

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  
~~XXXXX~~ of ..... Niagara .....  
~~XXXXX~~  
~~Village~~

Local Law No. .... 7 ..... of the year 19 98

A local law in Relation to the Regulation of Smoking in Niagara County  
(Insert Title)

Be it enacted by the ..... Legislature ..... of the  
(Name of Legislative Body)

County  
~~XXXXX~~ of ..... Niagara ..... as follows:  
~~XXXXX~~  
~~Village~~

**A LOCAL LAW IN RELATION TO THE  
REGULATION OF SMOKING IN NIAGARA COUNTY**

Section 1. Legislative Intent.

The Niagara County Legislature finds and determines that the health of the public is seriously threatened by exposure to environmental tobacco smoke (ETS). The Legislature also determines that recent findings by the Federal Environmental Protection Agency (EPA) make clear that ETS, or secondhand smoke, is a human carcinogen belonging in the category of Group A (known human) carcinogens.

The EPA has concluded that exposure to ETS increases the risks of respiratory and middle ear diseases in children, contributing to between 150,000 - 300,000 cases of bronchitis and pneumonia in infants and young children each year. Further, exposure to ETS significantly worsens the condition of up to 1,000,000 asthmatic children and contributes to new cases of asthma in once-healthy children.

The Legislature further finds that reliable studies have shown that primary tobacco use is a major cause of mortality and morbidity, directly causing an estimated 434,000 deaths per year in the United States, more deaths than are caused by the use of any other legal or illegal substance or drug. In addition, ETS is the number three cause of death in the United States, being responsible for over 53,000 deaths.

Moreover, the Legislature concurs in the finds of the EPA that exposure to ETS can pose substantial health risks to children, as it is causally associated with, among other things, increases in the prevalence of childhood respiratory illnesses, increases in the prevalence of fluid in the middle ear of children, and a statistically significant reduction in the lung function of children. The Legislature also concurs in the EPA's findings that ETS results in additional episodes and increased severity of asthma in children who suffer from this disease, and is a risk factor for new cases of asthma in children who have not previously displayed asthmatic symptoms.

The EPA reports that twenty-six percent of the population of the United States, or about 50 million Americans, are smokers. As the Legislature finds that Americans, including all citizens of Niagara County, are likely to be exposed to ETS by virtue of its widespread presence in public places and in the workplace, and that exposure to ETS presents a substantial and serious health risk to nonsmokers, it is the purpose of the Legislature to limit smoking throughout Niagara County in order to protect the people of the county from the health risks of smoking. The Legislature is therefore placing further prohibition on smoking in public places and in the workplace.

#### Section 2. Definitions.

- a. "Bar" and "Tavern" means any establishment open to the public, devoted to the sale and service of alcoholic beverages for on-premises consumption, where the service of food is merely incidental to the operation of the business, and for which the sale of food for on-premises consumption does not exceed 40% of annual gross sales.
- b. "Bar Area" means an area of Restaurant with Bars within a maximum of 15 feet of the bar where the service of alcoholic beverages for on-premises consumption takes place.
- c. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity whether for profit or not-for-profit, including retail establishments where goods or services are sold as well as professional corporations, social agencies and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- d. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- e. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity who employs the services of one or more individual persons.
- f. "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" except when it is used for a business.

- g. "Public Place" means any area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms and places of worship. Areas in a private residence which constitute common areas of a multiple dwelling are "public places" within the meaning of this Local Law.
- h. "Restaurant" means any coffee shop, cafeteria, sandwich shop or private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
- i. "Dining area" means any area in a restaurant where people dine except the bar area of a restaurant with a bar.
- j. "Separate Smoking Room" means an enclosed room in which smoking is permitted. Such room shall:
  - (1) be clearly designated as a separate smoking room;
  - (2) be 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/from the room;
  - (3) contain adequate means of extinguishing fires consistent with Code; and
  - (4) have a ventilation system whereby the air from the enclosed room is immediately exhausted to the outside in such a way as to prevent the reintroduction of smoke into the building and must prevent backstreaming of smoke into smoke free areas. Such room may contain one or more doors, provided that the doors remain closed except for the purpose of entry and exit. These doors must be equipped with self-closing devices. Such room may not contain the sole means of entry and exit to the restrooms or any other smoke free area.
- k. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- l. "Smoking" means to inhale or exhale the smoke of burning tobacco or tobacco substitute and also to carry burning tobacco or tobacco substitute in the form of a cigarette, cigar, or any other smoke producing device including pipes.

- m. "Sports Arena" means any enclosed sports pavilion, including concourses, gymnasium, health spa, boxing arena, swimming pool, roller or ice skating rink, and other similar places. This term also applies to places where the general public assembles either to engage in physical exercise, participate in athletic or recreational activity, to witness sports, cultural, recreational or similar activities.
- n. "Private social function" shall mean any weddings, parties, testimonial dinners, or other similar gatherings in which the seating arrangements are under the control of the organizer or sponsor of the event and not the person who owns, manages, operates, or otherwise controls the use of the place in which the function is held.
- o. "Significant Alterations" shall be defined as any change, re-arrangement or addition to a building that requires a building permit under the New York State Uniform Code, exceeds \$10,000.00 in cost and deals with building structural features or any modification that affects health, fire safety, or structural safety and exceeds \$10,000.00 in cost.

Section 3. Application of Article to Government Owned and/or Operated Facilities.

All enclosed facilities owned or leased by Niagara County and any political subdivision of the County shall be subject to the provisions of this article.

Section 4. Regulation of Smoking in Public Places.

- a. Smoking shall be prohibited in all public places within Niagara County, unless otherwise provided by this Local Law, including but not limited to the following places:
  - 1. Elevators.
  - 2. Buses, taxicabs, and other means of public transit, and ticket, boarding, and waiting areas of public depots.
  - 3. Public restrooms.
  - 4. Service lines.
  - 5. Retail Stores.
  - 6. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to professional and other offices, banks, laundromats, hotels, and motels.
  - 7. Aquariums, galleries, libraries, and museums.
  - 8. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance.

9. Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or agencies of the County or any political subdivision of the County.
  10. Hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices and any other health facility.
  11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential and commercial facilities.
  12. Polling places.
  13. Places of worship.
  14. Dining areas of private clubs when open to the public.
- b. All Public Places are encouraged to immediately provide a smoke free environment; however, smoking may be permitted, with certain limitations as provided in various sections of this Local Law including, but not limited to, Separate Smoking Rooms or in the following areas and locations:
1. Restaurants with Bars.  
  
Effective 90 days from the enactment of this Local Law, Restaurants with Bars may allow smoking in Bar Areas of the restaurant and in a designated area of the restaurant comprising no more than 30% of the total seating capacity of the restaurant. This section shall not apply to dining areas seating 45 people or less.
  2. Restaurants without Bars.  
  
Effective 90 days from the enactment of this Local law, Restaurants without Bars may allow smoking in a designated area of the restaurant comprising no more than 30% of the total seating capacity of the restaurant. This section shall not apply to dining areas seating 45 people or less.
  3. Bars and Taverns. Smoking may be permitted. Proper ventilation is encouraged to reduce exposure to environmental tobacco smoke.
  4. Sports Arenas. Indoor facilities shall be smoke free. With concurrence of the entities that own and operate the facility, separate smoking rooms may be provided for patrons who wish to smoke.
  5. Bowling Centers. Effective 90 days from the enactment of this Local Law:
    - (a) No smoking is permitted in the "settee" area;

(b) Smoking in dining areas of a bowling center shall be consistent with the applicable provisions of this Local Law governing Restaurants with Bars and Restaurants without Bars;

(c) Smoking may be permitted in the concourse area of a bowling center, provided that such area consists solely of adults in league or tournament play. Open bowling is smoke free. Smoking may be permitted to continue during adult league bowling with open bowling in progress in the remaining portion of the bowling center provided the open bowling allowed at that time is undertaken exclusively by adults, and adult league bowling patrons are separated from open bowling patrons by a space of no less than four bowling lanes;

(d) Before 6:00 p.m., if a Minor (under 18 years of age) is present anywhere on the premises, no smoking shall be permitted in any area of the bowling center, unless the Minors are provided a designated separate smoke free Enclosed Area; and

(e) Regardless of the bowling activities undertaken at the time, a bowling center must designate at least one third of the concourse area as smoke free.

6. Convention Halls. Effective 90 days from the enactment of this Local Law, convention halls shall be smoke-free. A separate smoking room may be provided.

- c. This section shall not prohibit smoking in separate smoking rooms as defined in Section 2 (j).
- d. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

#### Section 5. Regulation of Smoking in Places of Employment.

- a. It shall be the responsibility of employers to provide a smokefree workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications and shall be subject to the provisions of any existing labor agreements.
- b. Within 90 days of the effective date of this article, each employer having any enclosed place of employment located within the County shall adopt, implement, make known, and maintain a written smoking policy which shall contain the following requirements: Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles occupied by more than one person, and all other enclosed facilities.
- c. The smoking policy shall be communicated to all employees at least three (3) weeks prior to its adoption.

- d. This section shall not prohibit smoking in separate smoking rooms as defined in Section 2 (j).

Section 6. Where Smoking is Not Regulated.

Notwithstanding any other provision of this Local Law to the contrary, the following shall not be subject to the smoking restrictions contained in this Local Law:

- a. Private residences.
- b. Private vehicles.
- c. Tobacco businesses.
- d. Any indoor area where private social functions are being held and when seating arrangements are under the control of the sponsor of such functions and not the owner, operator, manager or person in charge of such indoor area.
- e. Hotel and motel rooms, unless otherwise regulated by management.

Section 7. Waiver.

The Niagara County Legislature shall appoint a Waiver Committee composed of the Public Health Director or his or her designee, a Legislator, a Board of Health Member, a restaurant owner and a representative of the business community. This Committee may grant a temporary or permanent waiver if compliance with specific provisions herein contained would cause undue financial hardship, if other factors would render compliance unreasonable, or if the goals of this Local Law can be shown to be met through the use of technology. A written request for a waiver is required, and such request must clearly establish that compliance with a specific provision of this Local Law would cause the applicant undue hardship or that other factors exist which would render strict compliance unreasonable. Temporary waivers shall be valid for a period of not more than twenty-four months and may be renewed upon written reapplication.

Reapplication waivers may be granted for periods of time as deemed appropriate by the Committee, but in no case longer than sixty months. Waivers may be transferred with the sale of any establishment regulated by this Local Law, provided that the use remains unchanged and the physical configuration of the premises remains substantially unaltered. No fee will be charged for application for a waiver.

Section 8. Application of Article to New Construction, and Conversion, and Addition and Alteration of Existing Buildings.

- a. Full compliance with this regulation must be achieved for new construction, and for conversions, significant additions and significant alterations of existing buildings covered by this regulation. No waiver shall be granted for these circumstances.

- b. For new construction and for conversions, significant additions and significant alterations of existing buildings covered by this regulation, areas where smoking is permitted may not be the sole means of entry and exit from the facility or its restrooms or any other smoke free area, and may not be the sole waiting area for the facility.

Section 9. Posting of Signs

- a. "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 clearly, sufficiently, and conspicuously posted at each entrance to every building or other facility where smoking is prohibited.
- b. "Smoking Permitted in Designated Areas Only" signs shall be clearly, sufficiently, and conspicuously posted at each entrance to every building or other facility where smoking is permitted.

Section 10. Notice and Enforcement.

- a. Any owner, manager, operator, or employee of any establishment regulated by this Local Law shall inform persons violating this Local Law of the appropriate provisions hereof.
- b. Any citizen may register a complaint under this Local Law to the Niagara County Health Department, Environmental Health Section.
- c. The Niagara County Health Department shall be charged with enforcement of this Local Law. The Public Health Director is authorized to issue all notices, orders and other processes that may be necessary in the enforcement of this Local Law.
- d. Upon written notice of a violation of any provision of this Local Law, or of the rules and regulations promulgated hereunder, the Public Health Director shall cause a hearing to be held in accordance with Section 5 of Chapter I of the Niagara County Sanitary Code.

Section 11. Violations and Penalties.

- a. It shall be a violation for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this Local Law to fail to request compliance with any of its provisions.
- b. It shall be a violation for any person to smoke in any area where smoking is prohibited by the provisions of this Local Law.
- c. Any person who violates any provision of this Local Law shall be guilty of a violation punishable by a fine not to exceed five hundred dollars (\$500.00).



## Section 12. Rules and Regulations.

The Public Health Director may promulgate such rules and regulations as necessary to carry out the provisions of this Local Law, provided that the Legislature, by simple majority, has not voted to disapprove such rule or regulation within sixty days from the Public Health Director's written notice to the Legislature that such rule or regulation has been promulgated.

## Section 13. Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke free environment afforded by this Local Law.

This Local Law shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

## Section 14. Severability.

If any provision, clause, sentence, or paragraph of this Local Law or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Local Law which can be given effect without the invalid provision or application, and to this end the remaining provisions of this Local Law are declared to be valid.

## Section 15. General Exceptions.

Regardless of the nature or type of facility, smoking may be permitted in a Separate Smoking Room if the room is:

- a. Clearly designated as a separate smoking area;
- b. Separate, enclosed and ventilated to the outdoors;
- c. Contains adequate means of extinguishing fires;
- d. Doors are equipped with self-closing devices so as to remain closed except for purposes of entry and exit from the room;
- e. Not the sole entry area to or exit area from the facility or its restrooms;
- f. Not the sole waiting area for the facility;
- g. Signs are posted as provided in Section 8(b) indicating that smoking is permitted within the establishment, and within the designated areas only;

- h. In Restaurants with Bars and Restaurants without Bars, said Separate Smoking Room may be utilized for full service dining, but may not comprise more than 50% of the total seating capacity of the restaurant.

Section 16. Interpretation.

Nothing in this Local Law shall be construed to create a cause of action by one person against another person for violation of any provision of this Local Law.

Section 17. Effective date.

Unless specifically stated otherwise within this Local Law, the effective date of this legislation shall be 90 days from the enactment of this Local Law.

Section 18. Review Committee.

No later than one year after enactment of this Local Law, the Niagara County Smoking Law Committee of the Health Services Committee shall reconvene as a Review Committee to evaluate this Local Law. Within six months after reconvening, the Committee must provide the Legislature with its findings and/or recommendations with respect to this Local Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 7 of 1998 of the (County)~~(City)(Town)(Village)~~ of Niagara was duly passed by the County Legislature on May 16 1998, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not disapproved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

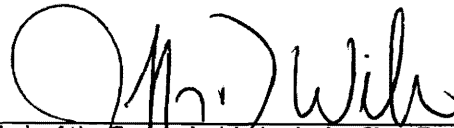
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 19\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 19\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.



\_\_\_\_\_  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

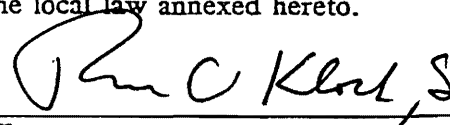
Date: 6/2/98

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK  
COUNTY OF Niagara

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



\_\_\_\_\_  
Signature

Assistant County Attorney  
Title

County  
~~City~~ of Niagara  
~~Town~~  
~~Village~~

Date: May 29, 1998