

(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  
~~City~~ of ..... ERIE  
~~Town~~  
~~Village~~

Local Law No. ..... 5 ..... of the year 19 ..96

A local law ..... in relation to the regulation of smoking in Erie County .....  
(Insert Title)

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

County  
~~City~~ of ..... ERIE ..... as follows:  
~~Town~~  
~~Village~~

Section 1. Legislative Intent.

The Erie County Legislature (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 Environmental Protection Agency (EPA) make clear that ETS, or as it is more commonly known, "secondhand smoke", is a human carcinogen belonging in the category of Group A (known human) carcinogens. The EPA has found that ETS is responsible for the lung cancer deaths of approximately 3,000 nonsmokers in the United States on an annual basis.

The EPA has concluded that exposure to ETS increases the risks of respiratory and middle ear diseases in children, contributing to between 150,000 and 300,000 annual cases of bronchitis and pneumonia in infants and young children. In addition, 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 primary tobacco use is a major cause of mortality and morbidity, directly causing an estimated 434,000 deaths annually in the United States, more deaths than

(If additional space is needed, attach pages the same size as this sheet, and number each.)

are caused by the use of all other legal or illegal substances combined. In addition, ETS is the number three cause of death in the United States, being responsible for over 53,000 deaths.

The Legislature determines that the addictive nature of nicotine, a drug present in tobacco, may make youthful experiments with cigarettes and chewing tobacco dangerously unhealthy.

Moreover, the Legislature concurs in the findings of the EPA that exposure to ETS can pose substantial health risks to children, since 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. The Legislature finds that almost all Americans, including all citizens of the County of Erie, 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 non-smokers. It is the purpose of the Legislature to limit smoking throughout the County of Erie in order to protect the people of the County from the health risks of smoking. The Legislature is

therefore placing reasonable limitations on smoking within the County of Erie while striking a balance between the health needs of all non-smoking individuals and the imposition of regulatory burdens on Businesses.

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 does not exceed 40% of annual gross sales.
- b. "Bar Area" means an area of Restaurant with Bars within 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, but not limited to, retail establishments where goods or services are sold as well as professional corporations, limited liability companies, limited liability partnerships, social agencies, warehouses, manufacturing plants and other entities where legal, medical, dental, engineering, architectural, or other professional or technical services are delivered.
- d. "Employee" means any person who is employed by an Employer for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a not-for-profit entity.

- e. "Employer" means any person, partnership, corporation, including a municipal corporation, or not-for-profit entity who employs the services of one or more individual person.
- f. "Enclosed Area" means any area completely closed in by a ceiling and walls, with appropriate openings for ingress and egress and not intended to mean areas commonly described as lobbies.
- g. "Minor" means a natural person who has not attained the age of eighteen years.
- h. "Place of Employment" means any area under the control of an 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 or private vehicle is not a "Place of Employment" except when it is used for business purposes.
- i. "Public Place" means any area to which the public is invited or in which the public is permitted including, but not limited to, Businesses, 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, restrooms, government buildings and vehicles, food stores and places of worship. A private residence is a "Public Place" within the meaning of this Local Law within areas of the private residence where a Business is operated and

to which the public is invited or permitted. Areas in a private residence which constitute common areas of a multiple dwelling are "Public Places" within the meaning of this Local Law.

- j. "Restaurant with Bars" means any establishment which sells alcohol for on-premise consumption, for which the service of food is not incidental to the operation of the Business, and for which the service of food constitutes at least 40% of annual gross sales.
- k. "Restaurants without Bars" means any establishment for which service of food is not incidental to the operation of the Business, and for which the service of food is the primary nature of the Business. This establishment maintains no separate Bar Area for the service of alcoholic beverages.
- l. "Separate Smoking Room" means an Enclosed Area in which smoking is permitted. Such Separate Smoking Room shall:
  - i. be clearly designated as a Separate Smoking Room;
  - ii. be completely enclosed on all sides by floor to ceiling walls, doors and/or windows which must remain closed except for entry and exit of persons to and from the room;
  - iii. contain adequate means of extinguishing fires; and
  - iv. have a separate ventilation system whereby the air from the Enclosed Area is immediately exhausted to the outside in such a way as to prevent the reintroduction of smoke into the Enclosed Area or into any

smoke free area, and must be negatively pressurized to an extent sufficient to prevent backstreaming of smoke into smoke free areas.

Such Separate Smoking 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 smoke free area.

- m. "Service Line" means any indoor line in a public place where one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- n. "Smoking" means to inhale or exhale the smoke of burning tobacco or tobacco substitute and also to carry burning tobacco or tobacco in the form of a cigarette, cigar, or any other similar smoke producing device including pipes.
- o. "Sporting and Recreational Areas" means any enclosed or open sports arena, pavilion or stadium including, but not limited to, a concourse, racetrack, gymnasium, health spa, boxing arena, swimming pool, roller or ice skating rink, and other similar places. "Sporting and Recreational Area" also includes, but is not limited 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.

- p. "Tobacco Business" means a Business in which the primary activity is the sale, manufacture, or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products generates less than 10 percent of total annual gross sales.

Section 3. Regulation of Smoking in Public Places.

- a. Smoking shall be prohibited in all Public Places within the County of Erie, unless otherwise provided by this Local Law, including, but not limited to, the following locations:
- i. Elevators.
  - ii. Busses, taxicabs, and other means of public transportation, and ticket, boarding and waiting areas of public depots.
  - iii. Public restrooms.
  - iv. Service Lines.
  - v. Retail stores.
  - vi. All areas available to and customarily used by the general public in all Businesses and not-for-profit entities patronized by the public including, but not limited to, professional and other offices, banks, laundromats, hotels, and motels.
  - vii. Aquariums, galleries, libraries, and museums.
  - viii. Any facility which is primarily used for exhibiting any motion pictures, stage, drama, lecture, musical recital,

or other similar performance, except for performers when Smoking is part of the production.

- ix. Every room, chamber, place of meeting or public assembly, including, but not limited to, school buildings, under the control of any board, council, commission, committee, including joint committees, or agencies of the County of Erie or any political subdivision thereof.
  - x. Hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices and any other health facility.
  - xi. Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple unit residential facilities.
  - xii. Lobbies, hallways, and other common areas in multiple unit commercial facilities.
  - xiii. Government and municipal buildings, facilities and vehicles.
  - xiv. Polling places.
  - xv. Places of worship.
- 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, Section 14, in Separate Smoking Rooms or in the following areas and locations:
- i. Restaurants with Bars.
    - (a) Restaurants with Bars may allow Smoking in Bar Areas of the restaurant and in a designated area of the

restaurant comprising no more than 20% of the total seating capacity of the restaurant.

(b) Effective January 1, 1998: All dining areas, waiting areas and restrooms shall be smoke free. Smoking may be allowed within Bar Areas provided the Bar Area is not the sole patron waiting area, is not the sole means of entrance or exit to the establishment or to the restrooms, and is separated from the seated dining area by a floor to ceiling partition or separated by at least a four foot space.

ii. Restaurants without Bars.

(a) Restaurants without Bars may allow Smoking in a designated area of the restaurant comprising no more than 20% of the total seating capacity of the restaurant.

(b) Effective January 1, 1998: All dining areas, waiting areas and restrooms shall be smoke free.

iii. Bars and Taverns.

Smoking may be permitted.

iv. Bowling Centers. Effective January 1, 1998:

(a) No Smoking is permitted in the "settee" area;

(b) Smoking for 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. Smoking may be permitted to continue 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) If a Minor 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 25% of the concourse area as smoke free.

v. Bingo Halls.

(a) Smoking may be permitted provided that signage is conspicuously posted indicating that a non smoking bingo area is available within the establishment. This area must be separated by at least four feet from the designated Smoking area and in an amount sufficient to meet consumer demand; and

(b) Effective January 1, 1998: Separate rooms which meet the following requirements must be provided for smoking and non-smoking patrons:

(i) Floor to ceiling partitions separating the smoking and smoke free rooms;

(ii) Each smoking room is separated, enclosed and separately ventilated to the outdoors;

(iii) Smoke free seating shall be sufficient to meet consumer demand or at least to a level of 50%, whichever is greater;

(iv) The Separate Smoking area shall not be the sole entry and exit area to or from the establishment or its restrooms; and

(v) Minors shall not be allowed within the Separate Smoking area of a bingo hall.

vi. Sporting and Recreational Areas and other Facilities with a seating capacity in excess of 5000.

(a) 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.

(b) Outdoor facilities shall be smoke free and any indoor areas of outdoor facilities are to be smoke free. With the concurrence of the entities that own and operate the facility, Separate Smoking Rooms may be provided for patrons who wish to Smoke.

vii. Outdoor Facilities and Parks with a seating capacity less than 5000.

(a) Indoor areas of outdoor facilities and parks shall be smoke free; and

(b) Smoking is permitted in the outdoors.

Section 4. Regulation of Smoking in Places of Employment

- a. It shall be the responsibility of Employers to provide a smoke free Place of Employment for all Employees, but Employers are not required to incur any expense to make structural or other physical modifications.
- b. Within 90 days of the effective date of this Local Law, each Employer having an enclosed Place of Employment located within the County, with the exception of Employers of the types of facilities listed in Sections 3(b)i,ii,iii,iv, and v of this Local Law, shall adopt, implement, make known, and maintain a written smoking policy which shall contain, at least, the following requirements:

Smoking shall be prohibited in all Enclosed Areas within a Place of Employment. In addition, Smoking shall be prohibited in all work areas including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, lobbies, medical facilities, cafeterias, employee lounges, stairs, restrooms, Business vehicles, and all other Enclosed Areas.

- 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.

- e. Enforcement of this Section against County of Erie Employees in County owned or operated facilities, buildings or vehicles is subject to applicable law.

Section 5. 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, except when used for business purposes.
- b. Private vehicles, except when used for business purposes.
- 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 function and not the owner, operator, manager or person in charge of such indoor area.

Section 6. Option To Declare Establishment "Smoke Free".

Notwithstanding any other provision of this Local Law, any owner, operator, manager, or other person who controls any establishment described herein may declare that entire establishment as a non-smoking establishment.

Section 7. Waiver.

The Erie County Commissioner of Health (Commissioner), or the Legislature by resolution with the concurrence of two-thirds of the Legislature, may grant a temporary or permanent waiver if compliance with specific provisions herein contained would cause undue financial hardship, or if other factors would render compliance unreasonable. Factors to be considered by the Commissioner or the

Legislature may include, but are not limited to, any factors which reasonably appears to the Commissioner, or his or her designee, that the public health will not be endangered by granting of such waiver and adequate alternative provisions have been made to protect the health of non-smokers. 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 Legislature or the Commissioner, or his or her designee, but in no case longer than sixty months.

Section 8. Posting of Signs.

Signs indicating "No Smoking", "Smoking Permitted" or the international no smoking symbol which consists 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 regulated by this Local Law. Such signs shall be at least 10 inches by 14 inches in size.

Section 9. 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 Erie County Department of Health, Environmental Health Section.
- c. Police officers within their jurisdiction, deputy sheriffs and designees of the Erie County Department of Health shall be charged with enforcement of this Local Law and are authorized to issue appearance tickets for violations of this Local Law.
- d. Upon issuance of an appearance ticket for a violation of any provision of this Local Law, or of the rules and regulations promulgated hereunder, the Commissioner shall cause a hearing to be held in accordance with Section 5 of Article I of the Erie County Sanitary Code.

Section 10. 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 civil penalty not to exceed five hundred dollars (\$500.00).

Section 11. Rules and Regulations.

The Commissioner may promulgate such rules and regulations as necessary to carry out the purposes 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 Commissioner's written notice to the Legislature that such rule or regulation has been promulgated.

Section 12. Non-Retaliation.

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 13. 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 14. 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 separately 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 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 20% of the total seating capacity of the restaurant.

Section 15. 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 16. Effective Date.

Unless specifically stated otherwise within this Local Law, the effective date of this legislation is January 1, 1997.

Section 17. Review Committee.

No later than January 1, 1999, the Chairman of the Legislature, shall appoint and convene a Review Committee to evaluate this Local Law. The Review Committee will be comprised of a cross-section of the community and will include, but not be limited to, representatives of the Legislature, Erie County Department of Health, and other appropriate representatives. Within six months after appointment of the Review Committee, 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. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, 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. 5 of 19 96 of the (County)(City)(Town)(Village) of ERIE was duly passed by the ERIE COUNTY LEGISLATURE on NOVEMBER 7 1996, and was (approved)(not disapproved)(repassed after disapproval) by the ERIE COUNTY EXECUTIVE and was deemed duly adopted on NOVEMBER 19 1996, 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.)

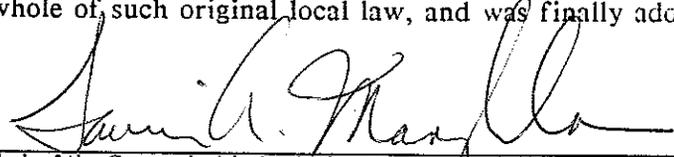
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority 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 \_\_\_\_\_ 2\_\_\_\_, above.



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

(Seal)

Date: December 18, 1996

(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 \_\_\_\_\_ ERIE

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

1st ASSISTANT COUNTY ATTORNEY

Title

County of \_\_\_\_\_ ERIE  
City of \_\_\_\_\_  
Town of \_\_\_\_\_  
Village of \_\_\_\_\_

Date: DECEMBER 18, 1996