

LOCAL LAW NO. 9-88
(Print 2)
CHAUTAUQUA COUNTY

A LOCAL LAW AMENDING THE CHAUTAUQUA COUNTY SANITARY CODE
REGARDING SMOKING RESTRICTIONS

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York as follows:

Section 1. The Chautauqua County Sanitary Code for the Chautauqua County Health District is hereby amended to adding a new Article XXIV, as follows:

Section 1. Declaration of Findings and Intent. The Chautauqua County Legislature hereby find as following:

- A. Reliable studies have shown that breathing second-hand smoke is a significant health hazard for several population groups, including children, fetuses, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
- B. These health hazards include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm.
- C. Exposure to tobacco smoke precipitates and/or aggravates allergic attacks in persons with respiratory allergies, and accelerates such allergic symptoms as eye irritation, nasal symptoms, cough, wheezing, sore throat and hoarseness.
- D. The preponderance of the evidence and the trends reflected in that evidence indicate that exposure to second-hand smoke is a significant health hazard which does adversely affect the public health. Such exposure has caused and continues to cause needless pain, suffering and death.
- E. It is also understood that regulations addressing such hazards will cause certain economic dislocations and governmental intrusions which must be justified by the nature and extent of the public health hazard. A balance must be struck between safeguarding citizens from involuntary exposure to second-hand smoke on the one hand, and minimizing governmental intrusion into the affairs of its citizens on the other.
- F. It is also recognized that certain voluntary efforts have been carried out independent of government intervention seeking to address the problem of second-hand smoke, and it is in the public interest to enact regulations which harmonize with such efforts so long as they do not compromise the public health.
- G. The hazard of second-hand smoke is of variable degree depending upon such factors as length of exposure and the age and physical condition of those exposed. In some cases, there is a voluntary assumption of the hazard and in other cases, an involuntary or coerced exposure. This wide range of conditions necessitates a tailoring of the regulations to match various circumstances. Therefore, the County Legislature declares the intent and purpose of this Article

is to preserve and improve the public health by limiting the exposure of the public to tobacco smoke.

Section 2. Smoking Restrictions. Except as otherwise permitted by this Article, no person shall smoke or carry a lighted cigar, cigarette, pipe or any other form of smoking object or device in any indoor area open to the public, including but not limited to:

- A. Areas in which smoking is prohibited by Article 13-E of the Public Health Law, provided that the provisions of Article 13-E shall supersede the provisions of this Article if inconsistent therewith;
- B. Taxicabs and limousines;
- C. All school, including elementary and secondary schools, colleges and other education and vocational institutions, when used as a public meeting place, to conduct public business, or when open to the public for functions not related to the educational functions of the school;
- D. Arenas, auditoriums, clubhouses, courthouses, municipal buildings, stadium, elevators, gymnasiums, restrooms, waiting rooms, and waiting areas, spas and health clubs, enclosed areas containing a swimming pool, food markets, stores, banks, and other commercial service establishments provide that:
 - 1. These restrictions shall not apply to conventions of private groups where the person participating in the convention are individually identified by the sponsor or organizer of the convention, or determined by law.
 - 2. These restrictions shall not apply to all other conventions and to trade shows open to the public if the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts notice at the entrance to the convention or trade shows advising the public that smoking will not be restricted.
 - 3. Smoking is prohibited in bowling establishments in the bowler settee area (i.e., the area occupied by bowlers while keeping score and actually bowling). In the concourse area (i.e., the area directly behind and immediately contiguous to the bowler settee area), bowling establishments shall provide a non-smoking area constituting at least 25 percent of the square footage of that area.
 - 4. The organizer or sponsor of bingo shall provide a contiguous non-smoking area sufficient to meet patron demand. If at least 70 percent of seating capacity is designated for non-smokers, demand will be deemed to have been met. The organizer or sponsor may not determine that no such demand exists. Notice shall be prominently posted at each entrance stating that a non-smoking section is available.
- E. Food service establishments shall be defined for the purposes of this Section as any place in which good is served, including restaurants, cafeterias, coffee shops, diners, sandwich shops, short order cafes and soda shops, The provisions of this sub-division shall not be applicable to food service establishments with seating capacity of 50 patrons or less.

Establishments with a seating capacity of greater than 50 shall designate a contiguous non-smoking area sufficient to meet customer demand. Establishments may not determine that no such demand exists. If an establishment designated 70 percent of its seating capacity as a non-smoking area, customer demand will be deemed to have been met. Notice shall be prominently posted to each entrance advising that a non-smoking section is available, and each patron shall be given an opportunity to state his/her preference. Food service establishments with a seating capacity of fifty (50) patrons or less shall be required to post a sign at all entrances to such establishments informing patrons as to the food establishment's policy regarding smoking at such establishments. Such sign shall indicate whether the restaurant's policy is to prohibit smoking, to segregate smokers, to allow unrestricted smoking, or whether other restrictions are in effect.

- F. It shall be the responsibility of employers to provide smoke-free work areas, subject to negotiation with employees or an employee union as required under any federal, state or local law, rule or regulation.
1. Each such policy shall, following such negotiation as required, adopt, implement, make known and maintain a written policy regarding smoking in the work place which shall require at least the following:
 - a) Smoking shall be prohibited in any enclosed work area occupied by more than one person unless such area is occupied exclusively by smokers;
 - b) Smoking shall be prohibited in auditoriums, classrooms, conference rooms, meeting rooms, elevators, hallways, restrooms, employee medical facilities, and rooms or areas containing photocopying or other equipment used by employees in common; and
 - c) Contiguous non-smoking areas shall be designated in cafeterias, lunchrooms, and employee lounges sufficient to meet employee demand. An employer may not determine that there is no such demand. If 70 percent of the seating capacity is designated for non-smoking employees, employee demand will be deemed to have been met.
 2. Employers shall prominently post the policy in the workplace, and supply a written copy upon request to any existing or prospective employee.
 3. Nothing herein shall be construed to deny any employer, when not prohibited by any other federal, state or local law, rule or regulation, the right to designate the entire place of employment, or any portion thereof, as a non-smoking area.
 4. An employer shall use its best effort to comply with request from non-smoking employees to be assigned to areas where smoking is not permitted by non-employees pursuant to this Article. The employer shall keep written documentation concerning such

efforts and make such documentation available to the Chautauqua County Health Department upon request.

5. An employer may designate a separate enclosed room or rooms not open to the public for use as a smoking room(s).

G. The owner, operator, manager or person in charge of a place covered by this subdivision may designate a separate enclosed room or rooms in such place solely for use by smokers.

Section 3. Posting of Signs. “Smoking” or “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 prominently and conspicuously posted in every place where smoking is regulated by this Article by the owner, operator, manager, or other person having control of such place. Such signs shall be protected from tapering, damage, removal or concealment.

Section 4. Smoking Restrictions Inapplicable. Smoking restrictions in this Article will not apply to:

- A. Private homes, residences and automobiles;
- B. Any place where private social functions are being held when seating arrangements are under control of the sponsor of the function and not the owner, operator, manager, or person in charge of such place;
- C. Hotel and motel rooms rented to guests;
- D. Retail tobacco stores where the sale of items other than tobacco products is only incidental; and
- E. Bars. For the purpose of this Article, a bar shall be defined as a place devoted to the serving of alcoholic beverages for on-site consumption by patrons and where the service of food is only incidental to the consumption of such beverages. A food service establishment may contain a bar, but the term bar shall not include the dining area of a food service establishment. Notice shall be prominently posted at the entrance of each bar stating that smoking is not restricted.

Section 5. General Provisions.

- A. Nothing in this Article shall be construed to deny the owner, operator, manager or person in charge of a place covered by this Article the right to designate the entire place, or any part thereof, as a non-smoking area.
- B. Any questions concerning the construction of this Article shall be resolved in a manner which will provide greater protection to non-smokers.
- C. Smoking may not be permitted where prohibited by any law, rule or regulation of any state agency or any municipality.
- D. The owner, operator, manager, or person in charge of a place covered by this Article shall request compliance with this Article by all persons in such place.

Section 6. Waiver. The Chautauqua County Commissioner of Health, or his designee, the person specifically designated to grant waivers pursuant to this Article, may grant a waiver from the application of a specific provision of this Article, provided that prior to the granting of such waiver, the applicant for a waiver shall 1.) establish that compliance would create undue financial hardship, 2.) establish that the physical layout of the indoor area would render compliance unreasonable, 3.) establish that enforcement of the article would not

substantially reduce the exposure of non-smokers to smokers, or that other factors exist which would render strict compliance unreasonable. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon person subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose and intent of this Article. Waivers granted pursuant to this subdivision shall be valid for a period of not more than twenty-four months and may be renewed upon application. Applications for removal shall be reviewed in the same manner as provided for applications for waiver.

Section 7. Separability. If any provision of this Article or the application thereof is held invalid, the remainder of this Article and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

Section 8. Effective Date. This article shall take effect, upon adoption by the Chautauqua County Legislature, in three (3) months in County buildings, in three (3) months for restaurants, and six (6) months for other businesses and industries, or upon filing with the New York State Department of State and the New York State Department of Health, whichever is later.

Adopted by Legislature: 5/25/88

Public Hearing: 6/9/88

Adopted as LL 9-88