

ORDINANCE NO. 2017-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE
ELSINORE ADDING MUNICIPAL CODE, CHAPTER 8, SECTION
14, SMOKING IN CERTAIN PUBLIC AREAS**

WHEREAS, according to the American Lung Association, cigarette smoking is the leading cause of preventable disease and death worldwide and, according to the Centers for Disease Control (CDC), smoking is responsible for more than 440,000 deaths annually in the United States, including deaths from secondhand smoke; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs; exposure to secondhand smoke causes nearly 50,000 deaths each year among adults in the United States; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors; and

WHEREAS, according to the California Department of Public Health, e-cigarettes contain nicotine and e-liquid forms of aerosol found on California's Proposition 65 list of chemicals known to cause cancer, birth defects, and other reproductive harm; and,

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs; and

WHEREAS, creating smoke-free areas helps protect the health of citizens of and visitors to the City of Lake Elsinore from the known dangers of secondhand smoke; and

WHEREAS, state law prohibits smoking in places of employment, within 25 feet of playgrounds and tot lots, and within 20 feet of entryways and operable windows of government buildings; and

WHEREAS, state law expressly authorizes local communities to enact additional restrictions on smoking; and

WHEREAS, there is no Constitutional right to smoke in public places; and

WHEREAS, California cities and counties have the legal authority to adopt local laws that make all areas not defined as places of employment subject to local regulation of smoking of tobacco products; and

WHEREAS, the City of Lake Elsinore supports and seeks to protect and promote the health of individuals and their environment; and

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES
ORDAIN AS FOLLOWS:**

Section 1. LEMC Chapter 8, Section 14, Smoking In Certain Public Areas, is hereby added as follows:

Chapter 8.14, Smoking In Certain Public Areas:

8.14.010	Definitions.
8.14.020	Prohibition of smoking in enclosed and unenclosed places.
8.14.030	Other requirements and prohibitions.

8.14.010 Definitions.

“Beach” means all City-owned public beaches along the lake shoreline.

“Business” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.

“City Manager” means the City Manager of the City of Lake Elsinore or designee.

“Public property” means an area that is owned, operated, controlled or under the jurisdiction of the City, including areas that a business has the use of, with or without the benefit of an encroachment permit.

“Dining area” means any area available to or customarily used by the general public that is designed, established, or regularly used for consuming food or drink.

“Electronic cigarette” means an electronic and/or battery-operated device, the use of which may resemble smoking, that can be used to deliver an inhaled dose of nicotine or other substances and includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vape device, or any other product name or description. “Electronic cigarette” does not include any inhaler prescribed by a licensed doctor.

“Employee” means any person who is employed; retained as an independent contractor by any employer, as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit, or volunteer entity.

“Employer” means any person, partnership, corporation, and association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.

“Enclosed” means:

1. Any covered or partially covered space having more than fifty percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or
2. Any space open to the sky (hereinafter “uncovered”) having more than seventy-five percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard; except that an uncovered space of three thousand square feet or more is not enclosed, such as, for example, a field in an open-air arena.

“Park” means any community park, neighborhood park, special use park, or any other recreational facility maintained by the City of Lake Elsinore.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Place of employment” means any area under the legal or de facto control of an employer, business, or nonprofit entity that an employee or the general public may have cause to 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 and warehouses.

“Public plaza” means a publicly owned square or open area, including but not limited to, for example, courtyards, plazas, and promenades.

"Public recreational area" means any public property for recreational purposes, including, but not limited to, parks, beaches, gardens, sporting facilities, stadiums, playgrounds, trails, bike paths, skateboard parks, amusement parks, and beaches controlled or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement.

“Public right-of-way” means any publicly owned right-of-way for transportation purposes, including, but not limited to, streets, highways, alleys, parkways, sidewalks, or parking lots designed to be used or is regularly used by one or more persons for transportation.

“Reasonable distance” means a distance of 10 feet in any direction from an area in which smoking is prohibited. This distance is reasonably sufficient to make it unlikely that secondhand smoke will enter nonsmoking areas.

“Service area” means any public or privately owned area used 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 "service area" also includes, but is not limited to, areas at and adjacent to information kiosks, automated teller machines (ATMs), ticket lines, transit depots, bus stops or shelters, mobile vendor lines or cab stands.

“Significant smoking retailer” means any smoking related retailer that derives seventy-five percent or more of gross sales receipts from the sale or exchange of smoking related products and smoking related paraphernalia.

“Smoking” or “to smoke” means holding or possessing a lit engaging in the lighting of a pipe, hookah, cigar, cigarette, joint, or similar type of device containing tobacco, tobacco product, nicotine, cannabis, spices, or any other plant or herbal material, or operating an electronic cigarette, or similar type of device.

8.14.020 Prohibition of smoking in enclosed and unenclosed places.

A. Enclosed Places. Smoking and the disposal of smoking related products is prohibited in enclosed public property, places of employment, public dining areas, public recreational areas, service areas, enclosed areas adjacent to areas where smoking is

prohibited, enclosed areas that share a ventilation system with areas where smoking is prohibited, and enclosed areas where smoking is prohibited by any other provision of this chapter, state law, or federal law and have a common or shared air space within the City of Lake Elsinore as such places are defined and regulated pursuant to California Labor Code Section 6404.5, which is hereby incorporated by reference as if fully set forth herein, except in places listed in Subsection C of Section 8.14.020, and except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies.

B. Unenclosed Places. Smoking and the disposal of smoking related products is prohibited in unenclosed places of employment, public dining areas, parks, playgrounds, beaches, public recreational areas, service areas, public plazas, and during public events, except in places listed in Subsection C of Section 8.14.020, and except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies.

C. Unless otherwise prohibited by law, smoking is permitted in the following locations:

1. Designated smoking areas set apart from and no larger than 25% of an entire event area;
2. Significant smoking related retailers, if minors are prohibited at all times from entering the store;
3. By performers during theatrical productions, if smoking is a part of the theatrical production;
4. Private property, except when or used as a childcare or health care facility subject to licensing requirements and children, patients, or employees are present;
5. Outdoor dining areas of businesses operating under an on-sale license for public premises issued by the California Department of Alcoholic Beverage Control. Such outdoor dining areas are exempt from the reasonable distance clause requirement stated in Section 8.14.010.
6. Public right-of-way areas.

8.14.030 Other requirements and prohibitions.

A. No person, employer, or nonprofit entity shall permit smoking or the placement of ash receptacles, in an area which is under the legal or de facto control of that person, employer or nonprofit entity and in which smoking is prohibited by law, unless otherwise required by state or federal law.

B. Notwithstanding any other provision of this chapter, any owner, landlord, employer, business, nonprofit entity or other person who controls any property, establishment or place of employment regulated by this chapter may declare any part of such area in which smoking would otherwise be permitted to be a nonsmoking area.

C. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this Chapter shall post a clear, conspicuous and unambiguous "No Smoking" or "Smoke Free" sign at each point of ingress to the area, and in at least one other point within the area. For purposes of this section, the City Manager or designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this Chapter.

D. No person, employer, or nonprofit entity shall intimidate or threaten for the purpose of retaliating against another person who seeks to attain compliance with this Chapter.

Section 2: Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 3: Effective Date. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

Section 4: Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED this _____ day of _____, 2017.

Robert Magee
Mayor

Attest:

Approved as to Form

Susan M. Domen, MMC, City Clerk

Barbara Leibold, City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF LAKE ELSINORE)

I, Susan M. Domen, MMC, City Clerk of the City of Lake Elsinore, do hereby certify that the foregoing Ordinance No. 2017- _____ was duly and regularly passed and adopted by the City Council of the City of Lake Elsinore at its regular meeting held on the _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Lake Elsinore, California on the _____ day of _____, 2017.

Susan M. Domen, MMC
City Clerk