

**BOROUGH OF OLD TAPPAN  
ORDINANCE NO. 1074-14**

**AN ORDINANCE TO CREATE A NEW ARTICLE II OF CHAPTER 202  
OF THE CODE OF THE BOROUGH OF OLD TAPPAN, ENTITLED “SMOKING IN  
AND UPON PUBLIC BUILDINGS, PUBLIC PROPERTIES AND BOROUGH PARKS  
AND RECREATION FACILITIES” AND TO DELETE ARTICLE III OF CHAPTER  
179, ENTITLED, “SMOKING PROHIBITED IN RECREATIONAL AREAS**

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

**Section 1.** Chapter 202, “Smoking”, of the Code of the Borough of Old Tappan is hereby amended to add a new Article II, entitled, “Smoking In and Upon Public Buildings, Public Properties and Public Parks and Recreational Facilities as follows:

**Section 202-5. Recitals.** The Mayor and Council of the Borough of Old Tappan 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 breathing 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 Agency (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., N.J.S.A. 40:48-2, et seq. and 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.

#### Chapter 202-6. Definitions.

As used in this section:

*Common Area* shall mean the walkways, parking areas, driveways, lawns, yards, gardens of any public building and all accessory structures, improvements or appurtenances used for the management, operation or maintenance of the public building.

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

*Public Building* shall mean any building, structure, facility or complex used by the general public, or to which the general public is invited, including appurtenant parking areas, which is owned, leased, operated or under the ownership or control of the Borough of Old Tappan or the Old Tappan Board of Education.

*Parks and Recreational Facilities* shall mean all public parks, pools, golf courses (except that smoking shall not be prohibited on the outside deck of the Clubhouse of the Old Tappan Golf Course), playgrounds, ballfields, publicly owned or leased by the Borough of Old Tappan and all property owned or leased by the Borough of Old Tappan upon which the public is invited or upon which the public is permitted and where individuals gather for recreational activities, including all areas adjacent to such facilities, including, but not limited to, any parking area, driveway or drive aisle.

Chapter 202-7. Smoking Prohibited.

a. Except as otherwise provided herein, smoking shall be prohibited in the following places:

1. Every room, chamber, lobby, hallway, restroom, plaza, and other common area in and upon any public building;
2. Within a thirty-five (35') foot radius of any entrance or exit area of any public building where smoke may enter the air people breathe through such entrances, exits, windows or ventilation systems;
3. Any vehicles owned and/or leased, in part or entirely, by the Borough of Old Tappan.
4. On or in any parks and recreation facilities.

This prohibition on smoking shall not apply to individuals in privately owned vehicles, provided that all debris is retained within the vehicle, nor shall it apply to the deck outside the Clubhouse at the Old Tappan Golf Course.

Chapter 202-8. 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. Letters shall have a minimum height of three-quarters (3/4") of an inch and should be posted in English and such other languages as the governing body approves. The "No Smoking" signs shall be posted, at a minimum, on every doorway which provides an entry to the building. The "Smoking" signs shall be posted only in those areas so designated by the governing body provided by this chapter.

Chapter 202-9. Enforcement.

The provisions of this article shall be enforceable by a police officer, employee or elected official of the Borough of Old Tappan, 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 Old Tappan.

Chapter 202-10. Violations and Penalties.

- a. It shall 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 subject to a maximum fine of \$200 for the first offense, \$400 for the second offense and \$750 for a third or subsequent offense.

c. 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 \$500, plus the cost of replacing the sign.

d. 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.

**Section 2.** Article III of Chapter 179, entitled “Smoking Prohibited in Recreational Areas”, is hereby repealed and deleted.

**Section 3. Repealer.**

All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflicts.

**Section 4. Severability.**

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Old Tappan declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

**Section 5. Effective Date.**

This ordinance shall take effect immediately upon passage and publication according to law.