



**CITY OF HEMET
Hemet, California
ORDINANCE NO. 1898**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HEMET, CALIFORNIA, AMENDING CHAPTER 34, ARTICLE IV
(SMOKING IN PUBLIC AREAS AND PLACES OF
EMPLOYMENT) OF THE HEMET MUNICIPAL CODE .**

WHEREAS, Chapter 34, Article IV of the Hemet Municipal Code prohibits smoking in places of employment and in enclosed public places; and,

WHEREAS, the provisions of Chapter 34, Article IV predate the adoption of California Labor Code section 6404.5, which banned smoking in enclosed places of employment with certain exceptions and expressly preempted local ordinances doing the same; and,

WHEREAS, the City Council desires to amend Chapter 34, Article IV of the Hemet Municipal Code to be consistent with Labor Code section 6404.5; and,

WHEREAS, due to the extraordinary health risks presented by secondhand smoke, the City Council also desires to amend Chapter 34, Article IV of the Hemet Municipal Code to restrict smoking in public parks and other unenclosed public places.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF HEMET DOES
HEREBY ORDAIN AS FOLLOWS:**

SECTION 1: Amendment of Chapter 34, Article IV of the Hemet Municipal Code.

Chapter 34, Article IV (Smoking in Public Areas and Places of Employment) is amended to read as shown in Exhibit "A" to this Ordinance.

SECTION 2: SEVERABILITY.

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

1 any court of competent jurisdiction, such decision shall not affect the validity of the
2 remaining portions of this Ordinance. The City Council hereby declares that it would
3 have adopted this Ordinance, and each section, subsection, subdivision, sentence,
4 clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,
5 subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared
6 invalid or unconstitutional.

7 **SECTION 3: EFFECTIVE DATE.**

8 This Ordinance shall take effect thirty (30) days from its passage by the City
9 Council of the City of Hemet.

10 **SECTION 4: PUBLICATION.**

11 The City Clerk is authorized and directed to cause this Ordinance to be published
12 within fifteen (15) days after its passage in a newspaper of general circulation and
13 circulated within the City in accordance with Government Code Section 36933(a) or, to
14 cause this Ordinance to be published in the manner required by law using the
15 alternative summary and pasting procedure authorized under Government Code
16 Section 39633(c).

17 **INTRODUCED** at the regular meeting of Hemet City Council on February 24, 2015.

18 **APPROVED AND ADOPTED** this 10th day of March 2015.

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21 _____
Linda Krupa, Mayor

22 **ATTEST:**

APPROVED AS TO FORM:

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24 _____
Sarah McComas, City Clerk

Eric S. Vail, City Attorney

1 State of California)
2 County of Riverside)
3 City of Hemet)

4 I, Sarah McComas, City Clerk of the City of Hemet, do hereby certify that the
5 foregoing Ordinance was introduced and first read on the 24th day of February 2015,
6 and had its second reading at the regular meeting of the Hemet City Council on the 10th
7 day of March 2015, and was passed by the following vote:

8 **AYES: Council Members Milne, Raver and Youssef, Mayor Pro Tem Wright**
9 **and Mayor Krupa**

10 **NOES:**

11 **ABSTAIN:**

12 **ABSENT:**

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14 _____
15 Sarah McComas, City Clerk
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EXHIBIT "A"

ARTICLE IV. SMOKING IN PUBLIC PLACES

- 34-91. Purpose and Findings
- 34-92. Definitions
- 34-93. Smoking Near Enclosed Areas
- 34-94. Smoking in Unenclosed Areas
- 34-95. Smoking in Enclosed Common Areas of Multifamily Housing
- 34-96. Signage
- 34-97. Penalties and Enforcement

34-91. Purpose and Findings

A. Purpose: The purposes of this article are to:

1. Protect the public health, safety, and general welfare by prohibiting smoking in public places and in the interior common areas of multi-family residential housing under circumstances where one or more persons will be exposed to secondhand smoke;
2. Ensure a cleaner and more hygienic environment for the city, its residents, its guests, and its natural resources;
3. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children, to breathe smoke free air, by recognizing the threat to public health and the environment that smoking causes, and by acknowledging that, when these needs conflict, the need to breathe smoke free air must prevail; and
4. Recognize the right of city residents, workers, and visitors to be free from unwelcome secondhand smoke.
5. Impose restrictions on smoking that supplement and are consistent with the prohibition on smoking in enclosed places of employment in California Labor Code section 6404.5.

B. Findings: The city council hereby finds, determines, and declares that:

1. It is estimated that only fifteen percent (15%) of a cigarette's smoke is inhaled by the smoker, while eighty five percent (85%) is released into the air for others to breathe;
2. Extensive medical and scientific research confirms that tobacco smoke is harmful to smokers and nonsmokers alike, triggering eye, nose, throat, and sinus irritation; hastening lung disease, including emphysema; and causing heart disease and lung cancer;
3. In 1992, the United States surgeon general reported that involuntary smoking by inhaling secondhand smoke (also called "environmental tobacco smoke") can cause lung cancer in healthy nonsmokers and poses a significant public health hazard;
4. In 2006, the United States surgeon general concluded that a risk free level of exposure to secondhand smoke does not exist, and neither separating smokers from nonsmokers nor installing ventilation systems effectively eliminates secondhand smoke;

5. The United States environmental protection agency ("U.S. EPA") has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen;
6. The United States centers for disease control and prevention ("CDC") has concluded that secondhand smoke contains approximately seventy (70) cancer causing chemicals;
7. The CDC has concluded that secondhand smoke causes approximately three thousand (3,000) lung cancer deaths per year among adult nonsmokers in the United States, and that even brief exposure can damage cells in ways that set the cancer process in motion;
8. The CDC has found that secondhand smoke causes children to suffer from lower respiratory tract illness, such as bronchitis and pneumonia; exacerbates childhood asthma; and increases the risk of acute chronic middle ear infections in children;
9. The California environmental protection agency has concluded that secondhand smoke causes coronary heart disease in nonsmokers;
10. The California air resources board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which no safe level of exposure exists;
11. Secondhand smoke is especially hazardous to particular groups, including those with chronic health problems, the elderly, and children;
12. Inside buildings, tobacco smoke contributes significantly to indoor air pollution;
13. The aesthetic impacts and odors of secondhand smoke pose a nuisance and annoyance to nonsmokers when in close proximity to people who are smoking;
14. Smoking in parks or recreational facilities endangers children and other users by exposing them to secondhand smoke;
15. In outdoor dining areas; outdoor service areas; outdoor gathering and event areas; enclosed common areas of multi-unit residential housing complexes; in proximity to entrances/exits, windows, and vents of buildings open to the public, smoking endangers the health of nonsmokers who are in the same area;
16. Neither the United States constitution nor the California constitution gives a person a constitutional right to smoke;
17. The consumption of controlled substances in certain enclosed and unenclosed areas of the city poses a risk to the health, safety, and welfare of the public, including, but not limited to, in many of the same manners as the consumption of tobacco products.

34-92. Definitions

- A. "*Business*" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.
- B. "*City property*" means, for the purposes of this chapter, property owned or controlled by the City, including those areas that a business has the use of, with or without the benefit of an encroachment permit.
- C. "*Common areas*" means any area of a multifamily housing complex accessible to and usable by the residents of one or more unit, including but not limited to, hallways, enclosed stairwells, lobby areas, elevators, laundry rooms, enclosed common cooking areas, playrooms, fitness rooms, swimming pools, and parking areas.

D. “*Electronic smoking device*” means an electronic or battery-operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices whether they are manufactured, distributed, marketed or sold as an electronic pipe, an electronic hookah, or any other product name or descriptor.

E. “*Enclosed area*” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

1. Any type of overhead cover whether or not that cover includes vents or other openings and at least three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height whether or not those boundaries include vents or other openings; or
2. Four walls or other vertical constraints to airflow including, but not limited to, vegetation that exceeds six feet in height whether or not those boundaries include vents or other openings.

F. “*Marijuana*” shall have the same definition as set forth in the “California Uniform Controlled Substances Act” (contained within California Health & Safety Code Sections 11000 et seq.).

G. “*Multifamily Housing Complex*” means a residential premises that contains two (2) or more dwelling units, including but not limited to apartments, condominiums, duplexes, and mobile home parks.

H. “*Outdoor dining area*” means any unenclosed area located on private property, public property, or a combination of both private and public property, which is available to or customarily used by the general public or employees, and which is designed, established, or regularly used for consuming food or drink.

I. “*Outdoor public event*” means any publicly or privately owned unenclosed area, including, but not limited to streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, open to the general public for a public event, regardless of any fee or age requirement. The term “outdoor public event” also includes, but is not limited to, a farmers’ market, parade, craft fair, festival, concert, play, or any other event open to the general public.

J. “*Outdoor recreational area*” means any publicly or privately owned unenclosed area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term “outdoor recreational area” also includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks.

K. “*Outdoor service area*” means any publicly or privately owned unenclosed area, including, but not limited to, streets, highways, alleys, rights-of-way, parkways, sidewalks, parking lots or pathways, designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “outdoor service area” also includes, but is not limited to, areas at and adjacent to information kiosks, automated teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines or cab stands.

L. “*Smoking*” means possessing a lighted tobacco product, lighted tobacco paraphernalia, lighted marijuana, or any other lighted weed or plant (including but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, lighted cigarette of any kind), an electronic smoking device of any kind, or the lighting or emitting or exhaling the smoke or vapor of a tobacco product, tobacco paraphernalia, marijuana product, or

any other weed or plant (including but not limited to, a pipe, a hookah pipe, cigar, marijuana product, electronic cigarette or cigarette of any kind).

M. “*Unenclosed area*” means an area in which outside air can circulate freely to all parts of the area, and includes an area that has:

1. Any type of overhead cover, and no more than two walls or other vertical constraint to airflow including, but not limited to, vegetation of any height; or
2. No more than three walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, and which has no overhead cover of any type.

34-93. Smoking Near Enclosed Areas

A. Prohibition. Smoking is prohibited within twenty five (25) feet of any doorway, window, opening, crack or vent of an enclosed area where smoking is prohibited by this code or by provisions of state or federal law, including but not limited to California Labor Code section 6404.5.

B. Exceptions. Notwithstanding the foregoing, this section does not prohibit the following:

1. Smoking in enclosed or unenclosed areas of private residential property.
2. Smoking while passing by an enclosed area where smoking is prohibited on the way to another destination.

34-94. Smoking In Unenclosed Areas

A. Prohibition. Smoking is prohibited in the following unenclosed areas:

1. City property;
2. Outdoor public events;
3. Outdoor recreational areas;
4. Outdoor service areas;
5. Outdoor dining areas.

B. Exceptions. Notwithstanding the foregoing, this section does not prohibit the following:

1. Smoking in enclosed or unenclosed areas of private residential property.
2. Smoking while passing by an unenclosed area where smoking is prohibited on the way to another destination.

34-95. Smoking in Enclosed Common Areas of Multifamily Housing

Smoking is prohibited in enclosed common areas of multifamily housing complexes.

34-96. Signage

“No Smoking” or “Smoke Free” signs, with letters of not less than one (1) inch in height, or the international “No Smoking” symbol (a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), or any alternative signage

approved by the city manager, shall be conspicuously posted by the person, employer, business, or nonprofit entity who or which has legal or de facto control of any area in which smoking is prohibited by this article. The city manager or his or her designee shall post signs at each entrance to City property in which smoking is prohibited by this article. The absence of signage as required by this section shall not be a defense to a charge of smoking in violation of any provision of this article.

34-97. Penalties and Enforcement

- A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.
- B. Each violation of this article is punishable in accordance with Section 1-8 of this code.
- C. The city prosecutor, city attorney, any peace officer, any city code enforcement officer, or any other city official designated by the city manager may enforce this article.
- C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.
- D. Any violation of this article is hereby declared to be a nuisance.
- E. Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any person against the City or its agents to compel public enforcement of this chapter against private parties.