

ORDINANCE NO. 2018-008

AN ORDINANCE OF THE CITY OF CITRUS HEIGHTS REPEALING AND REPLACING ARTICLE II OF CHAPTER 34 OF THE CITY OF CITRUS HEIGHTS MUNICIPAL CODE REGARDING CLEAN INDOOR AIR AND SMOKING

The City Council of the City of Citrus Heights does ordain as follows:

SECTION 1. Amendment. Chapter 34, Article II, Sections 34-26 through 34-52 “Clean Indoor Air” of the Citrus Heights City Code are hereby repealed in its entirety and replaced to read as set forth below:

Article II. Clean Indoor Air and Smoking

34-26 Purpose.

The purpose of this ordinance is to protect the public health and welfare by prohibiting smoking of tobacco products, electronic smoking devices, and marijuana in public places and places of employment, other than those that have been designated as a smoking area, and to guarantee the right of nonsmokers to breathe smoke-free air.

The City of Citrus Heights hereby finds that:

- (a) The U.S. Surgeon General 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) establishing smoke free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; 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.
- (b) Even occasional exposure to secondhand smoke is harmful, and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.
- (c) 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. The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces,

classifies impaired respiratory function as a disability.

- (d) 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 electronic 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. Electronic cigarettes produce an aerosol or 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. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smoke free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke free laws.
- (e) The smoking of tobacco, marijuana, and the use of electronic cigarettes are forms of air pollution and are a danger to health as well as a material public nuisance.

Sec. 34-27 Authority.

This article is enacted pursuant to the city’s general authority to protect health, safety, and welfare, for the purpose of restricting and regulating smoking in public places and in places of work in order to reduce the hazards and nuisance which smoking causes to those who are involuntarily exposed.

Sec. 34-28 Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings defined in this section, except where the context clearly indicates a different meaning:

- (a) *Apartment Building* means any residential dwelling other than a single family home, duplex or accessory dwelling unit.
- (b) *Bar* means an establishment that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which food may or may not be served. Also includes but not limited to, taverns, nightclubs, cocktail lounges, brew pubs, and cabarets.
- (c) *Business* means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered;

and private clubs.

- (d) *Cigar Bar/Lounge* means a business that exclusively caters to patrons who smoke cigars.
- (e) *City* means the City of Citrus Heights.
- (f) *Common Area* means any portion of an apartment building which all tenants of the apartment building are entitled to use.
- (g) *Electronic Smoking Device* means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- (h) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- (i) *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons. For the purposes of this article, Employer shall not mean any self-employed individual with no other employees.
- (j) *Enclosed Area* means all space between a floor and a ceiling that is bounded on at least two sides by closed walls, doorways, or windows.
- (k) *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.
- (l) *Hookah* means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- (m) *Medical Marijuana* means marijuana used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code §§ 11362.5 et seq.) and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000 et seq.).
- (n) *Non-medical marijuana* means marijuana that is intended to be used for non-medical

purposes pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000 et seq.).

- (o) *Outdoor* means any place that is not an enclosed area.
- (p) *Place of Employment* means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or residential care facility.
- (q) *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 grounds, public park or on city grounds.
- (r) *Person* means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club, or other organization of any kind, except the city or any other public agency.
- (s) *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. section 501.
- (t) *Public Event* means any indoor or outdoor event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers’ markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- (u) *Public Place* means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping centers, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a licensed child care, adult day care, or residential care facility.
- (v) *Recreational Area* means any outdoor public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, athletic fields, gardens, parks, plazas, skate parks, swimming pools, nature

preserves, and trails.

- (w) *Residential Care Facility* means a single dwelling or multi-unit facility licensed or supervised by a Federal, State, or local health/welfare agency that provides 24-hour nonmedical care of unrelated persons who are handicapped and in need of personal services, supervision; assistance essential for sustaining the activities of daily living; for the protection of the individual in a family-like environment; including halfway houses and social rehabilitation places.
- (x) *Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.
- (y) *Schools* means all public school facilities and any school or educational institution operated by a commercial enterprise or nonprofit entity for the purpose of providing academic classroom instruction; trade, craft, computer or other technical training; or instruction in dancing, artistic, musical or other cultural skills.
- (z) *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 or not 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.
- (aa) *Shopping Center* means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- (bb) *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, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. Smoking also means the use or vaping of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this article.
- (cc) *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.
- (dd) *Vaping* means the smoking of any electronic smoking device.
- (ee) *Youth sports event* is any practice, game, or related activity, organized by any entity, at which athletes up to 18 years of age are present.

Sec. 34-29 Other Applicable Laws.

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

Sec. 34-30 City of Citrus Heights Facilities and Properties.

Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or controlled by the city, as well as all outdoor property adjacent to such buildings and under the control of city, except areas that have been designated as an employee smoking area.

Sec. 34-31 Prohibition of Smoking in Enclosed Public Places.

Smoking is prohibited in all enclosed public places within the city, including but not limited to, the following places:

- (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, churches, laundromats, professional offices, and retail service establishments.
- (c) Banks, including savings and loan associations, credit unions, and other similar institutions which offer financial services to members of the general public.
- (d) Bars.
- (e) Bingo facilities.
- (f) Child care and adult day care facilities.
- (g) Convention facilities.
- (h) Educational facilities, both public and private.
- (i) Elevators.
- (j) Gambling facilities.
- (k) Health care facilities.
- (l) Hotels and motels.
- (m) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and residential care facilities.

- (n) Parking structures.
- (o) Private residences that operate as a licensed child day care home.
- (p) Private residences that operate as an adult day care or residential care facility, but only during the times when such residences are in operation.
- (q) Polling places.
- (r) Public transportation vehicles, including buses and taxicabs.
- (s) Recreational halls.
- (t) Restaurants.
- (u) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (v) Retail stores.
- (w) Rooms, chambers, places of meeting or public assembly, under the control of an agency, board, commission, committee or council of the city or a political subdivision of the State.
- (x) Schools, including public school facilities that have been authorized by school district management to be used by members of the general public.
- (y) Service lines.
- (z) Shopping centers.
- (aa) Sports arenas, including enclosed places in outdoor arenas.
- (bb) Terminals utilized by members of the general public for the purpose of being transported upon or departing from trains, buses, taxis, or any other form of public transportation.
- (cc) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 34-32 Prohibition of Smoking in Places of Employment.

- (a) Smoking shall be prohibited in all enclosed areas of places of employment and in all outdoor places of employment, where two or more employees are required to be at any point in the course of their employment.
 - (1) This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical

facilities, cafeterias, employee lounges, stairways, restrooms, vehicles, and all other enclosed facilities.

- (b) Each commercial enterprise, nonprofit entity, and the city, shall comply with these smoking prohibitions and shall be responsible for their implementation in the workplace.

Sec. 34-33 Prohibition of Smoking in Outdoor Public Places.

Smoking shall be prohibited in the following outdoor places:

- (a) In an area within 20 feet of entrances, exits, operable windows, and ventilation systems of a public building.
- (b) Within a distance of 20 feet of a main entrance, exit, operable windows or ventilation system of an enclosed area where smoking is prohibited.
- (c) In, and within 20 feet of, outdoor seating or serving areas of restaurants and bars.
- (d) In outdoor shopping centers.
- (e) In, and within 20 feet of, all outdoor arenas, stadiums, amphitheaters, bleachers and grandstands for use by spectators at sporting and other public events.
- (f) In, and within 250 feet of, a youth sports event.
- (g) In, and within 25 feet of, all outdoor recreational areas.
- (h) In, and within 25 feet of, all outdoor playgrounds and tot lot sandbox areas.
- (i) In, and within 20 feet of, all outdoor public events.
- (j) In, and within 20 feet of, all outdoor city public transportation stations, platforms, and shelters.
- (k) In, and within all public parks.
- (l) In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles within 20 feet of the point of service.
- (m) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential 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 20 feet from entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. A

designated smoking area may not be within 20 feet of an adjacent property line.

Sec 34-34 Smoking Non-Medical Marijuana.

Smoking non-medical marijuana is prohibited in all public places and where smoking is prohibited by this article.

Sec 34-35 Smoking Medical Marijuana.

Unless otherwise permitted by Health and Safety Code §§ 11362.7 *et seq.*, smoking medical marijuana is prohibited in all public places and where smoking is prohibited by this article.

Sec. 34-36 Private Residences.

This Article shall not be construed to affect smoking in private residences.

Sec. 34-37 Apartment Buildings.

Smoking is prohibited in all outdoor and enclosed common areas of apartment buildings that are not designated as smoking areas.

Sec. 34-38 Declaration of Establishment or Outdoor Area as Nonsmoking.

Nothing in this article shall be construed to limit the ability of an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area to prohibit smoking in that entire establishment, facility, or outdoor area.

Sec. 34-39 Posting of Signs.

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this article shall:

- (a) Clearly and conspicuously 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) in that place.
- (b) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post “No Smoking” signs in appropriate locations as determined by the City Manager or an authorized designee.

Sec. 34-40 No Retaliation; No Waiver of Rights.

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against a person that seeks enforcement of this article or otherwise protests smoking by others.

- (b) Notwithstanding Section 34-41, violation of this subsection shall be a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1000) for each violation.

Sec. 34-41 Violations and Penalties.

- (a) A person who smokes in an area where smoking is prohibited by this article shall be guilty of an infraction, punishable by:
 - (1) A fine not to exceed fifty dollars (\$50) for a first violation.
 - (2) A fine not to exceed one hundred dollars (\$100) for a second violation within one (1) year of first violation.
 - (3) A fine not to exceed one hundred fifty dollars (\$150) for a third violation and for each additional violation, within one (1) year of first violation.
- (b) Except as otherwise provided in Section 34-38, a person who owns, manages, operates, or otherwise controls a public place or place of employment, and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:
 - (1) A fine not to exceed one hundred dollars (\$100) for a first violation.
 - (2) A fine not to exceed two hundred dollars (\$200) for a second violation within one (1) year of first violation.
 - (3) A fine not to exceed five hundred dollars (\$500) for a third violation and for each additional violation, within one (1) year of first violation.
- (c) In addition to the fines established by this section, violation of this article 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 article is hereby declared to be a public nuisance, which may be abated by the city by such means as provided for by law, and the city may take action to recover the costs of the nuisance abatement.
- (e) Each day on which a violation of this article occurs, shall be considered a separate and distinct violation.
- (f) Payment of a fine under this section shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the fine.
- (g) This article may also be enforced via administrative or civil actions as authorized by the municipal code.

(h) Notwithstanding any other provision of this article, an employee or private resident may bring legal action to enforce this article.

Sec. 34-42 Enforcement.

- (a) This article shall be enforced by the Chief of Police, or the Chief of Police’s designee.
- (b) Any resident who desires to register a complaint hereunder, may do so with the Chief of Police, or the Chief of Police’s designee.
- (c) 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 of Citrus Heights or its agents to compel enforcement of this chapter.

Sec. 34-43 Exemption

Unless otherwise prohibited by law, the following types of businesses and clubs are exempt from section 34-31 of this ordinance:

- (a) Private Clubs
- (b) Cigar Bars/Lounges

Sec. 34-44 Liberal Construction

This chapter shall be liberally construed to further its purposes.

SECTION 2. Severability. If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days of its adoption, this ordinance shall be published at least once in a newspaper of general circulation published and circulated in the City of Citrus Heights.

PASSED AND ADOPTED by the City Council of the City of Citrus Heights this 8th day of November, 2018 by the following vote:

AYES: Council Members: Daniels, Fox, Slowey, Bruins, Miller
NOES: Council Members: None
ABSENT: Council Members: None
ABSTAIN: Council Members: None



Steve Miller, Mayor



Amy Van, City Clerk