

LOCAL LAW NO. 5-2000
CHAUTAUQUA COUNTY

A LOCAL LAW AMENDING THE CHAUTAUQUA COUNTY
SANITARY CODE ARTICLE XXIV

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

Section 1. Legislative History.

Chautauqua County Sanitary Code Article XXIV, as enacted by Local Law 9-88, and as amended by Local Law 6-96, is hereby further amended.

Section 2. Amendments to Sanitary Code Article XXIV.

A. Section 2 is amended by substitution to read as follows, with paragraphs A through G of Section 2 hereby repealed:

Section 2. Smoking Restrictions. Except as permitted in Section 3 of this Article, no person shall smoke or carry a lighted cigar, cigarette, pipe or other form of smoking object or device in any:

(1) public place;

(2) indoor or enclosed area containing a food service establishment of a private club, whether or not the public is invited or permitted access in such food service establishment.

For the purpose of this Article, a "public place" shall mean any indoor or enclosed area to which the public is invited or is permitted access. "Food service establishment" shall be defined as any place in which food is served, including restaurants, cafeterias, coffee shops, diners, sandwich shops, short order cafes, and soda shops.

B. Section 4 is hereby renamed Section 3, and amended by substitution to read as follows:

Section 3. Smoking Restrictions Inapplicable. Smoking restrictions in this Article will not apply to:

A. Private residences, except: (1) areas in a private residence where a business is operated which is open to the public or non-resident employees; and (2) areas in a private residence which constitute common areas of a multiple dwelling;

B. Vehicles, except: (1) vehicles used for public transit; and (2) vehicles owned by a business that are used by non-smoking employees and/or invitees of the business;

C. Retail tobacco stores where the sale of items other than tobacco products is only incidental;

D. Hotel and motel lodging rooms rented to guests that are permanently designated as smoking rooms;

E. Bars. For the purpose of this Article, a "bar" shall be defined as an establishment 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;

F. Food service establishments, which may permit smoking in any bar area and in no more than twenty percent (20%) of the total seating capacity of the dining area of the facility. All portions of the smoking section in the dining area must be contiguous to one another. Seating plans shall be approved by the County Health Department.

G. Bowling centers, except that:

1. Smoking is prohibited 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 centers shall provide a non-smoking area constituting at least twenty-five percent (25%) of the square footage of that area.

2. Smoking is prohibited anywhere in a bowling center during youth leagues and one hour prior to the commencement of youth leagues.

H. Bingo halls, except that smoking shall only be permitted in a designated and contiguous thirty percent (30%) section of the total square footage where the games are conducted.

I. Any area where private social functions are being held and when seating arrangements are under the control of the sponsor of such function and not the owner, operator, manager or person in charge of such area.

C. Section 3 is hereby renamed Section 4, and amended by substitution as follows:

Section 4. Posting of Site. SMOKING IS PROHIBITED, or NO SMOKING signs, using the international NO SMOKING symbol - consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bay across it, shall be prominently and conspicuously posted in every place where smoking is regulated by this Article. These signs shall be posted by the owner, by the operator, manager or other person having control of such place. SMOKING PERMITTED signs shall be posted where the conditions established in this Article have been met. Such signs shall be conspicuously posted at doors and entrances to the areas within these facilities where smoking is to be

permitted. SMOKING PERMITTED or NO SMOKING signs shall be protected from tampering, damage, removal or concealment.

D. Section 6 is hereby repealed and replaced with the following:

Section 6. Smoking in the Workplace. Each employer having any enclosed place of employment located within the County shall adopt, implement, publish and maintain a written smoking policy which shall prohibit smoking in all enclosed facilities within the place of employment without exception. This includes common work areas, auditoriums, building entryways, classrooms, conference and meeting rooms, indoor loading docks, garages, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairways, restrooms, and all other enclosed facilities. This Article shall not prohibit smoking in a workplace room designated for smoking only and where no actual work is performed, provided that the room has separate ventilation and is separately enclosed.

For the purpose of this Article, to "publish" shall mean communicating the smoking policy to all employees within three (3) weeks of adoption of the policy or of hire in the case of a new employee, and supplying a written copy upon request to any existing or prospective employee. "Separate ventilation" shall mean a system that is properly ventilated and maintained, exhausts to the outside of the structure in such a way to prevent re-introduction of smoke into the structure, and is negatively pressurized under all operating conditions so as to prevent the escape of tobacco smoke to the smoke-free areas of the structure. "Separately enclosed" shall mean completely enclosed on all sides by floor to ceiling walls, interior doors and/or windows, which must remain closed except for entry and exit of persons to or from the room.

Notwithstanding the above, this Section is not applicable to those facilities or portions of facilities exempted under Section 3 of this Article.

D. A new Section 7 is added as follows:

Section 7. Violation and Penalties. Any person who smokes or carries a lighted cigar, cigarette, pipe or other form of smoking object or device in an area where this Article prohibits smoking shall be guilty of a violation. In addition, it shall be a violation for any person who owns, operates or manages any premises subject to this law to fail to request compliance with this law when the law is being violated. Each day or incident wherein such a violation occurs shall constitute a separate violation of this Article.

Enforcement, hearings and penalties for violations of this Article shall be pursuant to the Chautauqua County Health District Sanitary Code, upon adoption of this Local Law by the Chautauqua County Board of Health. The Chautauqua County Board of Health is authorized and empowered to promulgate regulations consistent with this Article in order to ensure proper enforcement of this Article.

E. Section 7 is hereby renamed Section 8, and amended as follows:

Section 8. Separability. If any provision of this Article or the application thereof is adjudged invalid by any court of law with competent jurisdiction, the invalid part shall be stricken and 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.

F. Section 8 is hereby repealed.

Section 3. Effective Date.

This Local Law shall become effective upon filing with the Secretary of State, or upon filing with the New York State Health Department as a Sanitary Code Amendment, whichever is later.

Mailed - 4/14/00

DEFEATED - 4/26/00

(Roll Call Vote: 12 Yes, 10 No, 3 Absent No: Anderson, Bargar, Bobseine, Lus, Pullano, Szot, Tarnowski, Taylor, Teresi, Fagerstrom)

RENEW:

LOCAL LAW INTRO 4-2000, A Local Law Amending the Chautauqua County Sanitary Code Article XXIV. By Legislators Caflisch/Crowe.

Adopted – 5/24/00

(Roll Call Vote: 17 Yes, 6 No, 2 Absent. No: Anderson, Bargar, Bobseine, Pullano, Taylor, Teresi)

Public Hearing - 5/24/00

ADOPTED AS LOCAL LAW 5-2000