

# Ordinance

Ordinance No. 31

OF THE  
CITY OF ATLANTIC CITY, N.J.

Date..6-16-2021..

Date to Mayor..7-22-2021.

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Amended 7/20/2021

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Legislative Counsel/ Robert Tarver, Esq.

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/ Robert Tarver, Esq.

Prepared by the Legislative Counsel

Council Members KURTZ, SHABAZZ, RANDOLPH, MORSHED & ZIA Present the following Ordinance:

## **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 221 SMOKING OF THE CODE OF THE CITY OF ATLANTIC CITY TO PROHIBIT SMOKING AND CONSUMING CANNABIS ITEMS IN PUBLIC PLACES**

**WHEREAS**, section 46 of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, P.L. 2021, c. 16 (the “Act”) codified at N.J.S.A. 2C:35-10a, provides that “nothing in this section shall permit a person to smoke, vape, or aerosolize any cannabis item in a public place...and any indoor public place as that term is defined in section 3 of P.L.2005, c. 383 (C.26:3D-57), or portion thereof, even if the smoking of tobacco is otherwise permitted in that place or portion thereof pursuant to the ‘New Jersey Smoke-Free Air Act’; and

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

**WHEREAS**, the City Council of the City of Atlantic City determines that it is necessary and proper for good government, order and protection of persons and for the preservation of the public health, safety and welfare of the City and its inhabitants, specifically pursuant to and as authorized by sections 46 of the Act, N.J.S.A. 2C:35-10a, desires to enact an ordinance to prohibit the smoking, vaping, or aerosolize any cannabis item in a public place, indoor public place, or portion thereof and to provide for a civil penalty for a violation in accordance with the Act.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Atlantic City, in the County of Atlantic, New Jersey, as follows:

**Section 1.** A new article is hereby added to Chapter 221 Smoking which shall be entitled “Article II, “Prohibition of Smoking and Consuming Cannabis, Marijuana in Public Places and Indoor Public Places ~~Areas of Employment~~” is hereby created as follows:

**§ 221-14 Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

CANNABIS, CANNABIS ITEM – means any usable cannabis, cannabis product, cannabis extract and any other cannabis resin, all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. “Cannabis” does not include hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the “New Jersey Hemp Farming Act,” P.L.2019, c. 238 (C.4:28-6 et al.).

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

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 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; any facility used for the holding of sporting events; or 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.

MARIJUANA - means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant products cultivated, handled, processed, transported, or sold pursuant to the “New Jersey Hemp Farming Act,” P.L.2019, c. 238 (C.4:28-6 et al.).

PUBLIC PLACE – means any place to which the public has access that is not privately owned; or any place to which the public has access where alcohol consumption is not allowed, including, but not limited to, a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, playground, swimming pool, shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library, or any other public building, structure; or any other public area, including beach area.

SMOKING - means the smoking, vaping, aerosolizing, 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 that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

**§ 221-15 Smoking of marijuana and cannabis items prohibited.**

It shall be unlawful for any person to engage in the smoking of marijuana or cannabis item in or on any indoor public place or public place.

**§ 221-16 Reserved.**

**§ 221-17 Reserved.**

**§ 221-18 Reserved.**

**§ 221-19 Reserved.**

**§221-20 Violations and Penalties.**

- A. Any person violating any of the provisions of this Article VIII, upon conviction thereof, shall be subject to a civil penalty of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.
- B. Penalties provided for herein shall be recoverable in a civil action by a summary proceeding in the Municipal Court of the City of Atlantic City pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-10 et seq.

**Section 2.** The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this Ordinance shall remain in full force and effect.

**Section 3.** All other ordinances in conflict with or inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**Section 4.** If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this ordinance, but shall be confined in its effect to the provision directly involved in the controversy in which such judgment shall have been rendered.

**Section 5.** This ordinance shall become effective twenty (20) days after final passage and advertisement thereof as required by law.

7-C

DO NOT USE SPACE BELOW THISLINE

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.
DELGADO	PRESENT						MORSHED				X		
DUNSTON		X					RANDOLPH	X					
FAUNTLEROY		X					SHABAZZ	X				X	
KURTZ	X					X	ZIA	X					
TIBBITT, PRESIDENT								X					
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 ...JUNE 16, 2021.....

Adopted on second and final reading after hearing on...JULY 21, 2021.....

Approved By.../s/...MARTY SMALL, SR.....Date...7/22/2021.....By Council.....Ride \_\_\_\_\_ Over \_\_\_\_\_

Mayor

Aye \_\_\_\_\_ Nay \_\_\_\_\_

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

/s/.....PAULA GELETEI, City Clerk

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RECORD OF COUNCIL VOTE ON FIRST PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DELGADO	PRESENT						MORSHED	X					X
DUNSTON		X					RANDOLPH	X				X	
FAUNTLEROY		X					SHABAZZ	X					
KURTZ	X						ZIA	X					
TIBBITT, PRESIDENT								X					
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 ...JUNE 16, 2021.....