

**CITY OF UNION CITY  
COUNTY OF HUDSON, STATE OF NEW JERSEY**

**ORDINANCE 2020-14**

**ORDINANCE AMENDING CHAPTER 351 TO SET FORTH  
RESTRICTIONS ON SMOKING**

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal and enforce ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

**WHEREAS**, the City of Union City (the “City”) is a municipality as defined by Title 40 of the New Jersey Statutes; and

**WHEREAS**, Chapter 351, “Smoking”, of the Code of the City of Union City in its current form only prohibits smoking in municipal buildings and does not address additional public areas; and

**WHEREAS**, pursuant to N.J.S.A. 26:3D-56 the New Jersey State Legislature has found and declared that:

a. Tobacco is the leading cause of preventable disease and death in the State and the nation;

b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public;

c. Electronic smoking devices have not been approved as to safety and efficacy by the federal Food and Drug Administration, and their use may pose a health risk to persons exposed to their smoke or vapor because of a known irritant contained therein and other substances that may, upon evaluation by that agency, be identified as potentially toxic to those inhaling the smoke or vapor;

d. The separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system;

e. The prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public; and

f. Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking

devices in all enclosed indoor places of public access and workplaces and at all public parks and beaches.

**WHEREAS**, the City finds that it is in the best interest of the health, safety, and welfare of its residents to amend Chapter 351 to set forth restrictions on smoking; and

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Commissioners of the City of Union City, County of Hudson, State of New Jersey that the Code of the City of Union City is hereby amended and revised as follows:

**SECTION ONE:**

Chapter 351 of the Code of City of Union City titled "Smoking" shall be amended to read as follows:

**Section 351-1 Definitions.**

"Indoor public place" means 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 (C.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 (C.30:5B-1 et seq.); facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; 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.

"Municipal Buildings" means all structures owned, leased, rented and/or operated by the City of Union City, and/or occupied by employees and used for official business of the City of Union City.

"Person having control of an indoor public place or workplace" means 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.

"Smoking" means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe, hookah 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 an electronic smoking device.

“Tobacco retail establishment” means an establishment in which at least 51% of retail business is the sale of tobacco products and accessories, and in which the sale of other products is merely incidental.

“Workplace” means a structurally enclosed location or portion thereof at which a person performs any type of service or labor.

**Section 351-2 Smoking prohibited in certain public places and workplaces.**

- a. Smoking is prohibited in an indoor public place or workplace or at a public park, except as otherwise provided in this Chapter.
- b. Smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.
- c. Smoking is prohibited in all municipal buildings at all times. This prohibition includes, but is not limited to, all areas, offices, common areas, hallways and council chambers. It also includes all outdoor areas within 30 linear feet from any and all entrances and exits to all municipal buildings, thereby ensuring that tobacco smoke does not enter the smoke-free outdoor area through entrances, windows, ventilation systems or any other means.

**Section 351- 3 Signage, requirements**

- a. The person having control of an indoor public place or workplace where smoking is not permitted, shall place in every public entrance to the indoor public place or workplace a sign, which shall be located so as to be clearly visible to the public and shall contain letters or a symbol which contrast in color with the sign, indicating that smoking is prohibited therein. The sign shall also indicate that violators are subject to a fine. The person having control of a Tobacco retail establishment, or other areas wherein smoking is permitted as set forth in this Chapter, shall post a sign stating “Smoking Permitted” in letters at least one inch in height or marked by the international symbol for “Smoking Permitted” in those areas where smoking is permitted.
- b. The provisions of this section shall not be construed to prevent a lessee of the workplace, or space within the building or indoor public place, from enforcing the smoking restrictions imposed by the owner or operator of a commercial or other office building or other indoor public place.

**Section 351-4 Exceptions.**

The provisions of this Chapter shall not apply to:

- a. any cigar bar or cigar lounge that, in the calendar year ending December 31, 2004, generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. The registration shall remain in effect for one year and shall be renewable only if: (1) in the preceding calendar year, the cigar bar or lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (2) the cigar bar or cigar lounge has not expanded its size or changed its location since December 31, 2004;
- b. Tobacco retail establishments, or any area the tobacco retail establishment provides for the purposes of smoking;
- c. any tobacco business when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco;
- d. private homes, private residences and private automobiles.

**Section 351-4 Violations and Penalties.**

Any person who violates any provision of this Chapter shall be subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.

**SECTION TWO:**

**Severability.** If any term or provision of this Ordinance is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, in whole or in part, such determination shall not affect the validity of the remaining terms and provisions of this Ordinance.

**SECTION THREE:**

**Repealer.** To the extent that any provision of the Code of the City of Union City is found to conflict with this Ordinance, in whole or in part, this Ordinance shall control.

**SECTION FOUR:**

In order to avoid accidental repeal of existing provisions, the City Clerk and the Corporation Counsel are hereby authorized to change any chapter numbers, article numbers and/or section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing Code.

**SECTION FIVE:**

This Ordinance shall take effect upon passage and publication as required by law.

<b>Commissioners</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain/Present</b>	<b>Absent</b>
Lucio P. Fernandez				
Wendy A. Grullon				
Celin J. Valdivia				
Maryury A. Martinetti				
Mayor Brian P. Stack				

**I HEREBY CERTIFY** this to be a true and correct Ordinance of the City of Union City Board of Commissioners, introduced on July 14, 2020 and will be further considered after a Public Hearing held on July 28, 2020.

INTRODUCED: July 14, 2020

ADOPTED:

ATTEST:

\_\_\_\_\_  
Erin Knoedler  
City Clerk

\_\_\_\_\_  
DATE

**SUMMARY OF ORDINANCE**

Ordinance to set forth restrictions on smoking.