

Board of Supervisors
WAYNE COUNTY

RESOLUTION NO. 400-15: ADOPTION OF LOCAL LAW PROHIBITING USE OF TOBACCO AND E-CIGARETTES UPON REAL PROPERTY OWNED OR LEASED BY WAYNE COUNTY, WITHIN COUNTY OWNED VEHICLES OR PRIVATELY OWNED VEHICLES USED FOR A COUNTY PURPOSE, AND WITHIN 25 FEET OF THE ENTRYWAYS OF COUNTY BUILDINGS

Mrs. Crane presented the following:

WHEREAS, a proposed local law prohibiting use of tobacco upon real property owned or leased by Wayne County, was presented to the Board of Supervisors on Tuesday, May 19, 2015; and

WHEREAS, a public hearing on the proposed local law was held on Tuesday, June 16, 2015 at 7:05 p.m. in the Supervisor's Chambers in the County Court House, 26 Church Street, Lyons, New York, 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 to read as follows:

COUNTY OF WAYNE - STATE OF NEW YORK
LOCAL LAW NO. 5 FOR THE YEAR 2015

A local law prohibiting use of tobacco upon real property owned or leased by Wayne County.

BE IT ENACTED BY THE BOARD OF SUPERVISORS COUNTY OF WAYNE AS FOLLOWS:

SECTION 1: TITLE

This law shall be known as the "Local Law Prohibiting Use of Tobacco and E-Cigarettes upon Real Property Owned or Leased by Wayne County, within county owned vehicles or privately owned vehicles used for a county purpose, and within 25 feet of the entryways of county buildings.

SECTION 2: DECLARATION OF INTENT

The Board of Supervisors of the County of Wayne finds that:

- (I) Tobacco use on real property owned or leased by the County should be prohibited in order to:
 - A. Protect the public health, safety and general welfare by eliminating exposure to secondhand tobacco smoke and tobacco residue;
 - B. Acknowledge the need of nonsmokers, especially children, to breathe smoke-free air; recognizing the danger to public health which secondhand smoke causes including increasing the risk of exposed individuals of heart disease, cancer, emphysema, stroke chronic bronchitis, and asthma;
 - C. Recognize that the need to breathe air free of the disease-causing toxins in secondhand smoke should have priority over the desire and convenience of smoking on real property owned or leased by the County;
 - D. Recognize the right and benefit to municipal residents and visitors to be free from unwelcome secondhand smoke and tobacco residue while on real property owned or leased by the County;
 - E. Encourage the cessation of tobacco use by all persons, to promote longevity and reduce disease and its cost to society;

And further finds that:

- (II) E-cigarette use should be prohibited on county owned or leased property because:
 - A. Preliminary studies of e-cigarettes demonstrate that many brands contain toxic chemicals and carcinogens;
 - B. Most E-cigarettes contain nicotine which is a highly addictive and known neurotoxin. Moreover, the extremely high level of nicotine in some brands could place users at risk of overdosing and young children at risk of accidental poisoning;
 - C. The long-term health effects of e-cigarette use are currently unknown as are the effects on health of "secondhand" e-cigarette vapor inhalation. Preliminary studies, however, suggest that the vapor may negatively affect the lungs and pulmonary system of users and individuals exposed to emitted vapor.
 - D. E-cigarettes are not currently regulated by the Food and Drug Administration and are not approved as a smoking cessation device. E-Cigarettes, which are often available in a variety of flavor such as cherry, bubblegum, chocolate and vanilla, may encourage the use of these devices by adolescents and others not inclined to use traditional tobacco products and ultimately lead them into a lifetime of nicotine addiction;
 - E. When consumed in public places where traditional tobacco products are banned, the use of e-cigarettes causes fear, stress, and confusion among patrons and workers alike. E-cigarettes also seriously compromise the county's current public health laws governing indoor smoking bans and create an enforcement "nightmare" by forcing officials to distinguish between e-cigarettes and traditional nicotine delivery devices.

- F. E-cigarettes have been reported to “explode” while being charged and even while being used causing property damage due to fire and personal injury.

SECTION 3. DEFINITIONS

As used in this Local Law

- A. “use of tobacco” or “tobacco use” shall mean the burning of a lighted cigar, cigarette, pipe, or any other matter of substance which contains tobacco, and chewing, holding in the mouth, and/or expectorating of chewing tobacco, or any other matter of substance which contains tobacco;
- B. “E-cigarette” shall mean any electronic device composed of a mouthpiece, heating element, battery, and electronic circuit that provide a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user as he or she simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name;
- C. “smoking” shall mean to inhale or exhale the smoke or vapor 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 product or device including pipes as well as e-cigarettes.

SECTION 4. PROHIBITION

Tobacco and E-Cigarette use shall be prohibited:

- A. Upon all real property owned or leased by the County of Wayne;
- B. Within all County-owned vehicles or within private vehicles when being used for a county purpose except that a driver may smoke in a privately-owned vehicle being used for a county purpose if the driver is sole occupant of the vehicle; and
- C. Within 25feet of the entryways of all county-owned or county- leased buildings located within the County of Wayne, except as provided in Section 5 of this Local Law.

SECTION 5. EXCEPTIONS

The provisions of this Local Law shall not apply to:

- A. A privately owned motor vehicle located on county property, not engaged in county service, and only when said vehicle’s doors and windows are completely closed;
- B. Roadways and rights of way located within the County road system established under Section 115 of the New York State
- C. Public Parklands other than any state parks and/or historic sites enumerated in 9 NYCRR 386.1 located within Wayne County, particularly Fair Haven State Park, except that the provisions of this Local Law will apply to prevent smoking inside of Park Pavilions and other structures located within the County parks.

SECTION 6. POSTING OF SIGNS

“NO SMOKING” signs, using international symbols (where possible) shall be prominently and conspicuously posted upon the entrance to all real property where smoking is regulated by this Local Law. Said signs shall be protected from tampering, damage, removal or concealment.

SECTION 7. VIOLATIONS AND PENALTIES

- A. Smoking shall be unlawful in any area where smoking is prohibited by the provisions of this Local Law.
- B. Any person who violates any provision of this Local Law shall be guilty of a violation, punishable by a civil penalty not to exceed two hundred \$200.00 for a first offense nor to exceed one thousand (\$1,000.00) for a second or subsequent offense.
- C. Each violation of this Local Law shall constitute a separate and distinct offense.

SECTION 8. ENFORCEMENT

- A. For the purpose of this Local Law the term “enforcement officer” shall mean any “police officer” as the term is defined by section 1.20 subsection (34) of the Criminal Procedure Law when said officer is acting pursuant to his or her official duties. If the enforcement officer determines that a violation of this chapter occurred, such enforcement officer may prepare, file and serve an appearance ticket in conformance with the New York State Criminal Procedure Law. Said appearance ticket shall be returnable in the Local Justice Court in and for the town or village in which the violation is alleged to have occurred. If the Local Justice Court determines after a hearing that a violation of this Local Law has occurred, a penalty may be imposed by the Local Justice Court pursuant to Section 7 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.
- B. The decision of the Local Justice Court shall be reviewable pursuant to applicable law. A defendant charged with a violation of any provision of this local law may plead guilty to the charge in open court. He or she may also submit to the magistrate having jurisdiction, in person, by duly authorized agent, or by registered mail, a statement (a) that he or she waives arraignment in open court and the aid of counsel, (b)

that he or she pleads guilty to the offense charged, (c) that he or she elects and requests that the charge be disposed of and the fine or penalty fixed by the court, (d) of any explanation that he or she desires to make concerning the offense charged, and (e) that he or she makes all statements under penalty of perjury. Thereupon the magistrate may proceed as though the defendant had been convicted upon a plea of guilty in open court, provided however, that any imposition of fine or penalty hereunder shall be deemed tentative until such fine or penalty shall have been paid and discharged in full. If upon receipt of the aforesaid statement the magistrate shall deny the same, he or she shall thereupon notify the defendant of this fact, and that he or she is required to appear before the said magistrate at a stated time and place to answer the charge which shall thereafter be disposed of pursuant to the applicable provisions of law.

- C. The local justice court shall designate the Wayne County Sheriff as the official to whom payment of the imposed fine shall be remitted except that the court may designate that up to 50% of the fine imposed be remitted to the court clerk of the town or village in which the court is located.
- D. Any person who desires to register a complaint under this Local Law may do so with the Office of the Wayne County Sheriff.
- E. The Wayne County Attorney on behalf of the Wayne County Sheriff and/or the Wayne County Board of Supervisors, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in Section 7 of this Local Law.

SECTION 9: EFFECT ON OTHER LAWS

This Local Law shall not be interpreted nor construed to permit tobacco or e-cigarette use where it is otherwise restricted by other applicable laws, including but not limited to the Indoor Clean Air Act.

SECTION 10: REVERSE PREEMPTION

This law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal Administrative Agency issues and promulgates regulations preempting such action by the County of Wayne. The Board of Supervisors may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions in this section.

SECTION 11: SEVERABILITY

If any section, subsection, sentence, clause, phrase or other portion of this Local Law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidation shall not affect the validity of the remaining portions of this law, which shall remain in full force and effect.

SECTION 12: INTERPRETATION

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

SECTION 13: EFFECTIVE DATE

This Local Law shall take effect twenty (20) days after it shall finally have been adopted, pursuant to §27 of the Municipal Home Rule.

Mr. Colacino moved the adoption of the resolution. Seconded by Mr. Hammond. Upon roll call, all Supervisors voted Aye, except Supervisors Spickerman, Baldrige and Kolczynski who voted Nay. The Chairman declared the Resolution adopted.

WAYNE COUNTY
Board of Supervisors
LYONS, NEW YORK

This is to Certify that I, the undersigned, Clerk of the Board of Supervisors of the County of Wayne, have compared the foregoing copy of resolution with the original resolution now on file in this office and which was duly adopted by the Board of Supervisors of said County at a session held on the 16th day of June 2015 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 Board of Supervisors of the County of Wayne, this 16th day of June 2015.

Clerk of the Board

