

# ERIE COUNTY LEGISLATURE

**BETTY JEAN GRANT**

*Democratic Caucus Leader  
2nd District Legislator*



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January 30, 2015

Karen M. McCarthy  
Clerk of the Erie County Legislature  
92 Franklin St.  
Buffalo, New York 14202

Dear Ms. McCarthy,

For submission to the public record, please find the attached City of Buffalo - updated Ordinance "Chapter 399 Smoking" - amendment for electronic cigarettes.

With a proposed local law currently before the Legislature concerning the regulation of electronic cigarettes in the County of Erie, a review of the City of Buffalo amendment is both timely and informative.

Accordingly, I was hoping that this item could be forwarded to the Health and Human Services Committee at your earliest convenience.

Should you have any questions, please don't hesitate to contact me.

Thank you.

Sincerely,  
  
**BETTY JEAN GRANT**  
Democratic Caucus Leader  
2nd District Legislator

By: Mr. Pridgen

Ordinance Amendment

Chapter 399 Smoking

**Section 1.** The Common Council of the City of Buffalo does hereby ordain as follows:  
That §399 of the Code of the City of Buffalo be amended to read as follows:

**Chapter 399. SMOKING**

**Article I. Public Conveyances**

**§ 399-1. Prohibited acts.**

No person shall smoke any pipe, cigar, electronic cigarette or cigarette in or upon any bus while the same is being operated upon any public highway within said City for the transportation of passengers.

**§ 399-2. Posting of notice.**

Every person, firm or corporation owning or operating any public bus for the transportation of passengers within said City shall keep permanently and conspicuously posted in each of said conveyances a notice forbidding smoking, as provided by this Article.

**Article II. Sales to Minors**

**§ 399-3. Definitions.**

Where used in this Article, the following terms and words shall have the following meanings:

**MINOR**

Includes all persons under 18 years of age.

**SMOKING MATERIALS**

All objects utilized for the purpose of smoking, and shall include but not be limited to cigarettes, electronic cigarettes, pipes, loose tobacco, smoking herbs and cigarette papers.

**§ 399-4. Prohibited acts.**

No person, firm or corporation shall sell, barter or give smoking materials to a minor. No minor shall purchase or otherwise procure smoking materials. No person shall represent himself or herself to have attained the age of 18 for the purpose of obtaining smoking materials.

**§ 399-5. Proof of age.**

If any person contemplating the sale or furnishing of smoking materials believes or has reason to believe that a sale or delivery of smoking materials is prohibited because of the age of the prospective recipient, he shall, before making such sale or delivery, demand presentation of some

form of possible identification, containing proof of age, issued by a public officer in the performance of his/her official duties.

**§ 399-6. Posting of notice.**

Every person, firm or corporation engaged in the business of selling smoking materials shall display at all times in a prominent place in its place of business a printed card, to be issued by the Director of Licenses of the City of Buffalo, which shall read as follows:

**Warning:** The sale to and purchase of smoking materials is prohibited by §399-4 of Article II of Chapter 399 of the Code of the City of Buffalo. Violations of this Article subjects a person to a maximum fine of \$500.

**§ 399-7. Penalties for offenses.**

Any person violating the provisions of this Article shall be subject to a fine of not less than \$50 nor more than \$500.

**Article III. General Regulations**

**§ 399-8. Definitions.**

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

**SMOKING**

Inhaling and puffing out the smoke of burning tobacco and/or a substitute therefor and also the carrying of burning tobacco or a substitute therefor in any form, whether in the form of a cigarette, electronic cigarette, cigar or any other fire-and/or smoke-producing device, including pipes.

**§ 399-9. Smoking prohibited in conveyances and certain areas.**

Smoking shall be unlawful for any person in and/or upon the following conveyances, places, premises, buildings, structures or specified areas thereof:

A. Public transportation vehicles and conveyances, excluding taxicabs and railroad trains.

B. Retail and wholesale stores having a ground floor area of 10,000 square feet or more or having store accommodations over two stories in height above the curb level, excluding rest rooms, restaurants, executive offices, beauty parlors, barbershops or areas designated by written permission of the Bureau of Fire Prevention.

C. Schools while in session; excluding schools above secondary educational levels, rooms classified as faculty rooms, principals' offices and areas designated by written permission of the Bureau of Fire Prevention.

D. Theaters, one hour prior to, during and one hour after occupancy for a theatrical or operatic performance; excluding outer lobbies, lounges and rest rooms or areas designated by written permission of the Bureau of Fire Prevention.

E. Motion-picture theaters, one hour prior to, during and one hour after the exhibition of motion pictures, including the restrictions under Subsection D of this section, and excluding outer lobbies, loges and rest rooms or areas designated by written permission of the Bureau of Fire Prevention.

F. Tents exceeding 1,000 square feet, excluding tents used on private property for social functions and funeral purposes at cemeteries.

G. Public elevators.

H. Woodworking shops, planing mills, lumber-drying rooms or lumberyards.

I. Dry-cleaning or dyeing plants or establishments using flammable solvents.

J. Rooms or areas of buildings on premises in which flammable liquids, flammable gases or explosives are manufactured, used or stored.

K. Motion-picture projection booths or places for storage of motion-picture film, including safety film.

L. Paint shops or paint-manufacturing establishments using flammable liquids, flammable solvents, flammable paints, public storage or repair garages, stables or aircraft hangars, excluding open-air storage garages of fireproof construction having a minimum of two-thirds (2/3) of the exterior wall area open to the outdoors.

M. Rooms or portions of a building in which sawdust, loose paper, straw or combustible packing materials, including upholstering materials, are stored or used.

N. In any area of piers, wharves, warehouses, stores, industrial plants, institutions, places of assembly and in open spaces where combustible materials are stored or handled, including those outlined above, which, upon investigation, the Bureau of Fire Prevention finds that conditions are such as to make smoking a hazard and shall order the owner or occupant or agent to post "no smoking" signs in each building, structure, room or place in which smoking shall be prohibited. The Bureau of Fire Prevention shall designate specific safe locations, if necessary, in any building, structure or place where smoking shall be permitted.

§ 399-10. Posting of signs.

A. The owner, occupant or person managing any place, building or premises wherein smoking is hereby prohibited or regulated shall post in conspicuous places in areas where smoking is prohibited signs at least 18 inches long and 12 inches high, with red lettering on white background, said lettering being at least two and one-half (2 1/2) inches high, bearing the following legend:

**SMOKING PROHIBITED**  
**Under Penalty of a Fine**  
**Section 18.12 Fire Prevention Code**  
**By Order of the Fire Prevention Bureau**

B. Smaller signs may be used in elevators, small rooms and designated areas upon approval by the Bureau of Fire Prevention.

§ 399-11. Prohibited acts.

A. It shall be unlawful for any person to smoke or use matches or any fire-producing device in such a dangerous, careless or reckless manner as to set fire to any bedding, furniture, curtains, shades, drapes or other flammable household equipment or contents or any part of any building so as to endanger life or property. A plainly printed notice shall be posted in a conspicuous place advising the occupants of the provisions of this Article in each sleeping room of all hotels, motels, rooming houses, lodging houses or other places of public abode.

B. It shall be unlawful for any person to remove any legally required "smoking prohibited" sign or to remove any printed notices of this Article in sleeping rooms where such signs or notices are posted.

**Article IV. City Offices**

§ 399-12. Purpose.

Because the smoking of tobacco or any other weed or plant is the number one cause of preventable death and secondhand smoke kills 53,000 Americans annually, the Common Council hereby finds and declares that the purpose of this Article is to protect health and welfare by creating smoke-free environments in all City buildings and any vehicles owned or leased by or to the City of Buffalo.

§ 399-13. Prohibited acts.

It shall be unlawful for any person to smoke within any City building or any vehicle owned or leased by or to the City entity. This prohibition extends to all workplaces, public lobbies, rest rooms, storage areas, corridors, elevators and other enclosed areas within any City building; provided, however, that the provisions of this Article shall not apply to the downtown baseball stadium currently known as [North AmeriCare Park] Coca-Cola Field.

§ 399-14. Definitions.

For purposes of this Article, the following words and terms shall mean the following:

**CITY BUILDING**

Any public building or other structure or portion thereof owned, operated, occupied or leased by or to the City of Buffalo, its agencies, boards and commissions and the appropriate officials of such entities. This definition does not extend to properties used for residential purposes or those properties that are operated primarily for nonpublic purposes.

**EMPLOYEE**

Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

**EMPLOYER**

The City of Buffalo, its agencies, boards and commissions and the appropriate officials thereof.

**ENCLOSED**

Closed in by a roof and four walls with appropriate openings for ingress and egress, and is not intended to mean areas commonly described as "public lobbies."

**PERSON**

Any individual person, firm, partnership, association, corporation, company, organization or legal entity of any kind.

**SMOKING OR TO SMOKE**

Includes inhaling, exhaling, burning or carrying of: any lighted smoking equipment for tobacco or any other weed or plant; or electronic cigarettes.

**WORKPLACE**

Any enclosed area of a structure or portion thereof intended for occupancy by City entities which will provide labor, clerical, professional or business services to the City, to other business entities or to the public at that location.

**§ 399-15. Posting of notice.**

The employer or occupant managing the City building or premises wherein a smoke-free environment has been hereby created shall post in conspicuous places signs that are clearly visible and at least 18 inches long and 12 inches high, with red lettering on a white background, such lettering being at least two and one-half (2 1/2) inches high, which shall read as follows:

**SMOKING PROHIBITED****IN ALL AREAS**

Under Penalty of a Fine

Pursuant to Chapter 399 Article IV of

The Code of the City of Buffalo

**§ 399-16. Enforcement.**

A. It shall be the duty of the Commissioner of Police, the Commissioner of Fire and the Commissioner of Public Works to enforce this Article.

B. For those persons leasing property from the City, the lessee shall be responsible for ensuring that this Article is enforced.

§ 399-17. Penalties for offenses.

Any person violating the provisions of this Article shall be subject to a fine of not less than \$50 nor more than \$500 for each such violation.

§399-18. Effective date.

This Article shall become effective April 1, 1995. The provisions of this Article shall become effective January 1, 1996, for the following City buildings: the Buffalo Convention Center, the Buffalo Memorial Auditorium, the Delaware Park Marcy Casino, Kleinhans Music Hall, the Lafayette Ice Rink, the downtown baseball stadium formerly known as "Pilot Field" and Shea's Buffalo Center for the Performing Arts.

**APPROVED AS TO FORM ONLY**

By:   
**TIMOTHY A. BALL**  
**CORPORATION COUNSEL**

Underlined material is new. Material in brackets  is repealed.