

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THOUSAND OAKS REPEALING CHAPTER 5 OF TITLE 6, CONCERNING SMOKING AND REENACTING SAID CHAPTER WITH SIGNIFICANT REVISIONS TO SMOKING PROHIBITIONS.

The City Council of the City of Thousand Oaks does hereby ordain as follows:

Part 1  
(Uncodified)  
Findings.

WHEREAS, the U.S. Surgeon General has concluded that smoking harms every organ of the body, reducing the health of smokers in general and causing many diseases, including: bladder, esophageal, laryngeal, lung, oral, throat, cervical, kidney and stomach cancers, chronic lung diseases, coronary heart and cardiovascular diseases, abdominal aortic aneurysm, acute myeloid leukemia, cataract, pneumonia and periodontitis;<sup>1</sup>

WHEREAS, each year an estimated 438,000 people in the United States die prematurely from smoking or exposure to second-hand smoke, making tobacco use the nation's leading cause of preventable death;<sup>2</sup>

WHEREAS, the U.S. Surgeon General has concluded that there is no risk-free level of exposure to second-hand smoke, and neither separating smokers from non-smokers nor installing ventilation systems effectively eliminates second-hand smoke;<sup>3</sup>

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<sup>1</sup> U.S. Dep't of Health and Human Services. *The Health Consequences of Smoking: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office of Smoking and Health (2004), available at [http://www.cdc.gov/tobacco/data\\_statistics/sgr/sgr\\_2004/chapters.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2004/chapters.htm) (last accessed June 9, 2008).

<sup>2</sup> U.S. Dep't of Health and Human Services. *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death 2007*. Atlanta, GA: U.S. Department of Health and Human Services, Center for Disease Control and Prevention (2007), available at [http://www.cdc.gov/tobacco/basic\\_information/00\\_pdfs/AAGTobacco2007.pdf](http://www.cdc.gov/tobacco/basic_information/00_pdfs/AAGTobacco2007.pdf) (last accessed June 9, 2008).

<sup>3</sup> U.S. Dep't of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General –Executive Summary*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (2006), available at <http://www.surgeongeneral.gov/library/second-handsmoke/report/chapter1.pdf> (last accessed June 9, 2008).

WHEREAS, the California Air Resources Board has put second-hand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant;<sup>4</sup>

WHEREAS, the California Office of Environmental Health Hazard Assessment has included second-hand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm;<sup>5</sup>

WHEREAS, each year, primarily because of exposure to second-hand smoke, an estimated 3,000 non-smoking Americans die of lung cancer, more than 35,000 die of heart disease, and about 150,000-300,000 children younger than 18 months have lower respiratory tract infections;<sup>6</sup>

WHEREAS, the medical and economic costs to non-smokers suffering from lung cancer or heart disease caused by second-hand smoke are nearly \$6 billion per year in the United States;<sup>7</sup>

WHEREAS, in 2004 it was estimated that 13.2% of California high school students smoke;<sup>8</sup>

WHEREAS, the United States Environmental Protection Agency has found second-hand smoke to be a risk to public health, and has classified second-hand smoke as a group A carcinogen, the most dangerous class of carcinogen;<sup>9</sup>

WHEREAS, children exposed to second-hand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma;<sup>10</sup>

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<sup>4</sup> Cal. Air Resources Bd., Resolution 06-01, at 5 (Jan. 26, 2006), available at <http://www.arb.ca.gov/regact/ets2006/res0601.pdf> (last accessed June 9, 2008).

<sup>5</sup> Cal Evtl. Prot. Agency, Office of Evtl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity* 17, (Aug. 11, 2006), available at [http://www.oehha.ca.gov/prop65/prop65\\_list/files/P65single081106.pdf](http://www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf) (last accessed June 9, 2008).

<sup>6</sup> U.S. Dep't of Health and Human Servs., Center for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death 2007* (2007), available at [http://www.cdc.gov/tobacco/basic\\_information/00\\_pdfs/AAGTobacco2007.pdf](http://www.cdc.gov/tobacco/basic_information/00_pdfs/AAGTobacco2007.pdf) (last accessed June 9, 2008).

<sup>7</sup> American Academy of Actuaries, *Costs Associated with Second-hand Smoke* (October, 2006), available at [http://www.actuary.org/pdf/health/smoking\\_oct06.pdf](http://www.actuary.org/pdf/health/smoking_oct06.pdf) (last accessed June 9, 2008).

<sup>8</sup> Tobacco Control Section, Cal Dep't of Health Servs., *Youth Smoking* (November 2005), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/YouthSmoking.pdf> (last accessed June 9, 2008).

<sup>9</sup> Cal. Dep't of Health Services *Indoor & Outdoor Second-hand Smoke Exposure* (2005), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/Second-handSmoke.pdf> (last accessed June 9, 2008).

<sup>10</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon*

WHEREAS, scientific evidence indicates that a non-smoker sitting a few feet downwind from a smoldering cigarette is likely to be exposed to substantial levels of contaminated air for brief periods of time;<sup>11</sup>

WHEREAS, with certain exceptions, State law prohibits smoking inside an enclosed place of employment;<sup>12</sup>

WHEREAS, State law prohibits public school students from smoking or using tobacco while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees;<sup>13</sup>

WHEREAS, State law prohibits smoking in playgrounds and tot lots and within twenty feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions;<sup>14</sup>

WHEREAS, seventy-three percent of Californians surveyed in 2004 agreed that smoking should be prohibited in outdoor dining areas and restaurants.<sup>15</sup>

## Part 2

Chapter 5, Smoking, of Title 6, Sanitation and Health, of the Thousand Oaks Municipal Code is hereby repealed in its entirety and re-enacted to read as follows:

### CHAPTER 5. SMOKING PROHIBITIONS

#### **Sec. 6-5.101. Purpose.**

This chapter controls exposure to second-hand smoke by prohibiting smoking at certain locations. Exposure to second-hand smoke is a significant health hazard for several population groups, including elderly people, individuals with cardiovascular diseases, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing second-hand smoke also include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function,

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*General 11 (2006), available at <http://www.surgeongeneral.gov/library/second-handsmoke/report/chapter1.pdf> (last accessed June 9, 2008).*

<sup>11</sup> Neil E. Klepeis, Wayne R. Ott, and Paul Switzer *Real-Time Measurement of Outdoor Tobacco Smoke Particles*, Journal of the Air and Waste Management Association, Volume 57 (May 2007).

<sup>12</sup> Cal. Lab. Code § 6405.5 (Lexis 2007).

<sup>13</sup> Cal. Educ. Cod § 48901(a) (Lexis 2007).

<sup>14</sup> Cal. Health & Safety Code § 104495 (Lexis 2007); Cal. Gov. Code §7596 (Lexis 2007).

<sup>15</sup> Cal. Dep't of Health Services *Indoor & Outdoor Second-hand Smoke Exposure (2005)* <http://www.dhs.ca.gov/tobacco/documents/pubs/Second-handSmoke.pdf> (last accessed June 9, 2008).

bronchoconstriction and bronchospasm. The intent and purpose of prohibiting smoking at the identified locations is to protect the public health, safety, and welfare by reducing the number of locations in Thousand Oaks where exposure to second-hand smoke can occur.

**Sec. 6-5.102. Definitions.**

The following words and phrases, as used in this chapter or in any other applicable municipal regulation, shall have the following meanings:

(a) “Common area at a shopping center” means any outdoor common area of a shopping center accessible to and usable by the occupants or customers of more than one retail establishment used as a lobby, outdoor eating area, play area, gathering area with either seats or benches provided, or gathering areas having a water feature such as a fountain.

(b) “Dining area” means a non-residential location where food or beverages are served by a business or routinely consumed by customers. This includes, but is not limited to, restaurant or bar seating areas, outdoor customer dining areas and patios.

(c) “Playground” means any park or recreational area designed in whole or in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar area or facility located on public or private school grounds, or on city property.

(d) “Outdoor gathering and event area” means any non-enclosed area accessible to the general public where people are gathered to witness or participate in an event. For the purposes of this section, such gathering and event areas include, but are not limited to, permanent or temporary grandstands, bleachers, other seating areas, standing areas, viewing areas, playing courts and fields, circulation areas, and ancillary areas such as lobbies, foyers, restrooms, and concession areas. For the purposes of this section, events include, but are not limited to, shows, movies, plays, lectures, exhibitions, demonstrations, concerts, competitions, sporting events, arts and crafts shows, fairs, pageants, and parades, whether or not an admission fee is required or other compensation is provided.

(e) “Service area” means a place where people use or wait for services provided by a private or government entity. This includes, but is not limited to, bus stops, ATM lines, information kiosks and theater lines.

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

(g) “Smoke or smoking” means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment used for burning any tobacco product, weed, plant, or any other combustible substance.

(h) "Designated smoking area" means any area designated for smoking pursuant to this chapter. A designated smoking area shall be as small as practicable to accommodate the number of smokers that are expected to use the area, but in no event may the designated smoking area exceed more than 20% of the total event area. Designated smoking areas shall be posted with one or more conspicuously displayed signs that identify the area as a designated smoking area.

(i) "Tobacco shops" means any retail or wholesale business establishment the main purpose of which is the sale of tobacco products, including but not limited to, cigars, pipe tobacco and smoking accessories.

### **Sec. 6-5.103. Prohibition of Smoking in Public Places.**

(a) It is unlawful for any person to smoke in the following places:

- (1) Any playground and within 25 feet thereof;
- (2) Any public gardens;
- (3) Any outdoor service area;
- (4) The grounds of the Thousand Oaks Civic Arts Plaza, except in any designated smoking area;
- (5) Any outdoor dining area except those receiving a Special Use Permit exempting them from this prohibition;
- (6) The public portion of any public library grounds;
- (7) Any Common Area at a Shopping Center;
- (8) Out of doors within 25 feet of the entrance or exit of any building open to the public except tobacco shops that are a free standing business;
- (9) Any outdoor gathering and event area, except in separate designated smoking area. This prohibition applies from the time 60 minutes before the event begins to the time 60 minutes after the event ends;
- (10) A bus, taxi cab or other means of public transportation.

(b) No person, owner, business owner, operator or manager shall knowingly or intentionally permit smoking in a Common Area at a shopping center or in an outdoor dining area under his, her, or its legal or de facto control. This chapter does not require the physical ejection of any person from the business.

### **Sec. 6-5.104. Where Smoking is Allowed.**

(a) Smoking is permitted in any outdoor area not listed above in Sec. 6-5.103;

(b) Notwithstanding any other provision of this Chapter, any owner, operator, manager, or other person who controls any establishment described in this Chapter may declare that entire establishment as a nonsmoking facility.

**Sec. 6-5.105. Disposal of Smoking Waste.**

No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this Chapter, except in a designated waste disposal container.

**Sec. 6-5.106. Posting of Signs in Public Places.**

(a) "No Smoking" signs shall be conspicuously posted and an ashtray placed at every public entrance in every public place where smoking is prohibited by this chapter, and "smoking area" signs shall be posted only in those public areas authorized for smoking by this chapter.

(b) Every business or property subject to this ordinance shall post the signs required by this chapter by September 15, 2008. Every business or property which becomes subject to the provisions of this chapter after its effective date shall post the required signs immediately upon commencing operations.

(c) Signs shall have letters of not less than one inch (1") in height or shall have 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) not less than five inches (5") in diameter. These signs shall be posted and maintained in good condition by the owner, operator, manager or other person having control of such building or other place.

**Sec. 6-5.107. Prohibition of Cigarette or Tobacco Vending Machines.**

(a) On or after August 9, 2008, no person shall sell or dispense cigarettes or other tobacco products by vending machine or any other device that automatically sells or dispenses tobacco products.

(b) It is unlawful to sell cigarettes out of the manufacturer's package or without required health warnings.

**Sec. 6-5.108. Violations and Penalties.**

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(c) Any person who violates any provision of this chapter shall be guilty of an infraction, punishable as provided in section 1-2.03 of this Municipal Code.

(d) Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering.

**Sec. 6-5.109. Other Applicable Laws.**

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

**Part 3**  
**(Uncodified)**  
**Severability.**

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Part 4**  
**(Uncodified)**  
**Continuation.**

Repeal of any provision of Chapter 5, Smoking, of Title 6 of the Thousand Oaks Municipal Code herein does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

**Part 5**  
**(Uncodified)**  
**Effective Date.**

This Ordinance shall take effect on the thirty-first (31<sup>st</sup>) day following its final passage and adoption.

**PASSED AND ADOPTED**

**ATTEST:**

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Jacqui Irwin, Mayor  
City of Thousand Oaks, California

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Linda D. Lawrence, City Clerk

**APPROVED AS TO FORM:**  
Office of the City Attorney

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Amy Albano, City Attorney

**APPROVED AS TO ADMINISTRATION:**

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Scott Mitnick, City Manager