

Ordinance

Ordinance No. 86

OF THE
CITY OF ATLANTIC CITY, N.J.

Date.....
Date to Mayor.....

Approved as to Form and Legality on Basis of Facts Set Forth Factual contents certified to by

AS AMENDED 01/24/07

Legislative Counsel Billie Moore, Esq.

Business Administrator /s/ Domenic Cappella

Prepared by the Legislative Counsel

Council Member MARSH & MASON Presents the following Ordinance:

AN ORDINANCE TO AMEND CHAPTER 221 - SMOKING - AUGMENTING THE PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES AND PUBLIC PLACES OF EMPLOYMENT

WHEREAS, the City Council of the City of Atlantic City is charged with the obligation and responsibility to preserve and advance the public health, welfare and safety of the citizens of Atlantic City; and

WHEREAS, the Council of Atlantic City has received testimony calling for the implementation and protections of the New Jersey Smoke Free Air Act (the "Act") (N.J.S.A.26:3D-55) to be applied to public places and public places of employment;

WHEREAS, the Council of Atlantic City has examined studies and reports from the Surgeon General, U.S. Department of Health and Human Services (DHHS); the National Cancer Institute; the Public Health Service(s); the National Toxicology Program (NTP); Environmental Health Information Services (EHIS); British Medical Journal; U.S. Center for Disease Control; American Journal of Public Health and determined that the Citizens of Atlantic City are being exposed to preventable contaminants; and that this exposure presents a substantial health hazard to the public; and that the public interest would be advanced by prohibiting smoking in enclosed indoor places of public access and workplaces;

WHEREAS, the legislature through the January 15, 2006 approval of the Act sought to preserve and advance the public health and welfare of those within the State of New Jersey;

WHEREAS, the Act, within N.J.S.A.26:3D-59 pronounced "AREA AND BUSINESSES EXEMPT FROM SMOKING RESTRICTION." Therein, (e)(1) specifically exempted casino floors by stating "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, ten table games or some combination thereof approved by the Commission, which machines and games are available to the public for waging"; and

WHEREAS, the Act, within N.J.S.A.26:3D-59(e)(2) further exempted simulcasting facilities by stating that the provisions of the Act shall not apply to "any casino simulcasting facility approved by the Casino Control Commission pursuant to Section 4 of P.L. 1992, C.19 (C.5:12-194) that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least ten table games, which simulcast facilities and games are available to the public for wagering";

WHEREAS, Subsection 63 of the Act provides that "the provisions of this Act shall supersede any other statute, Municipal Ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by Municipal Ordinance under authority of R.S.40:48-1 or 40:48-2, or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a Municipal Ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under this Act."

WHEREAS, Council finds that it is empowered to create legislation to preserve and advance the public health by implementing legislation greater than that provided by the Act.

NOW, THEREFORE, BE IT ORDAINED that Chapter 221 of the Code of Atlantic City - SMOKING be amended.

BE IT ORDAINED by the Council of the City of Atlantic City that:

SECTION ONE

Chapter 221, SMOKING, shall be amended as follows:

**ARTICLE I - PROHIBITION OF SMOKING IN ENCLOSED
PUBLIC PLACES AND PUBLIC AREAS OF EMPLOYMENT**

Subsection 221-1 of the Atlantic City Code is amended to replace the existing provision with the following:

221-1 - Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Ordinance No. 86

Page 3

- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- D. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- E. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- F. "Gaming Floor" means the area within the perimeter of any casino and any casino simulcasting facility as set forth and defined in Section 5 of the New Jersey Smoke-Free Air Act (N.J.S.A. 26:3D-59).
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

- I. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- J. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- K. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- L. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- M. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- O. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Ordinance No. 86

Page 5

Section 221-2 - Application of this Article to City Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Atlantic City shall be subject to the provisions of this Article.

Section 221-3 - Prohibition of Smoking in Enclosed Public Areas

Smoking shall be prohibited in all enclosed public places within the City of Atlantic City including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, Laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities, except as exempted under this Ordinance.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.

Ordinance No. 86

Page 6

- N. Private clubs when being used for a function to which the general public is invited.
- O. Public transportation facilities, including buses, Jitneys and taxicabs, and ticket, boarding, and waiting areas of public transit depots.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Section 221-4 - Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Ordinance No. 86

Page 7

Section 221-5 - Prohibition of Smoking in Seating Areas at Outdoor Events

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

Section 221-6 - Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 221-3 and 221-4:

- A. Private residences, except when used as a childcare, adult day care, or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated.
- C. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- D. Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.
- E. Outdoor areas of places of employment except those covered by the provisions of Section 221-5.

Ordinance No. 86

Page 8

F. Gaming Floors within licensed casino hotel facilities; provided, however, that not more than twenty-five percent (25%) of such Gaming Floor, as particularly determined by the casino licensee operator of the casino hotel facility within which the Gaming Floor is located, may be so designated; and further provided (1) that the exempt areas so designated shall be (a) enclosed by solid walls or windows, a ceiling and a solid door; and (b) equipped with a ventilation system separately exhausted from the nonsmoking areas of the casino hotel facility so that air from the exempt areas is not recirculated to and smoke is not back streamed into such nonsmoking areas; (2) that the casino licensee operator, not later than five months from the effective date of this Ordinance, submits plans for such designated exempt areas to the New Jersey Department of Community Affairs and such other government agencies as may be necessary and, not later than ninety (90) days from receipt of all such approvals as may be necessary, commences and thereafter expeditiously completes the construction of such separately ventilated enclosures; and (3) that, during the pendency of the design and construction of such exempt area enclosures, not more than the above stated percentage of such Gaming Floor, as particularly determined by the casino licensee operator, may, without such enclosures, be so designated as exempt.

Section 221-7 - Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 221-8(A) is posted.

Section 221-8 - Posting of Signs

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

Ordinance No. 86

Page 9

C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Section 221-9 - Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 221-10 - Enforcement

- A. This Article shall be enforced by the Department of Health & Human Services or the Business Administrator, or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Atlantic City.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Department of Health and Human Services or Business Administrator.
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

Ordinance No. 10

Page 10

G. In addition to the remedies provided by the provisions of this Section, the Department of Health or Business Administrator or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 221-11 - Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 221-12 - Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Section 221-13 - Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding twenty-five (25) dollars.
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by:
 - C. A fine not exceeding twenty-five (\$25) for a first violation.
 - D. A fine not exceeding one hundred (\$100) for a second violation within one (1) year.
 - E. A fine not exceeding two hundred (\$200) for each additional violation within one (1) year.

Ordinance No. 86

Page 11

- F. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls Public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- G. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Department of Health or Business Administrator by restraining order, preliminary and permanent injunction, or other means provided for by the law, and the City may take action to recover the costs of the nuisance abatement.
- H. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

SECTION TWO

Any Ordinance or parts of any Ordinance inconsistent with the provisions of this Ordinance are hereby repealed to the extent of any such inconsistency.

SECTION THREE

This Ordinance shall take effect APRIL 15, 2007 with publication as provided by law.

January 25, 2007 3:35:32 PM pg

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
MANCUSO							SCHULTZ						
MASON							SMALL						
MOLLINEAUX							TIBBITT						
ROBINSON							WARD						
							MARSH, PRESIDENT						

X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on ... 11/15 and 12/29/06 and 1/24/07.....

Adopted on second and final reading after hearing on.....

Approved By.....Date..... Reconsidered Over By Council.....Ride

Mayor

Aye Nay

This is a Certified True copy of the Original Ordinance on file in the City Clerk's Office.

.....City Clerk