

No. **6FA** 1st Reading **OCT 01 2014**

Ordinance

Date to Mayor

OCT 16 2014

Date Returned

OCT 21 2014No. **6PSF A** Public Reading **OCT 15 2014**

of the

Date Resubmitted

To Council

No. **6PSF A** 2nd Rdg. and Final Passage

City of Newark, N.J.

Date Advertised

1st Reading

No. Reconsidered

Approved as to Form and Legality on Basis of Facts Set Forth

Corporation Counsel

Date Reading

Factual contents certified to by

Council Member **Rand** presents the following Ordinance:

AN ORDINANCE AMENDING TITLE 20, CHAPTER 2, SECTION 23. SMOKING IN PROHIBITED PLACES; PENALTY, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, AS AMENDED AND SUPPLEMENTED BY ADDING PROVISIONS RELATING TO SMOKING IN OUTDOOR AREAS, HOOKAHS, ELECTRONIC SMOKING DEVICES AND CERTAIN OTHER AMMENDMENTS.

WHEREAS, pursuant to N.J.S.A. 40:48-2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this State or of the United States, as it may deem necessary and proper for the good of government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

WHEREAS, the previous State legislation formerly codified at N.J.S.A. 26:3D-41, which prohibited municipalities from passing strict local smoking laws that differed from the State standards was repealed and the State now expressly authorizes municipalities to enact strict ordinances regulating smoking under N.J.S.A. 26:3D-63; and

WHEREAS, as additional basis for the City's authority to enact smoking laws to govern parks and recreational areas, it may be noted that the City is the owner and operator of numerous public sites, and that the statutes provide that smoking or carrying lighted tobacco may be prohibited by the owner and/or operator of a public place, such as public parks and recreational areas, N.J.S.A. 2C:33-13b; and

WHEREAS, N.J.S.A. 8:6-2.3a allows municipalities to create buffer zones by buildings that are smoke free; and

WHEREAS, it is in the interest of the City of Newark to refer to those areas as Smoke Free Zones; and

WHEREAS, the Municipal Council of the City of Newark recognizes the well-known health and safety risks posed by smoking and finds that it is within the public interest to prohibit smoking in public buildings and on public property, such as public parks, recreation areas and vehicles; and

WHEREAS, the Municipal Council of the City of Newark finds that it is in the public interest to protect impressionable children from the temptations of experimenting with cigarettes and other tobacco products, especially in public places where children are likely to congregate, gather, play and/or engage in athletic competition; and

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WHEREAS, the Municipal Council of the City of Newark also finds that the appearance of parks and recreation areas can be enhanced and the limited resources of the City's Department of Neighborhood and Recreational Services can be conserved if smoking were to be banned from such areas, thereby keeping such areas free of the litter typically generated by the smoking of cigarettes, such as cigarette butts, ashes and packaging.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

SECTION 1. Title 20, Chapter 2, **Disorderly Conduct**, of the Revised General Ordinances of the City of Newark, New Jersey, are hereby amended and supplemented as follows:

Editor's Note: Additions are shown as **underlined and bold**. Deletions are ~~strikethroughs~~.

a. *Definitions.*

1. ~~Municipal building shall mean a building or portion of a building owned or leased by the City of Newark.~~ **Municipal Buildings** shall include all structures owned, leased, rented and/or operated by the City of Newark, and/or occupied by City employees and used for official business of the City of Newark.

2. **City agency** shall mean any City department or division, board or commission, statutory agency or any other municipality created entity, which is under the control and or supervision of the City of Newark.

3. **City vehicle** shall include **all vehicles owned, leased, rented and/or operated by the City of Newark and/or occupied by City employees and used for official business of the City of Newark and vehicles operated by contract on behalf of the City of Newark.** mean any and all municipal vehicles ~~either owned or leased by the City of Newark.~~

4. **Smoking** shall mean 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 that can be smoked, **or the inhaling or exhaling of smoke or vapor from a hookah or an electronic smoking device or e-cigarettes pursuant to consistent with N.J.S.A. 26:3D-57(3).**

5. **Indoor public place** shall mean 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 (N.J.S.A. 26:2H-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 (N.J.S.A. 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,

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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 pursuant to N.J.S.A. 26:3D-57(3).

6. **Workplace** shall mean a structurally enclosed location or portion thereof at which a person performs any type of service or labor pursuant to N.J.S.A 26:3D-57(3).

7. **Person having control of an indoor public place or workplace** shall mean 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 pursuant to N.J.S.A. 26:3D-57(3).

8. **Enclosed area** shall mean all areas between a floor and a ceiling, extending to the outer perimeter walls of a structure.

9. **Parks and recreational facilities** shall include all public parks, playgrounds, ball fields, swimming pools, senior centers, community centers, publicly owned or leased by the City of Newark and all property owned or leased by the City of Newark upon which the public is invited or upon which the public is permitted and where individuals gather for recreational activities, including all areas adjacent to such facilities, including, but not limited to any parking areas, driveways or drive aisles.

10. **Secondhand Smoke** (also called environmental tobacco smoke, involuntary smoke, and passive smoke) is the smoke given off by a burning tobacco product and the smoke exhaled by a smoker.

11. **Hookah** (also known as Shisha, Argileh, Nargile, Hubble-Bubble, Water Pipe, Hookah, Goza, Measell and Sheesha) is an Arabic water-pipe in which fruit-scented tobacco is burned using coal and becomes smoke, then passes through an ornate water vessel and is inhaled through a hose.

12. **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.

Prohibitions. Smoking shall be prohibited at all times in all places within the City of Newark, in accordance with the following:

1. In or upon any part of any bus used in the transportation of passengers upon the streets within the boundaries of Newark;

2. In any polling place during the hours of a primary, general, municipal or special election is being conducted thereon;

3. In or upon any private or public elevator;

4. In any room, chamber, place of meeting or public assembly while a public meeting which has been convened under the auspices of the City of Newark, and to which the public is invited, solicited or legally entitled to attend, is in progress;

5. In any City of Newark municipal office and or building which is open to the general public;

6. In any library, indoor theater, museum, lecture or concert hall, indoor gymnasium or recreational facility owned or operated by the City of Newark;

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7. All outdoor areas within ~~twenty-five (25)~~ fifty (50) linear feet from any and all entrances and exits of any and all enclosed indoor areas where smoking is prohibited, to ensure that tobacco smoke does not enter the smoke-free indoor areas through entrances, windows, ventilation systems, or any other means;

8. ~~All City vehicles;~~ Smoking shall be prohibited in any vehicle owned, leased, rented and/or operated by employees of the City of Newark or operated by contract on behalf of the City of Newark;

9. All employers within the City of Newark shall provide a smoke-free workplace for all employees. Smoking shall be prohibited in all enclosed facilities within the workplace at all times without exception. This includes, but is not limited to, all common work areas, private offices and work areas, meeting rooms, conference rooms, auditoriums, classrooms, hallways, elevators, stairs, cafeterias, employee lounges, rest rooms, medical facilities, and all other enclosed areas;

10. Smoking is hereby prohibited in all indoor public places or workplaces within the City of Newark, subject to the limited exceptions of said State statute N.J.S.A. 26:3D-55 et seq;

11. In all Municipal Buildings as defined herein;

12. Smoking shall be prohibited in all public parks and recreation facilities owned or leased by the City of Newark and all property including lead-safe houses owned or leased by the City of Newark upon which the public is invited or upon which the public is permitted and where individuals gather for recreational activities, including all areas adjacent to such facilities, including, but not limited to, any parking areas, driveways or drive aisles, which have been designated with no smoking signs.

c. *Notification.* The owner of any building in which there is an elevator, or the owner of any bus shall cause to be posted a notice in red lettering with a white background informing the public in English and in Spanish that smoking in that elevator or bus is prohibited and a violation of City Ordinance.

d. *Signage and Posting.* All areas designated in paragraph b, 4 through 9 of this section as non-smoking areas shall be clearly identified by signs. All municipal buildings or City agencies affected by this section shall be identified by signs posted by the Department, Division or Office thereof with letters at least one (1) inch in height stating "Smoking Prohibited" or designated by the appropriate "Smoking Prohibited" internationally recognized symbol. ~~The letters or symbol shall contrast in color with the sign. Every sign required to be posted pursuant to this section shall be situated so as to be clearly visible to the public and employees. (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through its cross section)~~ shall be clearly, sufficiently and conspicuously posted at each Municipal Building entrance and within each closed area where smoking is prohibited by this chapter. The signs shall be clearly visible to the public and shall contain letters or a symbol which contrasts in color with the sign, indicating that smoking is prohibited therein. The sign shall also indicate that violators are subject to a fine.

e. *Violations; Fines, Penalties; Enforcement.*

1. Any municipal official or employee who smokes in a municipal building or City agency in violation of the provisions of this section shall be subject to disciplinary action pursuant to the appropriate State Statutes, Merit System Regulations, Municipal Code, Ordinance or other relevant regulatory guidelines.

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2. The person having control of an indoor public place or workplace shall order any person smoking in violation of this section to comply with the provisions thereof. A person, after being so ordered, who smokes in violation of this section shall be guilty of an ordinance violation and is subject to a fine of not less than two hundred fifty (\$250.00) dollars for the first offense, five hundred (\$500.00) dollars for the second offense and one thousand (\$1,000.00) dollars for each subsequent offense. A penalty shall be recovered in accordance with the provisions of paragraphs (e), 4 and 5 of this section.

3. The local Board of Health or the board, body or officers exercising the functions of the local Board of Health according to law, upon written complaint or having reason to suspect that an indoor public place or workplace covered by the provisions of this section is or may be in violation of the provisions thereof, 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 that fails or refuses to comply with the section shall be guilty of an ordinance violation and is subject to a fine of not less than two hundred fifty (\$250.00) dollars for the first offense, five hundred (\$500.00) dollars for the second offense and one thousand (\$1,000.00) dollars for each subsequent offense. In addition to the penalty provided herein, the Court may order immediate compliance with the provisions of the section.

4. Any penalty proscribed under the provisions of this act shall be recovered by and in the name of the local Board of Health. The penalty recovered shall be paid into the general treasury of the City of Newark.

5. The Municipal Court of the City of Newark shall have jurisdiction over the proceedings to enforce and collect any penalty imposed for violations of this section if said violations have occurred within the territorial jurisdiction of the Court. The proceedings shall be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L. 199, c.274 (N.J.S.A. 2A:58-10 et seq.). Process shall be in the nature of a summons or warrant and shall be issued by the local Board of Health, as the case may be, as plaintiff.

6. Any person who violates paragraph b, 4. through 9. of this section upon refusal to stop, may be denied governmental services being performed in that location, provided that a notice of refusal of service is included on the signs posted in conformance with paragraph d. above. Additionally, any person who violates paragraph b, 4. through 9. of this section, upon conviction thereof, shall be punished by a fine as provided in paragraph e, 2 and 3.

f. ~~Non-retaliation.~~ No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant seeks a smoke-free environment as afforded by this section.

g. ~~Power to Adopt More Comprehensive Smoke-Free Policies.~~ Notwithstanding any other provision of this section, the City of Newark reserves the right to adopt policies relating to smoking which are more comprehensive than those provided herein.

h. ~~Other Applicable Laws.~~ No provision of this section shall be construed or interpreted to allow smoking where it is otherwise restricted by other laws.
(R.O. 1966 § 17:2-23; R.O. 1966 C.S. § 17:2-23; Ord. 6 S+FA, 2-4-87; Ord. 6 S+FC, 9-3-08 §§ 1-3)

No. 6PSF-APage -6-Date OCT 15 2014**SECTION 2.**

Public Education. The Director of the Department of Health and Community Wellness shall engage in a continuing program to inform and educate the public regarding the health consequences of smoking, including the adverse health consequences of people's exposure to secondhand smoke, shall clarify the purpose of this article to citizens affected, and guide owners, operators and managers in compliance. Smoke free signs and educational flyers detailing connections between secondhand smoke and asthma will be part of the education regarding this policy and its benefits. Enforcement fines cannot be levied until this program has been implemented for two (2) months.

Effective Dates. This article shall take effect on the 20th day after enactment.

SECTION 3.

Enforcement. The enforcement authorities of this chapter shall be the City of Newark's Police Department, Fire Department, Neighborhood and Recreational Services Department, Division of Public Buildings and Department of Health and Community Wellness.

SECTION 4.

If any section or provision of this ordinance shall be invalid in any court the same shall not affect the other sections or provisions of this ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

SECTION 5.

This ordinance shall take effect 20 days after final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

The purpose of this Ordinance is to expand the current statutory prohibitions ~~prohibit~~ on (1) smoking in parks and recreational areas owned or otherwise possessed by the City of Newark and (2) prohibit smoking within a fifty foot radius of all entrances, exits, vents and windows of public buildings and prohibit smoking in any vehicle owned or operated on behalf of the City of Newark. In addition, smoking includes 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 that can be smoked, or the inhaling or exhaling of smoke or vapor from a hookah or an electronic smoking device or e-cigarettes.

CERTIFIED TO BY ME THIS

OCT 22 2014

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE										RECORD OF COUNCIL VOTE FOR RECONSIDERATION									
Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador	✓				Osborne	✓				Amador					Osborne				
Gonzalez	✓				Quintana	✓				Gonzalez					Quintana				
James	✓				Ramos, Jr.	✓				James					Ramos, Jr.				
Chaneyfield Jenkins	✓				Crump	✓				Chaneyfield Jenkins					Crump				
McCallum, Jr.				✓	President					McCallum, Jr.					President				
✓ - Indicates Vote										AB - Absent									
										NV - Not Voting									

Adopted on first reading at a meeting of the Council of the City of Newark, N.J., on OCT 01 2014Adopted on second and final reading after hearing on OCT 15 2014Approved
Rejected By

Mayor

14-0338

Council President

City Clerk

This Ordinance when adopted must remain in the custody of the City Clerk. Certified copies are available.