

ORDINANCE 02-2019

**BOROUGH OF EATONTOWN
COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

AN ORDINANCE AMENDING CHAPTER 67 OF THE CODE OF THE BOROUGH OF EATONTOWN ENTITLED, "SMOKING"

BE IT ORDAINED, by the Borough Council of the Borough of Eatontown, County of Monmouth and State of New Jersey that Chapter 67 of the Code of the Borough of Eatontown, entitled, "Smoking" shall be amended to add the following:

§67-1. STATEMENT OF PURPOSE.

The Borough Council of the Borough of Eatontown does hereby determine that smoking of tobacco constitutes a fire, health and safety hazard and a nuisance in the municipal buildings and in the public parks, as well as all other indoor and outdoor public places, and requires prohibition thereof.

§67-2. DEFINITIONS.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

BAR

Means any business establishment or a portion of a non-profit entity, which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons or members on the premises in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages.

CIGAR BAR

Means any bar, or area within a bar designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar bar that is in an area within a bar shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the non-smoking areas of the bar, so that the air from the smoking area is not recirculated to the non-smoking area and smoke is not back streamed into the non-smoking area.

CIGAR LOUNGE

Means any establishment, or area within an establishment, designated specifically for the smoking of tobacco products purchased on the premises or elsewhere; except that a cigar lounge that is in an area within an establishment shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the non-smoking areas of the establishment, so that the air from the smoking area is not recirculated to the non-smoking area and smoke is not back streamed into the non-smoking area.

ELECTRONIC SMOKING DEVICE

Means an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, cigarillo or pipe.

INDOOR PUBLIC PLACE

Means a structurally enclosed place of business, commerce or other service related activity, whether publicly or privately owned or operated on a for-profit or non-profit basis, which is generally accessible to the public, including but not limited to: a commercial or other office building; office or building owned, leased or rented by the State or by a County or municipal government; public and non-public elementary or secondary school buildings; Board of Education Building; theatres or concert halls; public library; museum or art gallery; bar; restaurant or other establishment where the public business is the sale of food for consumption on the premises, including the bar area of an establishment; garage or public facility; any public conveyance operated on land or water, or in the air; passenger waiting rooms and platforms areas in any stations or terminals thereof; healthcare facilities licensed pursuant to P.L. 1971, c.136(C.26:2H-1 et seq.); patient waiting room of the office of healthcare provider licensed

pursuant to Title 45 of the Revised Statutes; childcare center licensed facilities pursuant to P.L. 1983, c.492(C.30:5B-1 et seq.); racetrack facility; facility used for the holding of sports events; ambulatory recreational facilities, shopping malls or retail stores; hotel, motel or other lodging establishments; apartment building lobbies or other public area in an otherwise private building; passenger elevators in a building other than a single family dwelling.

MUNICIPAL BUILDINGS

The enclosed portion of (a) Borough Hall located at 47 Broad Street or any relocation or annex or addition to the aforesaid Borough Hall serving as offices and services for the Borough of Eatontown; (b) Community Center located at 68 Broad Street and any annex or additional building serving for community services for the Borough of Eatontown; (c) Community Center Annex located at 68 Broad Street; (d) Library located at 33 Broad Street; (e) Museum located at 75 Broad Street; (f) Public Works Garage located off Pine Brook Road and Lewis Street and any other future relocation of the Department of Public Works.

PERSON HAVING CONTROL OF AN INDOOR PUBLIC PLACE OR WORKPLACE OR A PUBLIC PARK OR BEACH

Means the owner or operator of a commercial or other office building or other indoor public place from whom a workplace or space within the building or indoor public place is leased, or the person having supervisory authority over a public park or beach or that person's designee, as applicable.

PUBLIC PARK OR BEACH

Means a State Park or forest, a County or municipal park or a State, County or municipal beach, but does not include any parking lot that is adjacent to but outside of the public park or beach.

SMOKING

Means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter than can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

TOBACCO RETAIL ESTABLISHMENT

Means an establishment in which at least 51% of retail business is the sale of tobacco products and accessories in which the sale of other products is merely incidental.

WORKPLACE

Means a structurally enclosed location or portion thereof at which a person performs any type of service or labor.

§67-3. SMOKING PROHIBITED

Smoking is prohibited at all times in municipal buildings and in indoor public places or workplaces and at public parks or beaches [if any]; except as otherwise provided in this Ordinance. Smoking is also prohibited in any area of any building of, or on the grounds of, any public or non-public elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

§67-4. POSTING OF RESTRICTIONS.

- A. "No Smoking" signs shall be conspicuously posted in the various public portions of municipal buildings and public parks or beaches [if any].
- B. No person shall remove, deface or conceal any sign posted or erected under the authority of this Chapter.

§67-5. DESIGNATED SMOKING AREAS OUTSIDE MUNICIPAL BUILDINGS AND PARKS OR BEACHES.

Areas allowed for smoking outside of public buildings, public parks or beaches [if any] shall be in accordance with N.J.S.A. 26:3D-56 and any other applicable State Statutes.

§67-6. SMOKING REGULATIONS IN PARKS AND RECREATION AREAS.

The aforesaid provision hereby amended to be consistent with §67-3 of this Chapter in terms of the scope of the prohibition, while continuing the prior provision prohibiting smoking in the municipal building.

§67-7. EXCEPTIONS TO §67-3, "SMOKING PROHIBITION" PARAGRAPH.

The prohibition with regard to smoking shall not apply to the following:

- A. Any cigar bar or cigar lounge that in the calendar year ending December 31, 2004 generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, but not including any sales from vending machines, and is registered with the local Board of Health at the Borough of Eatontown in which the bar or lounge is located. Registration shall remain in effect for one-year and shall be renewable only if: (1) in the preceding calendar year the cigar bar or lounge generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (2) the cigar bar or cigar lounge has not expanded its size or changed its location since December 21, 2004.
- B. Any tobacco retail establishment, or any area the tobacco retail establishment provides for the purposes of smoking.
- C. Any tobacco business when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco.
- D. Private homes, private residences and private automobiles.
- E. The area within the perimeter of:
 - (1) Any casino as defined in Section 6 of P.L. 1977, c.110 (C.5:12-6) approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the Commission, which machines and games are available to the public for wagering; and
 - (2) Any casino simulcasting facility approved by the Casino Control Commission pursuant to Section 4 of P.L.1992, seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games are available to the public for wagering.
- F. Research laboratories and other facilities that have been approved by the Department of Health to permit smoking for the purpose of medical research related to the health effects of smoking, in an indoor facility that is separately ventilated for the purpose of medical or scientific research that is conducted under physician supervision and has been approved by an Investigational Review Board (IRB), if the facility is used solely and exclusively for clinical research activities.
- G. A golf course, except for variations of traditional golf courses found in municipal, County or State parks within the Borough.
- H. An area of a municipal or County beach [if any] not to exceed 15 percent of the total area of the beach, which is designated by the municipality or County by ordinance or resolution as a smoking area.
- I. Any cigar bar or lounge previously registered with the local Board of Health pursuant to subsection (A) of this section that has, in accordance with the requirements of this subsection, renewed that registration following a period of lapse. A cigar bar or cigar lounge registration which has lapsed may be renewed under this subsection if: (1) no more than 10 years have elapsed since the date the registration lapsed; (2) in the calendar year immediately preceding the lapse, the cigar bar or lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors; and (3) the cigar bar or lounge has not expanded its size or changed its location since December 31, 2004. A registration renewed pursuant to this subsection shall remain in effect for one year, and shall be renewable thereafter only if it meets the requirements for renewal as set forth in this subsection or subsection (A) of this section.

§67-8. HOTEL, MOTEL, LODGING ESTABLISHMENT, SMOKING PERMITTED, CERTAIN AREAS.

- A. The person having control of a hotel, motel or other lodging establishment may permit smoking in up to 20% of its guest rooms.

B. Nothing in this section shall be construed to require a hotel, motel or other lodging establishment to provide a nonsmoking room to a guest if all the designated nonsmoking rooms are occupied.

§67-9. PERSON IN CONTROL – SIGNAGE, REQUIREMENTS.

The person having control of an indoor public place or workplace, or a public park or beach [if any] shall place in every public entrance to the indoor public place or workplace, or the public park or beach a sign, which shall be located so as to be clearly visible to the public and shall contain the letters or a symbol which contrasts in color with the sign indicating that smoking is prohibited therein, except in such designated areas as provided pursuant to this Ordinance. The sign shall also indicate that violators are subject to a fine. The person having control of the indoor public place or workplace or the public park or beach shall post a sign stating, "Smoking Permitted" in letters at least one inch in height or marked by the international symbol for "Smoking Permitted" in those areas where smoking is permitted. The provisions of this Section shall not be construed to prevent a Lessee of the workplace or space within the building or indoor public place from enforcing the smoking restrictions imposed by the owner or operator of a commercial or other office building or other indoor public place.

A. A person having control of an indoor public place or workplace or a public park or beach [if any] shall order any person smoking in violation of this Ordinance to comply with the provisions of the Ordinance. A person, after being ordered, who smokes in violation of this Ordinance, is subject to a fine of not less than \$250.00 for the first offense; \$500.00 for the second offense and \$1,000.00 for each subsequent offense. A penalty shall be recovered in accordance with the provisions set forth below.

§67-10. VIOLATIONS, PENALTIES AND ENFORCEMENT.

Any person violating any provision of this Chapter shall, upon conviction thereof, be subject to a fine of not less than \$250.00 for the first offense; \$500.00 for the second offense and \$1,000.00 for each subsequent offense. The Department of Health or the local Board of Health or the board, body or officers exercising the functions of the local Board of Health, upon written complaint or having reason to suspect violation of this Ordinance, shall, by written notification, advise the person having control of the place accordingly, and order appropriate action to be taken. A person receiving that notice who fails or refuses to comply with the Order is subject to a fine of not less than \$250.00 for the first offense; \$500.00 for the second offense and \$1,000.00 for each subsequent offense. In addition to the penalty provided therein, the Court may order immediate compliance with the provisions of the Ordinance.

A. The penalty recovered under the provisions of this Ordinance shall be recovered by and in the name of the Commissioner of Health or by and in the name of the local Board of Health. If the Plaintiff is the Commissioner of Health, the penalty recovered shall be paid by the Commissioner into the treasury of the State of New Jersey. When the Plaintiff is the local Board of Health or designee, the penalty recovered shall be paid by the local Board into the treasury of the municipality where the violation occurred.

B. The Superior Court of New Jersey or Municipal Court of the Borough of Eatontown shall have jurisdiction over proceedings to enforce and collect any penalty imposed due to the violation of this Ordinance, if the violation has occurred within the territorial jurisdiction of the Court, except that the Superior Court of New Jersey shall have exclusive jurisdiction over violations that occur in an indoor public place or public park or beach [if any] that may be issued against a State or Local Government Entity pursuant to N.J.S.A. 26:3D-56. Proceedings shall be summary and in accordance with the "Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.) and the process shall be in the nature of a Summons and shall issue only at the suit of the Commissioner of Health or the local Board of Health or its designee, as the case may be, as Plaintiff.

C. The penalties provided by this Ordinance shall be the only civil remedy for the violation of this Ordinance, and there shall be no private right of action against a party for failure to comply with the provisions of this Ordinance, by limitation set forth more fully in State Statute.

BE IT FURTHER ORDAINED, that

A. If any section or provision of Chapter 67 thereof shall be adjudged invalid, such determination shall not affect the other sections or provisions thereof, which shall remain in full force and effect.

- B. All other Ordinances or provisions of the Code of the Borough of Eatontown or parts thereof, which are inconsistent with any provisions in this Ordinance, are hereby repealed to the extent of such conflict or inconsistency.
- C. This Ordinance shall take effect upon its passage and publication as required by law.

DATE INTRODUCED: January 23, 2019

DATE ADOPTED: February 27, 2019

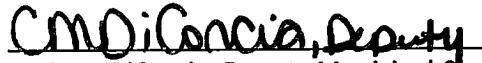
APPROVED:



ANTHONY TALERICO, JR., MAYOR

DATE: 2/27/19

ATTEST:



Corinne DiCorcia, Deputy Municipal Clerk

DATE: 2/27/19