

ORDINANCE AMENDING CHAPTER XII (FIRE PROTECTION AND PREVENTION), SECTION 12-11 (SMOKING IN PUBLIC PLACES) OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF HOLMDEL, COUNTY OF MONMOUTH, STATE OF NEW JERSEY. 2005-25

BE IT ORDAINED by the Township Committee of the Township of Holmdel, County of Monmouth and State of New Jersey, as follows:
NOTE TO CODIFIER: CHAPTER XII, FIRE PROTECTION AND PREVENTION, SECTION 12-11, SMOKING IN PUBLIC PLACES) IS HEREBY DELETED IN ITS ENTIRETY AND REPLACED WITH THE FOLLOWING:

WHEREAS, the Township Committee of the Township of Holmdel, having found that numerous studies have shown that tobacco smoke is a major contributor to indoor air pollution and that environmental tobacco smoke is a cause of cardiovascular disease in non-smokers and that breathing environmental tobacco smoke is a significant health hazard for several populations including children, elderly persons, individuals with cardiovascular disease, individuals with impaired respiratory functions and asthmatics and those with obstructive airway diseases and further that smoke-free air policies and laws protect health and safety; and

WHEREAS, smoking is a safety hazard linked to increased fires and accidents.

1

Chapter XXI, Section 12-11, Smoking in Public Places, is hereby deleted in its entirety and replaced with the following:

12-11 Prohibition of Smoking in Public Places and Workplaces.

12-11.1 **Definitions.** When used in this section, the following words and phrases shall have the following meanings:

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entities including retail establishments where goods and services are sold, as well as professional corporations, offices of health providers and other entities under which professional services are delivered.

“Employee” means a person who is employed by any employer for direct or indirect monetary wages or profits, including those employed full-time, part-time, temporarily, contracted or from a third-party. Employee also means any volunteer for a business or non-profit entity.

“Employer” means any person, business or non-profit entity which employs the services of one or more persons.

“Enclosed” means covered by a roof or enclosed by four or more connected floor to ceiling walls with appropriate openings for ingress and egress.

“Mall” means any enclosed public walkway or hall area which serves to connect retail or professional establishments.

“Place of Employment” means any enclosed area under the control of an employer which employees frequent during the course of employment.

“Public Place” or “Public Area” means any enclosed area to which the public is invited or to which the public is permitted.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe, weed, plant or other combustible substances in any manner or any form.

“Work Area” or “Work Place” means any area of a place of employment enclosed by floor to ceiling walls in which two or more employees are assigned to perform work for an employer.

12-11.2 **General Restrictions.**

A. Regulation of smoking in places accessible to the general public:

(a) All enclosed public and work areas available to and generally used by the general public, including but not limited to:

- 1) retail stores;
- 2) banks;
- 3) movie theatres;
- 4) all businesses and non-profit entities;
- 5) laundromats;
- 6) museums;

- 7) galleries and libraries;
- 8) auditorium stages;
- 9) performance halls;
- 10) recital halls or any venue wherein performances or demonstrations occur;
- 11) sports arenas or gymnasiums;
- 12) all areas of healthcare facilities;
- 13) all lobbies, hallways or common areas of multi-unit commercial buildings;
- 14) all lobbies, hallways or common areas of multi-unit residential buildings;
- 15) polling places; and
- 16) private residences that are used as childcare or healthcare facilities.

(b) Any owner or operator of any establishment not specifically covered in the above list may declare the entire establishment **SMOKE-FREE** by posting notices as per the provisions of this Ordinance and by notifying the Holmdel Township Health Department, Fire Official or Code Enforcement Officer that the establishment shall be covered under all provisions of this law.

(c) **Exclusions.** The following are excluded from the provisions of this Ordinance:

Establishments with plenary retail consumption or club licenses issued by the New Jersey Division of Alcoholic Beverage Control.

B. Regulations of Smoking in Places of Employment (including places of employment with fewer than 50 employees). All employers within the boundaries of Holmdel Township shall provide a smoke-free workplace for all employees. Smoking shall be prohibited in all enclosed work areas within the workplace without exception, including but not limited to all common work areas, auditoriums, classrooms, meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed areas. The entranceways to buildings used by the public, all outdoor entranceways of buildings used by the public shall also be smoke-free.

C. Smoking Prohibited in Municipal Buildings. Smoking is prohibited in all buildings and vehicles owned by the Township of Holmdel. There shall be a conspicuously posted sign or signs indicating “SMOKING PROHIBITED” or the appropriate “SMOKING PROHIBITED” international symbol shall be posted. Smoking is also prohibited at the entrances of the municipal buildings. The Township Administrator may designate a smoking area outside of each building.

D. Smoking Regulation in Parks and Recreation Areas, Posting. Smoking shall be prohibited in all Township parks and recreation areas except where designated. All Township parks and recreation areas shall be posted with a sign or signs indicating “SMOKING PROHIBITED - NO SMOKING” or the international symbol for smoking prohibited. It shall not be a defense to a charge under this paragraph that the accused did not see such posting. The principle that all are deemed to know the law shall control. The Township Administrator shall designate and delineate areas where smoking is permitted. Such areas shall be posted with signs stating “Smoking Permitted” or the appropriate international symbol for “Smoking Permitted” shall be posted.

12-11.3 **Posting Notices. NO SMOKING** signs or the international no smoking symbol shall be clearly, sufficiently and conspicuously posted in every building where smoking is regulated by this Ordinance, by owner, operator, manager or other person having control of such building or such place. Every building area regulated by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is not allowed.

12-11.4 **Enforcement**. The enforcement of this Ordinance will be implemented by the Holmdel Township Health Department or its designee. Any citizen may initiate enforcement by registering a complaint with the Holmdel Township Fire Official, the Board of Health or the Code Enforcement Officer or Police Department.

12-11.5 Violations and Penalties. It shall be a violation of this Ordinance for any owner, operator, manager or controller of any premises subject to this Ordinance to fail to comply with any of its provisions. It shall be unlawful to smoke where smoking is prohibited. Any person who willfully violates any provision of this Ordinance shall be guilty of an infraction punishable by (i) a fine not exceeding \$100.00 for the first violation, (ii) a fine not exceeding \$200.00 for the second violation, (iii) a fine not exceeding \$500.00 for any further violations.

12-11.6 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 exercises any right to a smoke-free environment afforded by this Ordinance.

12-11.7 Applicable Laws. No provision of this Ordinance will be construed or interpreted to allow smoking areas otherwise restricted by other laws.

II

This Ordinance shall take effect upon adoption and publication according to law.

III

If any section, subparagraph, sentence, clause or phrase of this Ordinance shall be held to be invalid, such decision shall not invalidate the remaining portion of this Ordinance.

IV

-

This Ordinance shall take effect upon adoption and publication according to law.

LEGAL NOTICE

The foregoing ordinance was introduced and passed on the first reading at a meeting of the Township Committee of the Township of Holmdel held on July 11, 2005 and will be considered for final passage and adoption at a meeting of said Township Committee to be held on July

25, 2005 at Township Hall, 4 Crawfords Corner Road, Holmdel, NJ at 8:00 PM at which time and place all persons desiring to be heard thereon will be given full opportunity.

Larry Fink, Mayor

Attest:

Maureen Doloughy, RMC
Township Clerk