

City of Mesquite
Initiative Petition – Municipal Statutory Measure

The People of the City of Mesquite do enact as follows:

City of Mesquite Clean Indoor Air Ordinance of 2018
Amendment to Title 4 –Health and Safety of the Mesquite Municipal Code Chapter 7

1. Title

This Chapter shall be known as the Mesquite Clean Indoor Air Ordinance of 2018.

2. Findings

The voters of Mesquite do hereby find that:

- a) The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) the only way to protect nonsmokers from the dangerous chemicals in secondhand smoke is to eliminate smoking indoors and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)
- b) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)
- c) The U.S. Environmental Protection Agency, the U.S. National Toxicology Program (NTP), the U.S. Surgeon General, and the International Agency for Research on Cancer have classified secondhand smoke as a known carcinogen — a cancer-causing agent. (U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, *Report on Carcinogens. Fourteenth Edition*, 2016; International Agency for Research on Cancer, *Tobacco Smoking, Second-hand Tobacco Smoke and Smokeless Tobacco*, France: 2012. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Vol. 100E; U.S. Environmental Protection Agency (December 1992.)

- d) Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (California Air Resources Board (ARB), "Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting," *California Air Resources Board (ARB)*, September 12, 2005.)
- e) Scientific evidence has firmly established that there is no safe level of exposure to secondhand tobacco smoke, a pollutant that causes serious illness in adults and children. There is also indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke. (World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," *World Health Organization (WHO)*, 2007.)
- f) A study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.) Similar studies have been conducted in numerous places, including Bowling Green, Ohio; Monroe County, Indiana; Pueblo, Colorado; New York State; France; Greece; Italy; and Scotland. All of these studies have concluded that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smoke-free laws. ("Bibliography of Secondhand Smoke Studies." *American Nonsmokers' Rights Foundation*, February 26, 2008.) In reviewing 11 such studies, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smoke-free laws reduce heart attacks. (Institute of Medicine (IOM) of the National Academies, Board on Population Health and Public Health Practice, Committee on Secondhand Smoke Exposure and Acute Coronary Events, "Secondhand smoke exposure and cardiovascular effects: making sense of the evidence," *Washington, DC: National Academies Press*, October 2009.)
- g) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)
- h) Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smoke-free law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smoke-free law went into effect. ("The State of Smoke-Free New York City: A One Year Review," *New York City Department of Finance, New York City Department of Health & Mental Hygiene, New York City Department of Small Business Services, New York City Economic Development Corporation*, March 2004.)

- i) Smoke-filled casinos have up to 50 times more cancer-causing particles in the air than highways and city streets clogged with diesel trucks in rush hour traffic. After going smoke-free, indoor air pollution virtually disappears in the same environments. Repace, J., "Respirable Particles and Carcinogens in the Air of Delaware Hospitality Venues Before and After a Smoking Ban." JOEM, September 10, 2004. The average level of cotinine (metabolized nicotine) among nonsmokers increased by 456% and the average levels of the carcinogen NNAL increased by 112% after four hours of exposure to secondhand smoke in a smoke-filled casino with a "sophisticated" ventilation system. Anderson, K.; Kliris, J.; Murphy, L.; Carmella, S.; Han, S.; Link, C.; Bliss, R.; Puumala, S.; Hecht, S., "Metabolites of Tobacco-Specific Lung Carcinogen in Nonsmoking Casino Patrons," *Cancer Epidemiology, Biomarkers & Prevention*, 12:151546, December 2003.)
- j) Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos." (*Health hazard evaluation report: environmental and biological assessment of environmental tobacco smoke exposure among casino dealers, Las Vegas, NV.* By Achutan C, West C, Mueller C, Boudreau Y, Mead K. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH HETA No. 2005-0076 and 2005-0201-3080, May 2009.)
- k) After the implementation of Ontario, Canada's Smoke-free Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%. (Geoffrey T. Fong, et. al., "The Impact of the Smoke-Free Ontario Act on Air Quality and Biomarkers of Exposure in Casinos: A Quasi-Experimental Study," *Ontario Tobacco Control Conference, Niagara Falls, Ontario*, December 2, 2006.)
- l) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)
- m) The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)
- n) Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in

secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smoke-free in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

- o) During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations. (Klepeis, N.; Ott, W.R.; Switzer, P., "Real-time measurement of outdoor tobacco smoke particles," *Journal of the Air & Waste Management Association* 57: 522-534, 2007.) Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smoke-free outdoor area. (Hall, J.C.; Bernert, J.T.; Hall, D.B.; St Helen, G.; Kudon, L.H.; Naeher, L.P., "Assessment of exposure to secondhand smoke at outdoor bars and family restaurants in Athens, Georgia, using salivary cotinine," *Journal of Occupational and Environmental Hygiene* 6(11): 698-704, November 2009.)
- p) Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. (Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., "Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS)," *Proceedings: Indoor Air 2002*, 2002.) Tobacco residue is noticeably present in dust throughout places where smoking has occurred. (Matt, G.E.; Quintana, P.J.E.; Hovell, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez, T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., "Households contaminated by environmental tobacco smoke: sources of infant exposures," *Tobacco Control* 13(1): 29-37, March 2004.) Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion. (Sleiman, M.; Gundel, L.A.; Pankow, J.F.; Jacob III, P.; Singer, B.C.; Destailats, H., "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards," *Proceedings of the National Academy of Sciences [Epub ahead of print]*, February 8, 2010.)
- q) Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ("Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," *Food and Drug Administration (FDA)*, July 22, 2009). E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is

prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

- r) The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)
- s) Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L., "The effect of ordinances requiring smoke-free restaurants on restaurant sales in the United States." *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)
- t) Thousands of communities in the U.S., plus numerous states, including Arizona, Delaware, Illinois, Iowa, Massachusetts, Michigan, Montana, New Jersey, New York, Ohio, Utah, and Washington, have enacted laws requiring all workplaces, restaurants, bars, and other public places to be smoke-free, as have numerous countries, including Bhutan, France, Hong Kong, Iceland, Ireland, New Zealand, Norway, Uruguay, and the United Kingdom constituent countries of England, Northern Ireland, Scotland, and Wales.
- u) There is no legal or constitutional "right to smoke." (Graff, S.K., "*There is No Constitutional Right to Smoke: 2008*," Tobacco Control Legal Consortium, 2d edition, 2008.) Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous. (Graff, S.K.; Zellers, L., "*Workplace Smoking: Options for Employees and Legal Risks for Employers*," Tobacco Control Legal Consortium, 2008.)
- v) Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)
- w) The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.
- x) A recent report issued by University of Nevada, Las Vegas, health economists found that Mesquite residents could save \$13.3 million over five years in cardiovascular, cerebrovascular, and respiratory event costs (an average of \$2.6 million in unnecessary costs per year) if the city adopted a comprehensive clean indoor air policy for all indoor public places and workplaces.

Accordingly, the voters of Mesquite find and declare that the purposes of this initiative petition are:

- (1) To protect the public health and welfare by prohibiting smoking in public places and places of employment;
- (2) To prevent death and disease caused by exposure to secondhand tobacco smoke;
- (3) To save on health-related costs as a result of exposure to secondhand tobacco smoke; and

(4) To guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

3. Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

- a) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- b) "Casino" means only the gaming floor of a licensed gaming establishment and any premise licensed pursuant to NRS 463.0177, exclusive of any bar, restaurant, or retail stores located within the gaming floor and subject to the prohibitions of this Chapter. Casino does not include sports arenas, theaters, or hotel and motel areas.
- c) "Dwelling unit" means physical portion of a multi-unit housing facility designated for separate residential ownership or occupancy, and includes any accessory spaces and areas, such as garage space, storage space, balcony, porch, deck, terrace, or patio. Dwelling unit includes, without limitation, an apartment, condominium, townhouse, or duplex.
- d) "Employer" means a person, business, partnership, association, private club, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- e) "Enclosed area" means all space between a floor and a ceiling that is bounded on at least 30% of its sides by walls, windows or doorways, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- f) "Health authority" has the meaning ascribed to it in NRS 202.2485.
- g) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- h) "Landlord" means any person who owns real property leased as residential property, any person who provides rental property for lease, or any person who manages such property, except that "Landlord" does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a Multi-Unit Residence.
- i) "Licensed gaming establishment" has the meaning ascribed to it in NRS 463.0169.
- j) "Multi-unit housing facility" means a building or portion thereof that contains more than one dwelling unit and in which a dwelling unit shares at least one common floor, wall or ceiling with

another dwelling unit, including but not limited to, apartments, condominiums, townhomes, townhouses, cooperatives, senior citizen housing, nursing homes, and single room occupancy hotels. Multi-unit housing facility also includes any common enclosed areas accessible to, and usable by, residents of dwelling units, including but not limited to, halls, stairwells, paths, lobbies, laundry rooms, common cooking areas, eating areas, play areas, swimming pools, and parking areas.

- k) "Place of employment" means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, private offices, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, classrooms, lobbies and reception areas, employee cafeterias, hallways, 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.
- l) "Playground" means any park or recreational area designed in part to be used by children, that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school property or on City of Mesquite property.
- m) "Private club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501.
- n) "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility, provided such private residence is not a unit located in a multi-unit housing facility.
- o) "Service line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- p) "Shopping mall" means an indoor or outdoor public or private walkway, corridor, or hall area to which the public is invited or in which the public is permitted, that serves to connect retail or professional businesses.
- q) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.
- r) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

- s) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor or aerosol, in any manner or in any form, or the use of any oral smoking device.
- t) "Sports arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

4. Application of Chapter to Government Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Mesquite, as well as all outdoor property under the control of the City of Mesquite shall be subject to the provisions of this Chapter.

5. Prohibition of Smoking in Public Places

Smoking in any form is prohibited within public places within the City of Mesquite including, but not limited to, the following:

- a) Aquariums, galleries, libraries, and museums
- b) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- c) Bars
- d) Bingo facilities
- e) Casinos and gaming facilities
- f) Child care and adult day care facilities
- g) Convention facilities
- h) Educational facilities, both public and private, including in buildings, on property and within vehicles owned, leased, or operated by the educational facility
- i) Elevators
- j) Health care facilities
- k) Hotels and motels including all common areas and all guest rooms
- l) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities
- m) Polling places
- n) Private clubs
- o) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Mesquite, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities
- p) Restaurants
- q) Restrooms, lobbies, reception areas, hallways, and other common-use areas
- r) Retail stores
- s) Retail tobacco stores

- t) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Mesquite or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Mesquite.
- u) Service lines
- v) Shopping malls
- w) Sports arenas, including enclosed places in outdoor arenas
- x) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances

6. Prohibition of Smoking in Enclosed Places of Employment

Smoking shall be prohibited in all enclosed areas of places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Chapter and to all prospective employees upon their application for employment.

7. Prohibition of Smoking in Certain Outdoor Areas

Smoking shall be prohibited in the following outdoor areas:

- a) Within 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- b) In, and within 25 feet of, outdoor seating or serving areas of restaurants and bars.
- c) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 25 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- d) In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Mesquite.
- e) In all outdoor service lines.
- f) In outdoor common areas of apartment buildings, condominiums, trailer parks, senior citizen housing, nursing homes, and other multiple-unit housing facilities., except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.
- g) In, and within 25 feet of, outdoor playgrounds and shopping malls.

9. Where Smoking Not Regulated

Notwithstanding any other provision of this Chapter to the contrary, smoking is not prohibited in the following areas:

- a) Private residences that are not contained within multiple-unit housing facilities, except smoking is prohibited within any private residence that is used as a child care, an adult day care or a health care facility.
- b) Outdoor areas of places of employment, except those in which smoking is otherwise prohibited by this Chapter, provides such smoking does not occur within 25 feet of the indoor place of employment.

10. Declaration of Establishment as Non-Smoking

In areas or establishments where smoking is not prohibited by this Chapter, nothing in this Chapter shall be construed to prohibit the owners, operator, manager, landlord, or other person in control of an outdoor area, establishment, or facility from voluntarily creating nonsmoking sections or designating the entire area or establishment as smoke-free. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Chapter is posted.

11. Other Applicable Laws

This Chapter does not repeal any existing local ordinances or regulations that provide restrictions on smoking that are equivalent to, or greater than, those provided by this Chapter. This Chapter shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

12. Posting of Sign and Removal of Ashtrays

- a) The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Chapter shall:
 - i) Post “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) clearly and conspicuously in every public place and place of employment where smoking is prohibited.
 - ii) Post at every entrance a conspicuous sign clearly stating that smoking is prohibited in each public place and place of employment where smoking is prohibited.
 - iii) Remove all ashtrays from any area where smoking is prohibited.
 - iv) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Chapter at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- b) The owner, operator, manager, landlord, or other person in control of a multi-unit housing facility where smoking is prohibited by this Chapter shall:
 - i) Post “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) clearly and conspicuously in every public indoor and outdoor place where smoking is prohibited, and signage

shall be displayed in quantities sufficient to make areas where smoking is prohibited obvious to a reasonable person.

- ii) Post at every entrance to a multi-unit housing facility where smoking is prohibited, a conspicuous sign clearly stating that smoking is prohibited.
- iii) Remove all ashtrays from any area where smoking is prohibited.

13. Compliance and Enforcement

- a) The Health Authority and/ or the City of Mesquite or its designee shall ensure compliance and when necessary enforce the provisions of this Chapter and shall issue citations for violations of this Chapter.
- b) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City of Mesquite.
- c) Any citizen who desires to register a complaint under this Chapter may initiate compliance and enforcement with the Health Authority and/ or the City of Mesquite or its designee.
- d) The Health Authority, or their authorized designees, and/ or the City of Mesquite or its designee, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.
- e) An owner, manager, operator, or employee of an establishment regulated by this Chapter shall direct a person who is smoking in violation of this Chapter to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency and report the violation.
- f) An owner, manager, operator, or landlord of a multi-unit housing facility where smoking is prohibited by this Chapter shall direct a person who is smoking in violation of this Chapter to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator or landlord shall immediately ask the person to proceed to an area where smoking is permitted. If the person in violation refuses to proceed to an area where smoking is permitted, the owner, manager, operator or landlord shall contact a law enforcement agency and report the violation.
- g) An owner, manager, operator or landlord of a multi-unit housing facility where is smoking is prohibited by this Chapter shall:
 - a. For every person who becomes a tenant after passage of this Chapter, include the following terms in each lease:
 - i. A clause stating that smoking is prohibited in the unit;
 - ii. A clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating smoking while on the premises; (ii) smoke in the unit; or (iii) smoke in any multi-unit residence common area in which smoking is prohibited; and

- iii. A clause stating that all occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.
- b. For every person who is a tenant on the effective date this Chapter, within 30 days of the date this Chapter is adopted, notify each tenant of the implementation schedule and plan for complying with this Chapter. This notice shall include the following:
 - i. The date upon which the legal occupant of a dwelling unit shall be prohibited from smoking within their dwelling unit in accordance with Section 7 of this Chapter; and
 - ii. The following lease terms required under this Chapter:
 - 1. A clause stating that smoking is prohibited in the unit;
 - 2. A clause stating that it is a material breach of the lease or agreement to (i) violate any law regulating smoking while on the premises; (ii) smoke in the unit; or (iii) smoke in any multi-unit residence common area in which smoking is prohibited; and,
 - 3. A clause stating that all occupants of the multi-unit housing facility are express third-party beneficiaries of the above required clauses.
 - c. All lease terms required by this Section are hereby incorporated by law into any lease or other agreement for the occupancy of a dwelling unit in a multi-unit housing facility made on or after the date this Chapter is adopted and which does not fully comply with this Section.
 - d. Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this Chapter and shall not prevent future enforcement of any such smoking regulation on another occasion.
- h) Notwithstanding any other provision of this Chapter, a private citizen, an employee, or a resident of a multi-unit housing facility, may bring legal action to enforce this Chapter.
 - i) In addition to the remedies provided by the provisions of this Chapter, the Health Authority and/ or the City of Mesquite or its designee, or any person aggrieved by the failure of the owner, operator, manager, landlord, or other person in control of a public place, multi-unit housing facility, or a place of employment to comply with the provisions of this Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
 - j) No less than 75% of the funds collected for violations of this Chapter shall be designated and used exclusively for the implementation, compliance, and enforcement of this Chapter, and for educational efforts related to this Chapter, as identified by the Health Authority and/ or the City of Mesquite or its designee, designed to advance public health by reducing tobacco use in the City of Mesquite.

14. Penalties

The penalties provided by this Chapter are civil, cumulative, and in addition to any other penalties or remedies available at law or in equity.

- a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of an infraction, punishable by a fine not exceeding one hundred dollars (\$100).

- b) Except as otherwise provided in this Chapter, a person who owns, manages, operates, or otherwise controls a public place, multi-unit housing facility, or place of employment and who fails to comply with the provisions of this Chapter shall be guilty of an infraction, punishable by:
 - (i) A fine not exceeding one hundred dollars (\$100) for a first violation.
 - (ii) A fine not exceeding two hundred fifty dollars (\$250) for a second violation within one (1) year of a first violation.
 - (iii) A fine not exceeding one thousand dollars (\$1,000) for each additional violation within one (1) year of a second violation.
- c) In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- d) Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by Health Authority and/ or the City of Mesquite or its designee by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Health Authority and/ or the City of Mesquite may take action to recover the costs of the nuisance abatement.
- e) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

15. Non-Retaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multi-unit residential facility, for exercising any rights afforded by, or attempts to prosecute a violation of, this Chapter. Notwithstanding other provisions of this Chapter, violation of this Section shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation. An employee who works in a setting where an employer allows smoking, and a resident who lives in a multi-unit housing facility where a landlord allows smoking, does not waive or otherwise surrender any legal rights the employee or resident may have against the employer, landlord or any other party.

16. Governmental Agency Cooperation

The Mesquite City Manager shall annually request other governmental and educational agencies having facilities within the City of Mesquite to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all Federal, State, City of Mesquite, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

17. Liberal Construction

This Chapter shall be liberally construed so as to further its purposes. Any City of Mesquite or Clark County statute or regulation inconsistent with this Chapter is null and void.

18. Severability

The provisions of this Chapter are severable. If any provision clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the Chapter as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

19. Effective Date

This Chapter shall be effective ninety (90) days from and after the date of its adoption.



DESCRIPTION OF EFFECT

Mesquite Clean Indoor Air Ordinance is enacted:

- (1) To protect the public health and welfare by prohibiting smoking in public places and places of employment;
- (2) To prevent death and disease caused by exposure to secondhand tobacco smoke;
- (3) To save on health-related costs as a result of exposure to secondhand tobacco smoke; and
- (4) To guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

County of Clark
City of Mesquite

(Only registered voters of the City of Mesquite may sign below)

This Space For Office
Use Only

1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
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