

ORDINANCE NO. 10-2021

AN ORDINANCE OF THE BOROUGH OF SEA BRIGHT AMENDING AND
SUPPLEMENTING CHAPTER 146, "NUISANCES", OF THE CODE OF THE BOROUGH OF
SEA BRIGHT TO ADD THERETO A NEW ARTICLE III, "SMOKING REGULATIONS."

SECTION ONE. Chapter 146, "Nuisances", of the Code of the Borough of Sea Bright be and the same is hereby amended to add thereto the following new Article:

ARTICLE III: Smoking Regulations

§ 146-13 Findings.

The Mayor and Council of the Borough of Sea Bright hereby finds and determines that:

- i. The smoking of tobacco products is a major contributor to air pollution and breathing in secondhand smoke is a cause of disease to nonsmokers;
- ii. The United States Department of Environmental Protection (EPA) has designated secondhand smoke as a Class A carcinogen, as well as a significant cause of respiratory problems in children;
- iii. In 1986 the United States Surgeon General found that the active smoking of tobacco products and the passive inhalation of environmental tobacco smoke are the most prevalent causes of preventable death, disease and disability;
- iv. The United States Surgeon General found that separating smokers from nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke;
- v. The New Jersey Legislature found and declared that tobacco is the leading cause of preventable disease and death in the State of New Jersey and the nation and tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public;
- vi. The State of New Jersey has acknowledged that careless smoking is the leading cause of death from fire;
- vii. Smoking leads to the inevitable discard of tobacco products and a source of litter by those who fail to properly dispose of cigarettes;
- viii. The State of New Jersey entered into litigation against various tobacco product manufacturers and others for the purpose of improving the public's health and adopting policies and programs to achieve a significant reduction in smoking by its citizens, and in particular, by youth and, as part of a settlement, the State of New Jersey received significant funding for the advancement of public health, including the implementation of important tobacco-related public health measures and restrictions.

- ix. In 2006, the Legislature enacted the New Jersey Smoke Free Air Act, N.J.S.A. 26:3D-55 et seq., creating an outright ban on smoking in virtually all public indoor facilities and extending such ban to the grounds of any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor or outdoor public place and expanded same in 2019 to include public beaches and parks; and
- x. The Legislature has deemed the control of smoking to be a necessary and proper exercise of municipal authority pursuant to N.J.S.A. 40:48-1 et seq., 40:48-2 et seq., and N.J.S.A. 2C:33-13 for the preservation of public health, safety and welfare of the community.

§ 146-14 Definitions.

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

(1) "Beach" means the gentle sloping of sand adjacent to the Atlantic Ocean in the Borough of Sea Bright that extends landward from the mean high waterline of the ocean to a man-made feature generally parallel to the ocean, such as a seawall, fence, parking lot, retaining wall or other structure, whichever is closest to the ocean. "Beach" shall include supervised beaches, unsupervised beaches, private beaches, beach clubs, beach access, dunes, foreshore and the Atlantic Ocean as defined herein.

(2) "Electronic smoking device" means an electronic device that can be used to deliver nicotine or other substance to that person inhaling from the device, including, but not limited to, an electric cigarette, cigar, cigarillo, or pipe.

(3) "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 nonprofit 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 nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L.1971, c. 136 (C.26:21-1-1 *et seq.*); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L.1983, c. 492 (C.30:5B-1 *et seq.*); race track facility; facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; apartment building lobby or other public area in an otherwise private building; or a passenger elevator in a building other than a single-family dwelling.

(4) "Park" means any athletic fields, playgrounds and other active and passive recreation areas primarily of service to youth, owned, leased, operated or under the ownership control of the Borough of Sea Bright to which the general public is invited and youth under the age of 18 may gather.

(5) "Person" means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

(6) "Public Building" means Any building, structure, facility or complex, including appurtenant parking areas, owned, leased, operated or under the ownership control of the Borough of Sea Bright to which the general public is invited.

(7) "Smoking" means burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe, hookah or similar device, or any other device which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

(8) "Workplace" means a structurally enclosed location or portion thereof at which a person performs any type of service or labor.

§ 146-15 Restrictions.

(1) Smoking shall be prohibited by any person, regardless of age, in all public parks, beaches and recreation facilities owned or leased by the Borough of Sea Bright, including that land upon which the public is invited or upon which the public is permitted and where individuals gather for recreation activities, including all areas adjacent to such facilities, including, but not limited to, parking areas, driveways or drive aisles, which have been designated by no-smoking signs and which are hereafter designated as "Smoke and Tobacco Free Places."

(2) Smoking shall be prohibited by any person, regardless of age, in any indoor public place, or workplace within the Borough of Sea Bright.

(3) No person shall smoke a cigarette, cigar, electronic smoking device or any other materials by any means in the beachfront area, entire beachwalk and all access ramps that lead to the beachwalk at any time.

§ 146-16 Signs. Signs shall be clearly, sufficiently, and conspicuously posted where smoking is prohibited by this section. The signs shall state "NO SMOKING," and/or contain the international no-smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through its cross section).

§ 146-17 Enforcement. The Sea Bright Police Department and any municipal officer charged with code enforcement is hereby charged with enforcement of this Article. Further, the person having control over an indoor public place or workplace shall order any person smoking in violation of this section to comply with the ordinance.

§ 146-18 Penalty. Anyone who smokes in violation of this ordinance is subject to a fine of \$200.00.

SECTION TWO. All other provisions of § 146, "Nuisance," remain unchanged and remain in full force and effect.

SECTION THREE. All Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION FOUR. Should any section, paragraph, clause or other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect or impair the remainder of this Ordinance.

SECTION FIVE. This Ordinance shall take effect upon its passage and publication according to law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Sea Bright, introduced on June 15, 2021 and will be further considered after a Public Hearing held on July 20, 2021.

INTRODUCED: June 15, 2021
PUBLIC HEARING: July 20, 2021
ADOPTED: July 20, 2021

Witness


CHRISTINE PFEIFFER, CLERK

BOROUGH OF SEA BRIGHT


BRIAN KELLY, MAYOR