

## **Chapter 8.36 Regulation and Prohibition of Smoking**

### **§ 8.36.010 Purpose of chapter.**

Smoking of tobacco, or any other weed or plant, is a positive danger to health and a cause of material annoyance, inconvenience, discomfort and health hazard to those who are present in confined places. In addition, the California Air Resources Board has placed 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 there is no safe level of exposure. Therefore, it is the city's intent to provide for the public health, safety and welfare, by prohibiting the smoking of tobacco, or any other weed or plant, in public places and places of employment, except in designated smoking areas as set forth herein. Smoking tobacco or any other weed, plant, or substance, including through electronic smoking devices, poses a danger to public health and causes material annoyance, inconvenience, discomfort, and health hazards to those present in confined places. The California Air Resources Board has categorized secondhand smoke as a toxic air contaminant with no safe level of exposure, placing it in the same category as the most toxic automotive and industrial air pollutants. Therefore, it is the City's intent to protect public health, safety, and welfare by prohibiting the smoking of tobacco or any other weed, plant, or substance in public places and places of employment, except in designated smoking areas as set forth herein.

### **§ 8.36.020 Definitions.**

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

"City" means the City of Palm Desert and its related entities, including the Palm Desert Housing Authority.

"Common area" means every unenclosed area of a multiunit residence that residents of more than one (1) unit of that multiunit residence are entitled to enter or use, including, for example, paths, courtyards, playgrounds, swimming pools, parking lots, and picnic areas.

"Dining area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.

"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic. Electronic smoking device

does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Employee” means any person who is employed or retained as an independent contractor by any employer or nonprofit entity in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer or nonprofit entity.

“Employer” means any person, business, entity or nonprofit entity that retains the service of one (1) or more employees.

“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 (3) walls or other vertical boundaries of any height whether or not those boundaries include vents or other openings; or
2. Four walls or other vertical boundaries that exceed six (6) feet in height whether or not those boundaries include vents or other openings.

“Multiunit residence” means a residential property containing two (2) or more units.

“Nonprofit entity” means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, education, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is a nonprofit entity within the meaning of this chapter.

“Person” means any natural person, business, cooperative association, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including government agencies.

“Place of employment” means any enclosed areas under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias. A private residence is not a place of employment, except for childcare facilities in private homes.

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

“Primary entrance” means the entrance to a building or business through which the majority of patrons enter. A building or business has only one primary entrance. Where the door into the establishment is at the end of a corridor formed by two or more vertical walls or barriers, with or without overhead cover, the primary entrance shall be deemed to be at the end of the corridor open to the exterior.

“Public place” means:

1. Any area to which the public is invited or in which the public is permitted, including, but not limited to, shopping malls, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting rooms, reception areas, educational facilities, health facilities, public transportation facilities, and their associated parking areas. A private residence or the fairway or putting green of a golf course within a private country club is not a public place;
2. Areas measured a distance of forty (40) feet from the entrances and exits to City-owned public places;
3. Areas measured a distance of twenty (20) feet from the primary entrances to publicly or privately-owned commercial, industrial, institutional, or office professional buildings;
4. Unenclosed areas owned by the City, including, but not limited to, City-owned property, parks, playgrounds, restrooms, baseball and soccer fields, except the golf course area of Desert Willow, or where specific signs are posted permitting such smoking;
5. Unenclosed public events, including, but not limited to, sports events, entertainment, speaking performances, ceremonies, and fairs;
6. Hotels, except in designated areas.

“Reasonable distance” means a distance of twenty (20) feet or, with respect to a designated smoking area or such larger area as the city manager reasonably determines in writing to be necessary in a given circumstance to ensure that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area.

“Secondary entrance” means any entrance to a building or business that is not the primary entrance. One building or business may have multiple secondary entrances.

“Secondhand smoke” means smoke from tobacco or any other weed, plant, or substance created by burning or carrying any lighted pipe, hookah, cigar, cigarette, or electronic smoking device of any kind, and the smoke exhaled by an individual who engages in smoking.

“Shopping mall” means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.

“Smoke,” or “smoking” means and includes any of the following: (1) the direct burning or indirect heating of any cigar, cigarette, pipe, electronic smoking device, or any similar kind of smoking equipment or article, using any form of tobacco, plant product, or other combustible substance in any form, or (2) the holding or carrying of a lighted or operated cigar, cigarette, pipe, electronic smoking device, or any other lighted smoking equipment or device, or (3) emitting or exhaling the smoke directly from a cigar, cigarette, pipe, electronic smoking device, or any other lighted smoking equipment or device. Smoke also means the gaseous or vaporous products or particles created by the use of a lighted or operated pipe, cigar, cigarette, electronic smoking device, or other kind of smoking equipment or article.

“Tobacco product” means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco product as defined in California Health and Safety Code Section 104559.5(a)(17), including, but not limited to, any product containing, made, or derived from tobacco or nicotine intended for human consumption, electronic devices that deliver nicotine or other vaporized liquids, and any component, part, or accessory of a tobacco product. Tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Unenclosed area” means any area that is not an enclosed area.

#### **§ 8.36.030 Prohibition of smoking in unenclosed areas.**

A. Smoking is prohibited in the unenclosed areas of the following places within the City, except places where smoking is already prohibited by state or federal law, in which case, those laws apply:

1. Public places;
2. Places of employment;
3. Businesses, including, but not limited to, restaurants and bars, and other public accommodations. In addition, smoking is prohibited within a reasonable distance of the primary entrance to a dining area. Where a business has more than one entrance, an outdoor smoking area may be designated within a reasonable distance of one of the secondary entrances. In such case, smoking is prohibited within a reasonable distance of the primary entrance and any other secondary entrances.
4. Common areas of multifamily residential properties owned by the City, except where permitted under Section 8.36.070.

B. No person shall dispose of smoking waste or place or maintain a receptacle for smoking waste in an area in which smoking is prohibited by this chapter or other law, including within any reasonable distance required by this chapter.

#### **§ 8.36.040 Designation of smoking areas.**

A. Places Where Smoking Permitted. Notwithstanding Section 8.36.030 of this chapter, smoking is permitted in the following locations within the City, unless otherwise provided by state or federal law:

1. Private residential property, other than: (a) those private residential properties used as a child-care or health-care facility subject to licensing requirements when employees, children or patients are present; or (b) home-based business where members of the public are invited. Nothing in this chapter shall require a person or entity who or which owns or controls a private residential property, including, but not limited to, a condominium association or an apartment owner, to permit smoking and such a person may prohibit smoking throughout the property he, she or it owns or controls.

2. Designated areas in shopping mall unenclosed areas, provided that: (a) there is not more than one (1) square foot of area designated for smoking for every twenty thousand (20,000) square feet of rentable space of the shopping mall (provided that each shopping mall may have at least one designated smoking area of forty (40) or fewer square feet in area); (b) the area is prominently marked with signs; (c) it is located the greatest distance practicable, and at least a reasonable distance, from any doorway or opening into an area or any accessway from parking facilities to the retail areas of the shopping mall; (d) smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property; and (e) the location(s) of the designated smoking area(s) is or are approved in writing by the city manager of the City or designee based on the standards of this subsection and the goals of this chapter.

3. Any unenclosed area in which no nonsmoker is present and, due to the time of day or other factors, it is not reasonable to expect another person to arrive.

B. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to eliminate the toxic effect of smoke in adjacent nonsmoking areas, but employers are not required to incur any expense to make structural or physical modifications in providing these areas. There shall be no designated smoking areas in areas that have a common or shared air space with other areas in which smoking is prohibited such as, without limitation, air conditioning systems, heating systems, ventilation systems, entries, doorways, hallways, and stairways or within a reasonable distance of commercial building entries. In all disputes in the work place, the rights of the nonsmoker shall be given priority over the rights of the smoker.

C. No person shall smoke in an area in which smoking is otherwise permitted by this chapter or other law within a reasonable distance from any primary entrance, opening, crack, or vent into an area in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of that area.

### **§ 8.36.050 Optional prohibition.**

All managers and owners of any establishment exempted from the provisions of Section 8.36.070 serving or doing business with the public may, at their discretion, post “No Smoking” signs within various areas of their businesses and utilize the full right of the provision of this chapter. No public place other than those enumerated in Section 8.36.070 shall be designated as a smoking area in its entirety.

### **§ 8.36.060 Posting of signs.**

Signs which designate smoking or no smoking areas established by this chapter shall be clearly, sufficiently, and conspicuously posted in every room, building or other place so covered by this chapter. “No Smoking” signs shall be specifically placed in retail food productions and marketing establishments, including grocery stores and supermarkets open to the public, so they are clearly visible to persons upon entering the store, clearly visible to persons in checkout lines and clearly visible to persons at meat and produce counters. The manner of such posting, including the wording, size, color, design and place of posting, whether on the walls, doors, tables, counters, stands or elsewhere, shall be at the discretion of the owner, operator, manager or other person having control of such room, building or other place, so long as clarity, sufficiency and conspicuousness are apparent in communicating the intent of this chapter.

### **§ 8.36.070 Exceptions.**

Exceptions to the smoking prohibitions of this chapter are as follows:

A. Private offices, including those in the work place, designated areas of hotels and motels, areas and rooms while in use for private social functions, private hospital rooms, psychiatric facilities, jails, and stores that deal exclusively in tobacco products and accessories, provided such stores comply with all state and local laws, including California Labor Code Section 6404.5 and California Health and Safety Code Section 104559.5. No pharmacy shall be considered a store that deals exclusively in tobacco products and accessories.

B. Fairways or putting greens of golf courses within private country clubs, provided smoking complies with all applicable state and local laws. Notwithstanding the foregoing, nothing in this chapter shall require a person or entity that owns or controls a private country club to permit smoking and such a person or entity may prohibit smoking throughout the property he, she or it owns or controls.

C. Areas measured within a twenty-foot zone outside of a building’s primary entrance, as long as the smoker is actively passing through on the way to another destination and so long as the smoke does not enter any indoor area in which smoking is prohibited.

D. Any owners or other person having control of a business or other establishment subject to this chapter may apply to the city for an exemption or

modification of the provisions of this chapter due to unique or unusual circumstances or conditions.

E. Up to twenty-five percent of the contiguous deck area around swimming pools in multifamily residential properties owned by the City. Such designated smoking areas must be clearly signed.

**§ 8.36.080 Nonretaliation.**

No person or employer shall discharge, refuse to hire or in any manner retaliate against an employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

**§ 8.36.090 Enforcement.**

A. The owner, operator or manager of any facility, business or agency within the purview of this chapter shall comply herewith. Such owner, operator or manager shall post, or cause to be posted, all “No Smoking” signs required by this chapter. Such owner, operator or manager shall not allow service to any person who violates this chapter by smoking in a posted “No Smoking” area.

B. It shall be the responsibility of employers to disseminate information concerning the provisions of this chapter to employees.

C. The city’s code enforcement officers, police, and fire personnel are authorized to issue citations for violation of the provisions of this chapter. Any peace officer may enforce the provisions of this Chapter. The City’s code compliance department may designate additional persons to monitor and facilitate compliance with this Chapter.

D. The City’s code compliance department shall coordinate with the California Department of Public Health and the California Department of Tax and Fee Administration to ensure compliance with state laws regarding smoking and tobacco use, including California Labor Code Section 6404.5. The department may use audio or video recording equipment when conducting inspections to record and document illegal smoking activities.

**§ 8.36.100 Violation—Penalty.**

A. Any person who violates any provision of this chapter by: (1) smoking in a posted “No Smoking” area; (2) failing to post or cause to be posted a “No Smoking” sign required by this chapter; (3) owning, managing or operating a business or building in which the prohibitions of this chapter are violated; or (4) violating any other provision of this chapter, is deemed guilty of an infraction in accordance with Chapter 1.12 of this code. Violations of this chapter may be criminally prosecuted as infractions or misdemeanors at the discretion of the prosecuting attorney as the interests of justice require.

B. Any violation of this chapter is hereby declared to be a nuisance, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this Municipal Code and state law, including, but not limited to, an action for abatement or injunctive relief.

C. Each incident of smoking in violation of this chapter is an infraction subject to:

1) a fine in an amount not to exceed fifty dollars (\$50) for a first conviction of an offense;

(2) a fine in an amount not to exceed one hundred dollars (\$100) for a second conviction of the same offense within a twelve-month period of the date of the first offense; and

(3) a fine in an amount not to exceed two hundred and fifty dollars (\$250) for the third conviction of the same offense within a twelve-month period of the date of the first offense.