

CITY COUNCIL ORDINANCE NO. 19-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
IRVINE, CALIFORNIA, AMENDING CHAPTER 5 OF
DIVISION 10 OF TITLE 4 OF THE IRVINE MUNICIPAL
CODE RELATING TO THE REGULATION AND
PROHIBITION OF SMOKING

WHEREAS, The City last updated its smoking regulations over 12 years ago, in 2007; and

WHEREAS, understanding of the adverse health effects, including second hand effects, of smoking tobacco has grown, while public tolerance for exposure to second hand smoke has diminished, and the expectation that non-smokers will be protected from the harmful effects of smoking has correspondingly increased; and

WHEREAS, the nature of smoking has changed with the legalization of medical and recreational marijuana, and with the emergence of vaping and e-cigarettes as new methods of consuming tobacco products; and

WHEREAS, to account for these changes in public expectations and smoking technology and practices, in 2016 the State of California approved a package of tobacco bills that raised the legal smoking age from 18 to 21, and that banned e-cigarettes and vaping in any areas where cigarette smoking bans previously applied; and

WHEREAS, through the adoption of Proposition 64, the People of the State of California determined to prohibit marijuana use in all public places as well as all places where tobacco use is also prohibited; and

WHEREAS, to protect the public health and align the City's Municipal Code with community expectations, best practices, and State law, revisions to the City's smoking regulations to: (a) prohibit smoking in all public places, which include common areas of multi-unit housing, in hazardous fire areas, and in City facilities and on City property where persons will be exposed to unwelcome secondhand smoke and also the risks and dangers associated with fires; (2) expand the reach of the City's smoking regulations to include electronic smoking devices, vaping devices, and e-cigarettes, and to include marijuana-based products as well as tobacco and nicotine based products; and (3) to updated enforcement practices and responsibilities.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2: Chapter 5 of Division 10 of Title 4 of the Irvine Municipal Code is hereby amended to read in its entirety as follows:

Chapter 5 of Division 10 of Title 4

SMOKING REGULATED OR PROHIBITED

Sections:

Sec. 4-10-501	Findings and Purpose.
Sec. 4-10-502	Definitions.
Sec. 4-10-503	Smoking Prohibited in Public Places.
Sec. 4-10-504	Smoking and Open Fires Prohibited in Hazardous Fire Areas.
Sec. 4-10-505	Smoking and Open Fires Prohibited in City Facilities and on City Property.
Sec. 4-10-506	Smoking Prohibited on Property of Other Governmental Bodies.
Sec. 4-10-507	Posting of Signs Required.
Sec. 4-10-508	Enforcement.

Sec. 4-10-501 – Findings and Purpose.

The City Council finds that residents and visitors to the city have a right to be free from unwelcome secondhand smoke, which is deemed to be a public nuisance. The purpose of this chapter is to promote and protect the public health, safety, and general welfare by prohibiting smoking in public places, which include common areas of multi-unit housing, in hazardous fire areas, and in City facilities and on City property where persons will be exposed to unwelcome secondhand smoke and also the risks and dangers associated with fires. This chapter is further intended to ensure a cleaner and more hygienic environment for the city, its residents and visitors, and its natural resources.

Sec. 4-10-502 – Definitions.

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

- A. "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such device, whether or not sold separately. This definition includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor, including any component, part or accessory of such device, whether or not sold separately.
- B. "Employer" means any person who employs the services of an individual person.
- C. "Employee" means any person who is employed by an employer for direct or indirect monetary wages or profit.
- D. "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.
- E. "Multi-unit residence" means residential property that contains two or more residential units that are joined by a shared wall, including apartment homes and condominiums. "Multi-unit residence" does not include a hotel, a motel, or a bed and breakfast establishment.
- F. "Multi-unit residence common area" means any common area of a multi-unit residence accessible to and usable by the occupants for more than one dwelling, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas, and swimming pools.
- G. "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, and any private residences subject to state licensing requirements that are used as child-care or health-care facilities; provided, however, that closed and separately accessible indoor areas, and separately accessible outdoor areas, of commercial buildings and/or hotels shall not constitute a "place of employment" for purposes of this chapter.

- H. "Public place" means any indoor or outdoor public place publicly or privately owned, including but not limited to any public buildings, restaurants, dining areas, bars, entryways, elevators, hospitals and health care facilities, public meeting rooms, theaters and auditoriums, public restrooms, service lines, streets, alleys, rights-of-way, sidewalks, plazas, public transportation, bus shelters, parking lots, parking structures, parks, picnic areas, playgrounds, sports fields, walking paths, hiking trails, bike paths, open space preserves, and hazardous fire areas. "Public place" includes any place being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public.
- I. "Smoke" means the gases, aerosols, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. "Smoke" includes but is not limited to tobacco smoke, electronic cigarette vapors, and marijuana smoke.
- J. "Smoking" means the release of gases, aerosols, particles, or vapors into the air as the result of combustion, electrical ignition, or vaporization and/or inhaling, exhaling, burning or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product, including but not limited to tobacco and marijuana, intended for human inhalation.

Sec. 4-10-503 – Smoking Prohibited in Public Places.

- A. In addition to all places where smoking is prohibited under state or federal law, in which case those laws apply, no person shall smoke in, and smoking areas shall not be established or designated in, any and all of the following areas:
 - 1. Multi-unit residence common areas;
 - 2. Places of employment; and
 - 3. Public places.
 - 4. Outdoor patios and balconies in Multi-unit residences.
- B. Smoking is permitted in the following locations within the city, unless otherwise provided by state or federal law or this code:

1. Private residential properties, other than those used as a child-care or health-care facility subject to State licensing requirements;
 2. Closed and separately accessible indoor areas, and separately accessible outdoor areas, of commercial buildings and/or hotels; and
 3. Within a moving or stationary vehicle.
- C. No employer, owner, operator, manager, employee or other person having control of a place of employment or a public place shall knowingly permit smoking in an area in which smoking is prohibited by law. This subsection does not require the physical ejection of any person from the business or the taking of steps to prevent smoking under circumstances that would involve a significant risk of physical harm.
- D. The owner, operator or manager of a hotel, motel or bed and breakfast establishment may establish rules permitting or prohibiting smoking on portions of the property designated with appropriate signage by the owner, operator, or manager, including guest rooms, pools, and similar facilities and areas, provided that such rules comply with applicable laws.
- E. No employer, owner, operator, manager, employee or other person having control of an outdoor dining area, restaurant, snack shop or alcohol beverage establishment shall place ashtrays on tables.
- F. Nothing in this chapter prohibits any person or employer with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

Sec. 4-10-504 – Smoking and Open Fires Prohibited in Hazardous Fire Areas.

Smoking and open fires are prohibited in any hazardous fire area as identified by the fire chief and marked with identifying signage.

Sec. 4-10-505 – Smoking and Open Fires Prohibited in City Facilities and on City Property.

- A. Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Irvine, as well as on all outdoor property owned, leased, or operated by the City of Irvine.

- B. To the extent not prohibited by Section 4-10-504, open fires are prohibited on all outdoor property owned, leased, or operated by the City of Irvine.

Sec. 4-10-506 –Smoking Prohibited on Property of Other Governmental Bodies.

Smoking is prohibited in all enclosed areas, including buildings, as well as on all outdoor property within the city owned, leased, or operated by other governmental bodies, including the State of California, the Regents of the University of California, the County of Orange, and special districts, when such other governmental body has consented in writing to the City enforcing the provisions of this section on such property.

Sec. 4-10-507 – Posting of Signs Required.

- A. Except where other signs are required, whenever in this code smoking is prohibited, "No Smoking" or "Smoke Free" signs shall be conspicuously posted by the owner, operator, manager, or other persons having control of such room, building, or other place where smoking is prohibited. The City Manager or his/her designee shall post signs at or near the primary entrance(s) to a public place in which smoking is prohibited and which is owned or controlled by the City. Signage required by this section shall be prominently displayed, shall clearly recite the phrase "no smoking" and/or use the international no-smoking symbol and shall cite the appropriate section of the City of Irvine Municipal Code. Such signs shall be posted not less than five feet nor more than eight feet above the floor and shall be of sufficient number and location to cause the message of the signs to be clearly visible and readable.
- B. As an alternative to posting signs as required by this section, eating establishments may place small signs, containing the messages described above, on each dining table located in an area subject to the provisions of this chapter.
- C. No person shall willfully mutilate or destroy any sign required by this section.

Sec. 4-10-508 – Enforcement.

- A. The provisions of this chapter may be enforced by the Irvine Police Department, any peace officer or code enforcement officer, or other employees designated by the City Manager.

- B. While an establishment is undergoing otherwise mandatory inspections, code enforcement officers may inspect the establishment for compliance with this chapter.
- C. Notice of the provisions of this chapter shall be provided to all applicants for a business license or renewal thereof; provided, however, any failure to provide such notice shall be no defense to a violation of this chapter.
- D. Causing, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- E. Any person who is found to violate any provision of this chapter shall be deemed guilty of an infraction and shall be punishable as provided in Title 4, Division 13 of the Code.
- F. Any aggrieved person may enforce the provisions of this chapter by means of a civil action on his or her own behalf pursuant to California Civil Code section 3501 *et seq.*

Sec. 4-10-509 – Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws.

SECTION 3. CEQA Determination. In adopting this Ordinance, the City Council finds that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Sections 15061(b)(2) and (b)(3), 15308, and 15378.

SECTION 4: This Ordinance shall become effective thirty (30) days after adoption.

SECTION 5: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 12th day of November, 2019.

MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, MOLLY PERRY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 22nd day of October 2019, and duly adopted at a regular meeting of the City Council of the City of Irvine, held on the 12th day of November, 2012.

AYES:	5	COUNCILMEMBERS:	Carroll, Fox, Khan, Kuo, and Shea
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

CITY CLERK OF THE CITY OF IRVINE