

**BOROUGH OF EMERSON
COUNTY OF BERGEN
NOTICE OF ADOPTION**

Introduced: May 6, 2014

Adopted: May 20, 2014

NOTICE IS HEREBY GIVEN that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 20th day of May, 2014. A copy of Ordinance 1485-14 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

ORDINANCE NO. 1485-14

AN ORDINANCE TO CREATE SECTION 61-12 et seq. OF CHAPTER 61 BOROUGH REGULATIONS, ENTITLED "AN ORDINANCE PROHIBITING SMOKING UPON PARKS, PLAYGROUNDS AND RECREATIONAL AREAS," OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF EMERSON

BE IT ORDAINED by the Mayor and Council of the Borough of Emerson, County of Bergen, State of New Jersey, as follows:

Section 1. Chapter _61 Parks, Playgrounds and Recreational Areas_____ Borough Regulations

Chapter 61-12 Smoking.

Chapter 61-12 (a) Findings.

The Mayor and Borough Council of the Borough of Emerson hereby find and determine that:

- a. The smoking of tobacco products is a major contributor to indoor air pollution and breathing second-hand smoke is a cause of disease to non-smokers;
- b. Reliable studies have shown that environmental tobacco smoke is a cause of cardiovascular disease in non-smokers and that breaking environmental tobacco smoke is a significant health hazard for children, the elderly, and individuals with cardiovascular disease, impaired respiratory function, and asthma;
- c. The United States Department of Environmental Protection (USEPA) has designated second-hand smoke as a Class A carcinogen as well as a significant cause of respiratory problems in children;

- d. The U. S. Surgeon General has 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;
- e. The U. S. Surgeon General has found that separating smokers from non-smokers within the same air space does not eliminate the exposure of non-smokers to environmental tobacco smoke;
- f. The State of New Jersey has acknowledged that careless smoking is the leading cause of death from fire;
- g. Smoking leads to the inevitable discard of tobacco products and a source of litter by those who fail to properly dispose of cigar, cigarette, pipe or other combustible tobacco product in any manner or in any form.
- h. The State 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., N.J.S.A. 26:3D-46 et seq., and N.J.S.A. 2C:33-13 for the preservation of public health, safety and welfare of the community.
- i. The previous State legislation 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 smoking under N.J.S.A. 26:3D-63.
- j. N.J.S.A. 2C:33-13b also provides that the owner and/or operator of a public place, such as public parks and recreational areas, may prohibit smoking on such property.
- k. The Borough Council 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 and recreational areas.
- l. The Borough Council has determined that the public interest is especially implicated in preventing the youth of Emerson from being exposed and succumbing to the temptations of experimenting with tobacco products; and
- m. The Borough Council also finds that the appearance of parks and recreational areas can be enhanced 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.

Chapter 61-13 Definitions

As used in this section:

Person shall mean any individual, partnership, cooperative association, private corporation personal representative, receiver, trustee, assignee or any other legal entity.

Parks and Recreation Facilities shall include all public parks, playgrounds, ball fields, playing fields, recreational areas and recreational facilities, that are publicly owned or leased by the Borough of Emerson, all areas adjacent to such parks and recreation facilities, including, but not limited to, any seating areas, parking areas, paths, walkways, driveways, or drive aisles.

“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 or substance which contains tobacco or any other matter that can be smoked.

Chapter 61-14 Smoking Prohibited.

Smoking Prohibited. Smoking and/or the carrying of a lighted cigarette, cigar, pipe or other combustible substance, in any matter or any form, shall be prohibited at all times, in and on all Borough parks and recreation facilities.

Chapter 61-15 Signs.

“No Smoking” or “Smoke Free” signs, or the international “No Smoking” symbol (a picture of a burning cigarette inside a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in all areas regulated by this chapter. The color of such signs, when not of the international type, shall have letters that are distinct, contrasting to the background and easily read, indicating that smoking is prohibited. The sign shall also indicate that violators are subject to a fine.

Chapter 61-16 Enforcement.

The provisions of this article shall be enforceable by a police officer as well as by any other individual who observes a violation. Any person seeking to enforce the provision of this ordinance shall be authorized to file a complaint in the Municipal Court of the Borough of Emerson.

Chapter 61-17 Violations and Penalties.

- a. It should be unlawful for any person to smoke in any area where smoking is prohibited under this chapter.

- b. Unless a greater fine is permitted under N.J.S.A.26:3D-56 et seq., for smoking in specific areas defined therein, in which case such higher level of fine shall be utilized, any person who smokes in an area in which smoking is prohibited shall be guilty of a disorderly persons offense and subject to a maximum fine of \$200.00 for each violation pursuant to N.J.S.A. 2C:33-13.
- c. Any person who violates any provision of this chapter shall 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. Any municipal employee found in violation of this chapter may also be subject to discipline in accordance with the provisions of the Borough of Emerson's policies and procedures.
- d. Any person found guilty of defacing, tampering with or removing "No Smoking or "Smoking" signs which are required by this chapter shall be guilty of a disorderly persons offense and subject to a maximum fine of \$200.00, plus the cost of replacing the sign.
- e. Any juvenile adjudicated to have violated the provisions of this article shall be subject to such penalties, fines or other discipline as may be imposed upon an adult pursuant to this chapter.

BE IT FURTHER ORDAINED,

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.

BE IT FURTHER ORDAINED

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

BE IT FURTHER ORDAINED

This ordinance shall take effect upon publication as provided by law.

ATTEST:

Jane Dietsche, RMC
Deputy Borough Clerk

Carlos Colina
Mayor

