

ORDINANCE NO. 18-2016

AN ORDINANCE OF THE TOWNSHIP OF BUENA VISTA, COUNTY OF ATLANTIC, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE TOWNSHIP CODE WITH THE ADDITION OF CHAPTER 230 TITLED "SMOKING" AND AUTHORIZING INSERTION OF SAME INTO THE TOWNSHIP CODE

WHEREAS, the Township of Buena Vista believes that the general health and well-being of its residents is a top priority; and,

WHEREAS, municipalities are expressly authorized to enact strict ordinances regulating smoking under N.J.S.A. 26:3D-63 ("New Jersey Smoke-Free Air Act"); and,

WHEREAS, N.J.S.A. 2C:33-13(b) 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; and,

WHEREAS, the Township of Buena Vista 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 recreation areas as well as within Township owned and/or leased vehicle(s); and,

WHEREAS, the Township of Buena Vista also finds that the appearance of parks and recreation areas can be enhanced and the limited resources of the Department of Public Works and Recreation 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; and,

WHEREAS, Buena Vista Township finds a need to regulate smoking and create "Smoke Free Zones" in its Public Buildings and within the Township boundaries as further identified herein.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Buena Vista, County of Atlantic, State of New Jersey that Chapter 230, titled "Smoking" of the Code of the Township of Buena Vista be created and the same be inserted into the Township Code Book to read as follows:

CHAPTER 230 SMOKING

§ 230-1. Findings; purpose.

The Township Committee of the Township of Buena Vista hereby finds and determines that:

- A. The smoking of tobacco products is a major contributor to indoor air pollution and breathing and secondhand smoke is a cause of disease to nonsmokers;
- B. 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;
- C. 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;
- D. 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;
- E. The New Jersey Legislature also finds and declares 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;
- F. The State of New Jersey has acknowledged that careless smoking is the leading cause of death from fire;
- G. Smoking has also been found to lead to the inevitable discard of tobacco products and a source of litter by those who fail to properly dispose of cigarettes and tobacco products;
- H. 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;

- I. In 2006, the Legislature enacted the New Jersey Smoke Free Air Act, N.J.S.A. 26:3D-56 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,
- J. 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., N.J.S.A. 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.

§ 230-2. Definitions.

As used in this Chapter only, the following words and terms shall be defined as set forth below. All other terms, words and phrases not defined herein shall be given their customary meaning.

ELECTRONIC SMOKING DEVICE The use of an electronic device that can be used to deliver nicotine or other substances to the person inhaling the device, including but not limited to, an electronic cigarette, cigar, cigarillo or pipe.

PARK Any athletic fields, playgrounds and/or other active and passive recreation areas primarily of service to youth, owned, leased, operated or under the ownership control of Buena Vista Township to which the general public is invited and/or youth under the age of eighteen (18) may gather.

PERSON Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

PUBLIC BUILDING Any building, structure, facility or complex, including appurtenant parking areas, owned, leased, operated or under the ownership control of Buena Vista Township to which the general public is invited and/or occupied by Township of Buena Vista employees.

SMOKING The inhaling, exhaling, burning or possession of any lighted cigar, cigarette, pipe or other combustible tobacco product in any manner or in any form including but not limited to weed, plant or other vegetative or similar material. This shall include, but not be limited to, e-cigarettes or any other type of artificial cigarettes that produce emissions.

TOBACCO PRODUCT Any product containing tobacco or nicotine, including but not limited to cigars, cigarillos, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, loose leaf tobacco, tobacco pellets, plug tobacco, twist or rope tobacco, dipping tobacco, dissolvable tobacco and electronic cigarette cartridges.

§ 230-3. Smoking prohibited.

- A. Except as otherwise provided herein, smoking shall be prohibited in the following places:
- (1) In every room chamber, lobby, hallway and other common areas in and upon any public building.
 - (2) In every park where any member of the public are present and congregate.
 - (3) Any entrance or exit areas of any public buildings where smoke may enter the air people breathe through such entrances, exits, windows or ventilation systems.
 - (4) Any vehicles, equipment owned and/or leased, in part or entirely, by the Township of Buena Vista.
 - (5) Public areas of libraries, museums or the like which are funded or partially funded by government agencies.
 - (6) Any polling places within one hundred (100) feet of the public entrances to any polling places during the time at which elections are being conducted.
- B. Smoking optional areas. Notwithstanding the prohibitions contained in the foregoing provisions, outdoor smoking areas may be designated by the Buena Vista Township Committee by a resolution of same. Smoking areas, once approved, shall bear signs specifically designating that they are smoking areas. Smoking areas shall be clear of any public entrance or exit areas of any public buildings where smoke may enter the air people breathe through such entrances, exits, windows or ventilation systems. Except as approved by Township Committee resolution, no smoking shall be permitted in any other areas of any public buildings and parks.

§ 230-4. Signs.

"Smoking" or "No Smoking" signs, as appropriate, 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 and conspicuously posted by the owner, operator, manager, employer or such other person in control of every public building where smoking is controlled 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. The "No Smoking" signs shall be posted, at a minimum, on every area which provides an entry to the public building. The sign shall list the ordinance number of this Chapter. The "Smoking" signs shall be posted only in those areas so designated by resolution of the governing body as provided by this chapter.

§ 230-5. Promulgation of regulations.

The implementation and administration of regulations concerning the Township of Buena Vista's designation of its smoking areas shall be approved by resolution as necessary from time to time under this chapter in accordance with the terms of this Section (§ 230-5). Prior to implementing any such designations by resolution, the Buena Vista Township Committee shall consult with and obtain input from the designated Township staff and advisory boards regarding the proposed designated smoking areas. Notwithstanding anything to the contrary contained in this Section (§ 230-5), any designated areas implemented hereunder shall not contradict the specific terms of this Chapter nor may the penalties imposed under this Chapter be assessed for a violation of any regulation implemented by the Buena Vista Township Committee, unless such violated regulation was, prior to the violation, adopted by an Ordinance.

§ 230-6. Enforcement.

The provisions of this Chapter shall be enforceable by a police officer or employee of the Township of Buena Vista, as well as by any other individual. Any person seeking to enforce the provisions of this Chapter shall be authorized to file a complaint in the Municipal Court of the Township of Buena Vista.

§ 230-7. Violations and penalties.

- A. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this Chapter.
- B. Any person who violates any provision of this Chapter shall be subject to a fine of not less than Two Hundred Fifty (\$250.00) Dollars for the first (1st) offense; Five Hundred (\$500.00) Dollars for the second (2nd) offense and One Thousand (\$1,000.00) Dollars for each and every subsequent offense. In addition, any municipal employee found in violation of this Chapter shall be subject to disciplinary action in accordance with the Township of Buena Vista's Policies and Procedures.
- C. Any person found guilty 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 Two Hundred (\$200.00) Dollars, plus the cost of replacing the sign.
- D. Any juvenile adjudicated to have violated the provisions of this Chapter shall be subject to such penalties, fines or other discipline as may be imposed upon an adult pursuant to this Chapter.

§ 230-8. Construal of provisions.

No provision of this Chapter shall be construed or interpreted to allow smoking where it is otherwise restricted or prohibited by other laws.

NOW, THEREFORE, BE IT FURTHER ORDAINED that:

- 1. All ordinances or portions of ordinances which are inconsistent with this Ordinance shall be repealed as to their inconsistencies only.
- 2. If any provision or paragraph of this Ordinance shall be held invalid by any court of competent jurisdiction, the same shall not affect the other provisions of this Ordinance, except so far as the provisions or paragraphs so declared invalid shall be separable from the remainder or any portion thereof.
- 3. This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BUENA VISTA

BY Chuck Chiarello
CHUCK CHIARELLO - MAYOR

PASSED ON FIRST READING ON: FEBRUARY 22, 2016

INTRODUCTION PUBLISHED ON: FEBRUARY 27, 2016

PASSED ON FINAL READING ON: MARCH 14, 2016

FINAL PUBLICATION ON: MARCH 19, 2016

ATTEST:

Lisa A. Tilton
LISA A. TILTON - TOWNSHIP CLERK

I hereby certify the above to be a true copy of Ordinance No. 18-2016 adopted by the Township Committee at the Regular Meeting held on March 14, 2016.

Lisa A. Tilton
LISA A. TILTON - TOWNSHIP CLERK

	Motion	Y	N	ABSENT	ABSTAIN
ARMATO	<u>1</u>	✓	—	—	—
KELLY	—	✓	—	—	—
MARTINELLI	—	—	—	✓	—
WILLIAMS	<u>2</u>	✓	—	—	—
CHIARELLO	—	✓	—	—	—