smoking or No Vaping symbols (depicted below) shall be clearly and conspicuously posted in every building or other area where smoking is prohibited by this section by the owner, operator, manager or other person having control of such building or other area.



- (2) Every public place where smoking and vaping is prohibited by this section shall have posted at every public entrance a conspicuous sign clearly stating that smoking and vaping is prohibited.
- (3) All ashtrays, smoking devices, and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager or other person having control of such area.

(F) Enforcement and penalties.

(1) Any person found guilty of violating the requirements of this section shall be guilty of a petty offense, punishable by:

- (a) A fine not exceeding \$100 plus surcharges for a first violation in any 24-month period;
- (b) A fine not exceeding \$200 plus surcharges for a second violation in any 24-month period;
- (c) A fine not exceeding \$300 plus surcharges for a third violation in any 24-month period;
- (d) Any person who violates any provision of this section four or more times in any 24-month period may be charged with and found guilty of a class 1 misdemeanor.

(2) Any owner, manager, operator, employer or employee of any establishment controlled by this section shall, upon either observing or being advised of a violation of subsection (C) of this section, has the obligation to inform the violator of the appropriate requirements of this law and then request immediate compliance.

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

- (a) To properly set aside required No Smoking areas;
- (b) To properly post and maintain signs required hereunder; and
- (c) To take action required by subsection (F)(2) of this section when observing or being advised of a violation.

(4) By enforcing this section, the city 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.

(5) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the City of Goodyear Code Compliance Officer or other law enforcement agency.

(6) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

(G) Providing for severability. If any division, subdivision, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of the ordinance or parts thereof.

Pursuant to Ordinance No. 2019-1449 adopted by Goodyear City Council on September 23, 2019, Goodyear City Code Article 11-1 (Offenses) is hereby amended to enact a new Subsection 11-1-35 Regulation of Smoking and Vaping in City Parks and Trails to read as follows:

11-1-35 REGULATION OF SMOKING AND VAPING IN CITY PARKS AND TRAILS.

(A) Purpose. The Mayor and Council of the City of Goodyear, Maricopa County, Arizona declare that the purpose of this section is to protect the outdoor recreation environment of its citizens and improve the public health of all citizens, business and visitors by prohibiting smoking in public recreational areas.

(B) Except as otherwise allowed by law, it shall be unlawful to smoke (as defined in Section 11-1-17 of this Code) in a park or preserve.

(C) Unless otherwise allowed by law, it is unlawful for any person to smoke (as defined in Section 11-1-17 of this Code) while on or within any public bike trail, hiking trail, river trail, horse trail, city park or preserve, picnic area, ball field, court, play ground or other area designated or reserved for any other temporary gathering of people. As provided in Section 11-1-17 of this Code, vaping is included within the definition of Smoking and is prohibited.

(D) Enforcement and penalties. Any person found guilty of violating the requirements of this section shall be guilty of a petty offense, punishable by:

- (1) A fine not exceeding \$100 plus surcharges for a first violation in any 24-month period;
- (2) A fine not exceeding \$200 plus surcharges for a second violation in any 24-month period;
- (3) A fine not exceeding \$300 plus surcharges for a third violation in any 24-month period;
- (4) Any person who violates any provision of this section four or more times in any 24-month period may be charged with and found guilty of a class 1 misdemeanor.

Pursuant to Ordinance No. 2019-1449 adopted by Goodyear City Council on September 23, 2019, Goodyear City Code Article 11-1 (Offenses) is hereby amended to enact a new Subsection 11-1-36 Sale of Tobacco Products or Smoking Devices prohibited to persons under the age of twenty-one (21) to read as follows:

11-1-36 SALE OF TOBACCO PRODUCTS OR SMOKING DEVICES PROHIBITED TO PERSONS UNDER THE AGE OF TWENTY-ONE (21).

(A) Purpose. The Mayor and Council of the City of Goodyear, Maricopa County, Arizona declare that the purpose of this section is to protect and improve the public health of the City's young people by prohibiting the sale of Tobacco Products or Smoking Devices to persons under the age of 21 years of age and limiting access to these materials.

(B) Person(s) selling Tobacco Products or Smoking Devices shall keep such products behind a counter or otherwise in a manner that is inaccessible to the public and in an area where such products are monitored to prevent theft, or unauthorized or uncontrolled purchases.

(C) Person(s) making a retail sale of Tobacco Products or Smoking Devices shall require acceptable photo identification from all potential purchasers and shall NOT sell Tobacco Products or Smoking Devices to any person under the age of twenty-one (21) years of age. For purpose of this subsection, acceptable photo identification means any of the following:

- (1) Current driver's license or picture identification card issued by this or any other state;
- (2) A current passport;
- (3) A current tribal identification card; or
- (4) A current military identification card.

(D) For purposes of this article, a Tobacco Product or Smoking Device shall mean those items as defined in Section 11-1-17 of the Goodyear City Code. Product packaging that lists tobacco or nicotine or and derivative of either substance as an ingredient shall constitute prima facie evidence that it is a Tobacco Product.

(E) Enforcement and Penalties - Individual. Any individual found guilty of violating the requirements of this section shall be guilty of a misdemeanor, punishable by:

- (1) A fine of \$500 plus surcharges for a first violation in any 24-month period;
- (2) A fine of \$1,000 plus surcharges for a second violation in any 24-month period;
- (3) A fine of \$2,500 plus surcharges for a third or more violations in any 24-month period.

(F) Enforcement and Penalties – Enterprise, Any enterprise found guilty of violating the requirements of this section shall be guilty of a misdemeanor, punishable by a fine not to exceed \$20,000 as further provided for in Section 1-8-1 PENALTY, of this code.

Pursuant to Ordinance No. 2019-1449 adopted by Goodyear City Council on September 23, 2019, Goodyear City Code Article 11-1 (Offenses) is hereby amended to enact a new Subsection 11-1-37 Smoking and Vaping Prohibited at Schools and School Related Events to read as follows:

11-1-37 SMOKING AND VAPING PROHIBITED AT SCHOOLS AND SCHOOL RELATED EVENTS.

(A) Purpose. The Mayor and Council of the City of Goodyear, Maricopa County, Arizona declare that the purpose of this section is to protect and improve the public health of the City's school children by prohibiting the use of Tobacco Products or Smoking Devices at schools and school sponsored events.

(B) Tobacco Products, as defined in Section 11-1-17, are prohibited on school grounds, inside school buildings, in school parking lots or playing fields, in school buses or vehicles or at off-campus school sponsored events. For purposes of this subsection, "school" means any public, charter, or private school where children attend classes in kindergarten programs or grades one through twelve.

(C) Subsection A of this section does not apply to an adult who employs tobacco products as a necessary component of a school sanctioned tobacco prevention or cessation program established pursuant to Arizona Revised Statutes section 15-712.

(D) Enforcement and penalties. Any person found guilty of violating the requirements of this section shall be guilty of a petty offense, punishable by:

- (1) A fine not exceeding \$100 plus surcharges for a first violation in any 24-month period;
- (2) A fine not exceeding \$200 plus surcharges for a second violation in any 24-month period;
- (3) A fine not exceeding \$300 plus surcharges for a third violation in any 24-month period;
- (4) Any person who violates any provision of this section four or more times in any 24-month period may be charged with and found guilty of a class 1 misdemeanor.

Pursuant to Ordinance No. 2019-1449 adopted by Goodyear City Council on September 23, 2019, Goodyear City Code Article 1-8 (Penalty) Subsection 1-8-1 (C) shall be amended to read as follows:

(C) Notwithstanding any provisions to the contrary in this code providing for enforcement of violations of this code as misdemeanors or petty offenses, violations of any provision of this code and violations of any proscription, requirement or duty set forth in any ordinance incorporated into this code or any other ordinance of the city are declared to be civil code violations which may be adjudicated and enforced by the city court pursuant to Chapter 18 of this code, as an additional enforcement alternative to other remedies provided in this section or remedies and procedures provided for specifically in this code or other ordinance. Use of this civil code enforcement alternative is not mandatory and shall be at the discretion of the city official undertaking enforcement action on an alleged violation of this code or other ordinance.