

**BOARD OF SUPERVISORS  
WAYNE COUNTY**

**RESOLUTION NO. 471-00: ADOPTING LOCAL LAW PROVIDING FOR CHANGES IN  
SANITARY CODE IN RELATION TO CLEAN INDOOR AIR**

Mr. Guelli presented the following:

WHEREAS, a proposed local law in relation to providing for changes in the Wayne County Sanitary Code in relation to clean indoor air was presented to the Board of Supervisors on May 16, 2000 and was amended on June 20, 2000; and

WHEREAS, a public hearing on the proposed local law as amended was held by the Board of Supervisors on July 5, 2000 in accordance with the notice of hearing duly posted and published in the manner prescribed by law; now, therefore, be it

RESOLVED, that said local law is hereby adopted.

A Local Law providing for changes in the Wayne County Sanitary Code in relation to clean indoor air.

**COUNTY OF WAYNE – STATE OF NEW YORK**

**BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE,**  
as follows:

**SECTION 1. Intent**

Wayne County Board of Supervisors declare the intent and purpose of this Local Law is to preserve and improve the public's health by improving indoor air quality in public places.

**SECTION 2. Definitions.**

The following words and phrases, whenever used in this Local Law, shall be construed as defined in this section:

- (1) **"Bar"** or **"tavern"** shall mean a business establishment that is devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the service of food is incidental to the business of the facility. Service of food shall be considered incidental if the food service generates less than forty percent (40%) of total annual gross sales.
- (2) **"Business"** shall mean any sole proprietorship, partnership, joint venture, Corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- (3) **"Employee"** shall mean 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.
- (4) **"Employer"** shall mean any person, partnership, corporation, including a municipal corporation, or non-profit entity who employ the services of one or more individual persons.
- (5) **"Food"** shall mean any edible substance, ice, beverage (excluding alcohol) or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (6) **"Multiple Unit Residence"** shall mean any facility containing more than one residence unit, when common space or facilities are present for use by the residents or the general public.
- (7) **"Place of Employment"** shall mean any enclosed 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, hallways, garages and indoor loading docks. A private residence is not a "place of employment" unless it is used as a childcare or health care facility or where the use of the private residence falls under the definition of Section 2 Paragraph 9 "Public Place".

- (8) **"Private Social Functions"** 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.
- (9) **"Public Place"** shall mean any area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, correctional facilities, health facilities, bingo halls, indoor recreational facilities, laundromats, public transportation facilities, reception areas, restaurants, bars, retail food production and marketing establishments, malls, retail service establishments, retail stores, showrooms, theaters, waiting rooms and places of worship. A private residence is not a 'public place' within the meaning of this Local Law, except that areas in a private residence where a child care center, health care facility or other business (open to the public) is operated during the times of operation and areas in a private residence which constitute common areas of a multiple unit residence are "public place" within the meaning of this Local Law.
- (10) **"Restaurant"** shall mean any coffee shop, cafeteria, sandwich shop, private or public school cafeteria, and any other eating establishment which gives or offers food for sale to the public, guests, members or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
- (11) **"Restaurant/Bar Area"** shall mean a contiguous area of a restaurant, containing a counter, which is primarily devoted to the selling and serving of alcoholic beverages. This area may include seating that is immediately contiguous to the bar if the bar area is separated from the remaining seating area by : (a.) full floor to ceiling partition, or (b.) partial partition with separately operating and properly maintained ventilation [as defined in *Section 2, Paragraph 14(c)*] to the outside, or (c.) is on a separate floor, for example, as in a two-story dwelling.
- (12) **"Restaurant Dining Area"** shall mean the area(s) of a restaurant, which are primarily devoted to the serving, and consumption of food.
- (13) **"Retail Tobacco Business"** shall mean a sole proprietorship, corporation, partnership or other enterprise 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.
- (14) **"Separate Smoking Room"** shall mean an enclosed room in which smoking is permitted. Such room shall:
- (a.) be clearly designated as a separate smoking room;
  - (b.) 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;
  - (c.) have a ventilation system whereby the air from the enclosed room is immediately exhausted to the outside of the building in such a way as to prevent the re-introduction of smoke into the building and must prevent back steaming 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 be the sole entry area to or exit area from the facility, nor be the sole waiting area for the facility.
  - (d.) In Restaurants with Bars and restaurants without Bars, the "Separate Smoking Room" and, "Restaurant Bar Area" may be utilized for full service dining, but may not comprise more that thirty percent (30%) of the total area open to the public or employees in a place of employment.
- (15) **"Service Line"** shall mean any indoor line in 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.
- (16) **"Smoking"** shall mean inhaling of, exhaling of, burning of, or carrying of any lighted cigar, cigarette, weed, or other plant in any manner or in any form.

- (17) **"Sports Area"** shall mean any indoor or outdoor stadium, sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard parlors, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
- (18) **"Spectator Facilities"** shall mean any indoor or outdoor facility where members of the general public assemble to view and/or participate in scheduled events involving competitions, exhibitions, entertainment productions, trade shows, conventions, or other events established for common purposes.

**SECTION 3. Application of Local Law to County-Owned and Leased Facilities.**

All enclosed facilities owned or leased by the County of Wayne shall be smoke free.

**SECTION 4. Regulation of Smoking in Public Places.**

- A. Smoking shall be prohibited in all enclosed public places within the County of Wayne, 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 transit depots.
  - (3) 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 offices, banks, laundromats, barber and beauty shops.
  - (7) Restaurants.
    - (a) Restaurants without bars shall designate as a non-smoking area its entire Restaurant Dining Area, the full 100% of its seating capacity, excepting a separate smoking room as defined.
    - (b) Restaurants with a bar shall designate as a nonsmoking area its entire Restaurant Dining Area, excepting a separate smoking room as defined.
    - (c) (1) Regardless of the nature or type of facility, smoking may be permitted in a "Separate Smoking Room" as defined in Section 2, Paragraph 14.
    - (2) Signs must be posted as provided in Section 10, infra, indicating that Smoking is permitted within the establishment, and within the designated areas only.
  - (8) Galleries, libraries, museums and exhibition halls.
  - (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, cabaret, comedy production, concert or other similar performance.
  - (10) Sports arenas, spectator facilities and convention halls.
  - (11) Bowling Centers.
    - (1) Smoking shall be prohibited in Bowling Centers, except smoking may continue to be allowed in the bar area.
    - (2) Smoking may be allowed in the "bar area" as defined in the Local Law.
  - (12) Bingo Halls.
 

Smoking may be allowed in Bingo Halls in separate "smoking rooms", as defined in Section 2, Paragraph 14, provided that the room does not exceed 50% of the total seating of the facility.
  - (13) 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 during such time as a public meeting is in progress.
  - (14) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics physical therapy facilities, doctors' offices, and dentists' offices.
  - (15) Correction facilities.

- (16) Lobbies, hallways, offices and other common areas in multiple unit residences, condominiums, retirement facilities, nursing homes, and multiple unit commercial facilities.
- B. This section shall not prohibit smoking in "separate smoking rooms" as defined in Section 2, Paragraph 14.

**SECTION 5. Regulation of Smoking in Places of Employment**

- A. It shall be the responsibility of employers to provide a smoke free work-site for all employees, but employers are not required to incur any expense to make structural or other physical modifications in providing a smoke-free environment.
- B. Each employer having any enclosed place of employment located within the County of Wayne 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, building entryways, classrooms, conference and meeting rooms, loading docks, garages, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairways, restrooms, fleet vehicles, and all other enclosed facilities.
- C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- E. This section shall not prohibit "separate smoking rooms" as defined in Section 2, Paragraph 14.

**SECTION 6. Further Restriction of Smoking.**

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

**SECTION 7. Where Smoking is Not Regulated.**

- A. Notwithstanding any other provision of this Local Law to the contrary, the following areas shall not be subject to the smoking restrictions of this Local Law.
  - (1) Stand alone Bars.
  - (2) Private residences, except when used as childcare or health care facilities, or when used as a work-site which is open to the public or non-resident employee.
  - (3) Retail tobacco stores.
  - (4) Rooms in which private social functions are being held where seating arrangements are under the control of the sponsor of the function and not the owner or operator of the facility.
  - (5) Hotel and motel rooms rented to guests.
- B. No area may be designated for smoking where prohibited by regulation of another agency having jurisdiction.

**SECTION 8. Additional Responsibilities of Management**

The person in charge of a facility shall also be responsible to:

- A. Provide ashtrays and smoking receptacles, where smoking is permitted by this Local Law and maintain locations where smoking is prohibited free of ashtrays or smoking receptacles.
- B. Enforce this Local Law by requesting compliance from patrons verbally or by presenting a non-smoking card, and by prohibiting employees from smoking, except in separate smoking rooms.
- C. Develop and implement a plan of compliance, upon request, that is acceptable to the Wayne County Public Health Service and which specifies areas where smoking is prohibited, and where smoking is permitted, if any. The plan must include the manner in which this information is conveyed to the public and all employees. The plan shall be available for inspection by the Director of Public Health or the Director's designees upon request.

**SECTION 9. Variances and Waivers.**

- A. **Variance.** The Wayne County Director of Public Health Services may, on written

application and after review, grant a variance from a specific provision of this Local Law, subject to appropriate conditions which shall include a time schedule for compliance when such variance is in harmony with the general purposes and intent of this Local Law, and when there are practical difficulties or unnecessary hardship in complying with such provision.

- B. **Waiver.** The Wayne County Director of Public Health Services, in his or her sole discretion, may waive, in writing, any of the requirements of this Local Law when it reasonably appears to the Wayne County Director of Public Health Services that the public's 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 application for a waiver is required. Initial waivers shall be valid for a period of not more than twenty-four (24) months and may be renewed upon written reapplication. Under conditions of renewal, waivers may be granted for periods of time as deemed appropriate by the Wayne County Director of Public Health Services.
- C. **Revocation.** The Wayne County Director of Public Health Service may revoke any waiver or variance after providing thirty (30) days written notice to the applicant/holder.

**SECTION 10. Posting of Signs.**

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 bar across it, shall be prominently and conspicuously posted in every place where smoking is regulated by this Local Law. 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 Local Law have been met. Such signs shall be conspicuously posted at doors and entranceways to all facilities when smoking is permitted anywhere within the facility and at the entrances to the areas within these facilities where smoking is to be permitted. All signs shall be protected from tampering, damage, removal or concealment.

**SECTION 11. Enforcement.**

- A. For the purpose of this Local Law the term "enforcement" shall mean the Wayne County Public Health Service, or its designee, the Wayne County Sheriff and other municipal law enforcement agencies operating in Wayne County.
- B. If the enforcement officer determines after a hearing that a violation of the Local Law has occurred, civil penalty may be imposed by the enforcement officer pursuant to Section 12, infra, of this Local Law. Nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this Local Law.
- C. Any person who desires to register a complaint under this Local Law may do so with any appropriate enforcement officer.
- D. The person, firm, corporation or other entity that owns, manages, operates or otherwise controls the use of an indoor area open to the public in which smoking is prohibited or restricted pursuant to this Local Law, shall inform, or shall designate an agent who shall be responsible for informing individuals smoking in an area in which smoking is not permitted that they are in violation of this Local Law.
- E. The decision of any enforcement officer shall be reviewable pursuant to Article seventy-eight of the New York State Civil Practice Law and rules.
- F. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in Section 12, infra, of this Local Law.
- G. The owner, operator, manager, or person in charge of the facility shall permit the Director of Public Health Service or the Director's designees' entrance to the facility to determine compliance with this Local Law.

**SECTION 12. Violations and Penalties.**

- A. It shall be unlawful 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 comply with any of its provision.
- B. It shall be unlawful 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 an infraction punishable by:
  - 1. Warning in writing for a first violation.
  - 2. A fine not to exceed one hundred dollars (\$100) for a second violation.
  - 3. A fine not to exceed two hundred dollars (\$200) for a third violation of this Local Law within one (1) year.
  - 4. A fine not to exceed five hundred dollars (\$500) for each additional violation of this Local Law within one (1) year.
- D. Notwithstanding any other provision of this Local Law, an employee or private citizen may bring legal action to enforce this Local Law.

**SECTION 13. Other Applicable Laws.**

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 valid provision or application, and to this end the provision of this Local Law are declared to be severable.

**SECTION 15. Effective Date.**

This Local Law shall take effect one (1) year and six (6) months following the adoption of the law.

Mr. Eddy moved the adoption of the resolution. Seconded by Mrs. Deyo. Upon roll call, all Supervisors voted Aye except Supervisors Spickerman, Jenkins, Buckalew, Fabino, Pascarella and Decker who voted Nay. The Chairman declared the Resolution adopted.

Clerk of the Board of Supervisors,  
County of Wayne

I, hereby certify that I have compared the foregoing copy of a resolution with the original duly adopted by the above mentioned Board at a session held on the 5th day of July 2000 and that the same is a true copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the said Board, this 6th day of July 2000.

\_\_\_\_\_  
Clerk