D

LOCAL LAW NO. 24-2002

A LOCAL LAW REGULATING SMOKING IN AREAS GENERALLY ACCESSIBLE OR OPEN TO THE PUBLIC, INCLUDING FOOD SERVICE ESTABLISHMENTS, AND IN PLACES OF EMPLOYMENT IN ONONDAGA COUNTY

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ONONDAGA, AS FOLLOWS:

Section 1. Purpose.

The Onondaga County Legislature finds and determines that the health of the public is seriously threatened by exposure to environmental tobacco smoke. The Legislature further finds that almost all Americans, including all citizens of the County of Onondaga, are likely to be exposed to environmental tobacco smoke by virtue of its widespread presence in public places and in the workplace, and that exposure to environmental tobacco smoke presents a substantial and serious health risk to non-smokers.

The Legislature determines the addictive nature of nicotine, a drug present in tobacco, may make youthful experiments with cigarettes and chewing tobacco dangerously unhealthy. Moreover, the Legislature finds that exposure to environmental tobacco smoke 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 finds that environmental tobacco smoke results in additional episodes and increases 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.

Involuntary exposure to environmental tobacco smoke, or second-hand smoke, presents a substantial and serious health threat to the residents, children and workers of Onondaga County. In some cases, there is a voluntary assumption of the hazard and, in other cases, an involuntary exposure. One example of involuntary exposure lies with the thousands of workers in the hospitality industry who are exposed for prolonged periods of time to second-hand smoke as a condition of employment. Another example of involuntary exposure results from parents who expose their children to second hand-smoke by requiring them to accompany them into smoking environments in public places.

This wide range of conditions necessitates a tailoring of the regulations to match various circumstances. It is the purpose of the Legislature to limit smoking throughout the County of Onondaga in order to protect the people of the County from the health risk of smoking. The Legislature is therefore placing reasonable limitations on smoking within the County of Onondaga 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. Terms not otherwise defined herein shall have the same meaning as set forth in Article 13-E of the New York State Public Health Law.

B. "Bar" shall mean any indoor area open to the public devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than forty percent of total annual gross sales. Any bar that generates forty percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a food service establishment.

C. "Bar area of a Food Service Establishment" shall mean a contiguous area within a food service establishment containing a counter, which is primarily devoted to the selling and serving of alcoholic beverages. Provided, however, that for purposes of this definition, the seating in said bar area plus the seating in any Separate Smoking Room shall not constitute in the aggregate more than 30% of the total indoor seating capacity of the food service establishment, provided that rooms used exclusively for private functions, service areas and other areas to which the public does not have access shall not be included. The bar area shall be separated from the seated dining room by a solid floor to ceiling partition or separated by at least a six foot space.

D. "Employer" shall mean any person, partnership, associate, corporation or nonprofit entity which employs one or more person.

E. "Facilities" shall mean, for purposes of Section 5, Paragraph (H) of this Local Law, any structure, dwelling, building, clubhouse or real property owned or occupied by a private membership club and utilized by the members of said club.

F. "Food Service Establishment" shall mean any indoor area open to the public or portion thereof in which the business is the sale of food for on-premises consumption regardless of the seating capacity including, but not limited to, restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes.

G. "Place of employment" shall mean any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but which is not generally accessible to the public.

H. "Separate Smoking Room" shall mean an enclosed room whose primary purpose is for smoking. Such room shall:

(1). Be clearly designated as a separate smoking room; and
(2). Be completely enclosed on all sides by floor to ceiling walls, interior doors and/or windows, with all the interior doors and windows remaining closed except for entry and exit of persons to and/or from said room; and
(3). Have a separate ventilation system whereby the air from the separate smoking room is immediately exhausted to the outside of the building in such a way as to prevent the re-introduction of smoke into the establishment and prevent back streaming of smoke into smoke-free areas; and
(4). Contain no more than two doors, which shall remain closed except for the purpose of entry and exit, which doors must be equipped with self-closing devices; and
(5). Not be the sole entry area to or exit area from the establishment, nor be the sole waiting area for the establishment; and

(6). Shall not comprise more than twenty percent (20%) of the total square foot area open to the public in a public facility or the employees in a private facility, and in the case of a food service establishment such Separate Smoking Room shall not comprise more than twenty percent (20%) of the total indoor seating capacity of said food service establishment.

I. "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 is merely incidental.

Section 3. Smoking Prohibited.

A. Except as otherwise provided in this local law, smoking shall not be permitted and no person shall smoke in any indoor area generally accessible or open to the public, including, but not limited to, any indoor area generally accessible or open to the public in:

(1). Food Service Establishments, provided, however, that smoking may be allowed within the bar area of a food service establishment provided the bar area is separated from the seated dining room by a solid floor to ceiling partition or separated by at least a six foot space;
(2). Bowling Establishments, including the concourse and settee areas of said establishments, except that smoking in any bar or bar area of a food service establishment therein shall be governed by and be consistent with the provisions of this local law applicable to bars and bar areas of a food service establishment;
(3). Businesses and not-for-profit entities including, but not limited to, professional and other offices, banks and other financial institutions and laundromats;
(4). Aquariums, galleries, libraries, and museums;
(5). Any facility which is primarily used for exhibiting any motion picture, stage drama, lecture, musical recital, or other similar performance, except for performers when smoking is part of the production;
(6). Every room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees, or agencies of the County of Onondaga or any political subdivision thereof;
(7). Hospitals, residential health care facilities, clinics, physical therapy facilities, doctors' offices, dentists' offices and any other health care facility;
(8). Lobbies, hallways and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple unit residential facilities;
(9). Lobbies, hallways and other common areas in multiple unit commercial facilities;
(10). Buildings and facilities owned or operated by the County of Onondaga or any political subdivision thereof;
(11). Polling places;
(12). Places of worship;
(13). Public restrooms;

(14). Service Lines;
(15). Retail stores in which goods, wares or merchandise are offered for sale;
(16). School Grounds, except as otherwise provided for by Section 1399-0(8) of the New York State Public Health Law; and
(17). Conventions and Trade Shows.

B. Except as may be otherwise provided by state law, smoking shall be permitted in a Separate Smoking Room in any indoor area generally accessible or open to the public.

C. Protection of Minors.

The owner, operator or manager of a food service establishment or a bar shall not permit any person under the age of eighteen, whether or not accompanied by an adult, to enter or remain in the separate smoking room of said food service establishment or bar. The organizer or sponsor of bingo shall not permit any person under the age of eighteen, whether or not accompanied by an adult, to enter or remain in any area thereof where smoking is allowed pursuant to the provisions of this local law.

Section 4. Places of Employment.

A. Smoking is prohibited in all indoor areas of places of employment which are not generally accessible or open to the public, including but not limited to common work areas, hallways, meeting rooms, private offices, lounges, lunchrooms and cafeterias.

B. As provided by New York State Public Health Law Section 1399-0(6)(d), smoking is prohibited in company vehicles occupied by more than one person, unless the occupants of such vehicles agree that smoking may be permitted.

C. It shall be the responsibility of every employer, except for employers of the types of facilities listed in Section 5 of this local law, to provide a smoke-free place of employment for all employees. Nothing herein shall be construed, however, to require an employer to make any expenditures or structural or other physical modifications to create a smoke-free place of employment.

Section 5. Smoking Restrictions Inapplicable.

This local law shall not apply to:

A. Private residences;
B. Private vehicles;
C. Tobacco Businesses;
D. Any area where private social functions are being held when seating arrangements are under the control of the sponsor of such function and not the owner, operator, manger or person in charge of such area;
E. Bars;
F. Bar Areas of food service establishments, provided that the bar area is separated from the seated dining room by a solid floor to ceiling partition or separated by at least a six foot space;
G. Hotel and Motel Rooms rented to one or more guests;
H. Facilities of private membership clubs when such facilities are being utilized primarily by and for the benefit of the members of said club for a club purpose. For

purposes of this Local Law a private membership club shall mean any private membership country club, association, corporation, group, or fraternal order, which does not make its facilities or grounds generally open for use by the public, and in which membership is (i) exclusive, (ii) based upon a written set of principals or standards, and (iii) not dependent solely upon the payment of fees, dues, or similar assessment. The provisions of this Section 5 shall not apply to exempt such facility from the provisions of this local law during any period of time that said facility is used for any social function generally open to the public. Provided, however, that the use of facilities owned by a private membership club for a private social function as set forth in Paragraph D of this Section 5 shall not prevent the application of this Section 5 to said facility nor cause said facility to be designated as one being generally open for use by the public. Facilities owned by private membership clubs shall include, but not be limited to, facilities owned by any lodge of Free and Accepted Masons; any council of the Knights of Columbus; any lodge of the Benevolent and Protective Order of Elks; any chapter of the American Legion; any lodge of the Order of the Sons of Italy in America; the Ancient Order of Hibernians; any post or counties council of the Veterans of Foreign Wars of the United States, Inc.; any chapter, county, committee of the Disabled American Veterans; any Kiwanis Club; any Rotary club; any Lions Club; any exclusive, private membership Country Club; any post of the Jewish War Veterans of the United States; or any other similar organization;

I. Bingo Halls, provided that at least fifty percent of seating capacity is designated for nonsmokers and notice is prominently posted at each entrance stating that a nonsmoking section is available. Provided, further, that the organizer or sponsor of bingo shall not permit any person under the age of eighteen, whether or not accompanied by an adult, to enter or remain in any area thereof where smoking is allowed pursuant to the provisions of this local law; and

Section 6. General Provisions.

A. Nothing herein shall be construed to deny the owner, operator, manager, organizer or sponsor of an establishment referred to herein the right to designate the entire establishment as a smoke-free establishment and to prohibit smoking therein.

B. Nothing herein shall be construed to permit smoking where otherwise prohibited.

C. Nothing herein shall be construed to prohibit smoking in a Separate Smoking Room.

D. The owner, operator or manager of a food service establishment or bar shall prominently post and maintain at the entrance or entrances to such food service establishment or bar a sign or signs clearly labeling the food service establishment or bar as smoke-free or smoking permitted. The provisions for posting of signs in this Section 6 shall be in addition to the provisions for posting and maintenance of signs provided for in Section 1399-p of the New York State Public Health Law. Any sign posted pursuant to this Section 6 must be readily visible to patrons approaching the entrance(s) to such food service establishment or bar.

Section 7. Violations.

A. It shall be unlawful for any person to smoke in any area where smoking is prohibited by any provision of this local law.

B. It shall be unlawful for any person, firm, corporation or other entity that owns, manages, operates, or otherwise controls the use of an area generally accessible or open to the public in which smoking is prohibited pursuant to this local law to violate or fail to comply with any provision of this local law. For violations of Section 3 of this local law, it shall be an affirmative defense that during the relevant time period actual control of the establishment was not exercised by the respondent, but rather by a lessee, the sublessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said establishment during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the appropriate enforcement officer within thirty days of receipt of a Notice of Violation.

C. It shall be unlawful for any person, firm, corporation or other entity that owns, manages or operates a food service establishment to fail to comply with the requirements of this local law. In actions brought for violations of Section 3(A)(1) of this local law, it shall be an affirmative defense that notice of a violation was provided to a customer.

D. It shall be unlawful for any person, firm, corporation or other entity that owns, manages or operates a food service establishment or bar to fail to comply with the requirements of this local law pertaining to the admission or entry of minors into a separate smoking room. It shall be unlawful for the organizer or sponsor of bingo to fail to comply with the requirements of this local law pertaining to the admission or entry of minors into areas where smoking is allowed. For violations of Sections 3 and 5 pertaining to such admission or entry of minors, it shall be an affirmative defense that a photographic identification card, apparently issued by a governmental agency, was produced, and that the person under the age of eighteen was admitted to enter the separate smoking room or area where smoking is permitted in reasonable reliance upon such identification.

E. It shall be unlawful for an employer to fail to comply with the provisions of Section 4 of this local law. In actions brought for violations of Section 4 of this local law, it shall be an affirmative defense that the employer has made good faith efforts to ensure that employees comply with the provisions of this local law.

F. It shall be unlawful for the owner, operator or manager of a food service establishment or bar to fail to comply with the provisions of Section 6 of this local law pertaining to the posting and maintenance of signs.

Section 8. Enforcement

A. For purposes of this local law, the term "enforcement officer" shall mean the Commissioner of the Onondaga County Department of Health and any person or persons designated by the Commissioner to enforce the provisions of this local law. The enforcement officer shall have jurisdiction to enforce the provisions of this local law on a countywide basis.

B. Designees of the Onondaga County Department of Health are hereby authorized to issue a Notice of Violation of this local law. Any such Notice of Violation will also serve as notice of a hearing and shall include the following information: charges and violations complained of with specific reference to this local law; the time and place of the hearing;

the purpose of the hearing; the right to present evidence; the right to examine and cross examine witnesses; and the right to be represented by counsel.

C. Upon issuance of a Notice of Violation of any provision of this local law, a hearing shall be conducted pursuant to the provisions set forth in Section F of Article I-B of the Onondaga County Sanitary Code. If the enforcement officer determines after a hearing that a violation of this local law occurred, a civil penalty may be imposed pursuant to Section 10 of this local law. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding pursuant to Article 78 of the CPLR for injunctive relief to compel compliance with this local law or as set forth provided for in Section 8(G) of this local law.

D. Any person who desires to register a complaint under this local law may do so with the enforcement officer.

E. The owner, manager, operator, or other person having control of a premises, facility or establishment referred to herein 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.

F. Any person aggrieved by the decision of an enforcement officer other than the Onondaga County Commissioner of Health may appeal to the Commissioner to review such decision within thirty days of such decision. The decision of any enforcement officer shall be reviewable pursuant to article seventy-eight of the Civil Practice Law and Rules.

G. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided for in Section 10 of this local law in any court of competent jurisdiction.

Section 9. Waivers.

Upon written application, the enforcement officer may grant a waiver from the application of a specific provision of this local law, provided that prior to the granting of such waiver the applicant shall establish that compliance with a specific provision of the local law would cause undue financial hardship or that other factors, including but not limited to physical layout, exist which would render strict compliance unreasonable. The enforcement officer also may consider whether the public health will be endangered by the granting of such waiver and whether adequate alternative provisions have been made to protect the health of non-smokers. A waiver shall be valid for a period not to exceed twenty-four months from the date of issuance. Upon written re-application, the enforcement officer may extend the time period for which the waiver is valid, but in no case shall such extension be for a period of time longer than forty-eight months from the date of issuance of the initial waiver. The applicant for an extension of a waiver shall establish that compliance with a specific provision of this local law would cause undue financial hardship or that other factors, including but not limited to physical layout, exist which would render strict compliance unreasonable, and the enforcement officer also may consider whether the public health will be endangered by the granting of such waiver and whether adequate alternative provisions have been made to protect the health of non-smokers.

Every waiver or extension of waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose of Article 13-E of the New York Public Health Law.

The Onondaga County Commissioner of Health may consult the Health Advisory Board with respect to health related issues prior to granting a waiver or an extension of waiver.

Nothing in this Section 9 shall be construed to impermissibly alter, diminish or impair the provisions of New York Public Health Law Section 1399-u (2) with respect to the granting of a waiver to a factory or warehouse.

Section 10. Penalties.

If the enforcement officer determines after a hearing that a violation of this local law has occurred, the enforcement officer may impose a civil penalty in an amount not to exceed one thousand ($1,000.00) dollars for each such violation.

Section 11. Review Committee.

By June 15, 2004, the Chair of the Onondaga County Legislature shall appoint and convene a Review Committee to evaluate this local law, including but not limited to the provisions of this local law exempting restaurants with an indoor seating capacity of fifty persons or less. Said Review Committee shall be comprised of a cross-section of the community to include, but not be limited to, representatives of the Onondaga County Legislature, the Onondaga County Department of Health, community based health organizations, and other appropriate representatives. Said committee shall commence its review on June 15, 2004 and shall conclude its review and report its findings and/or recommendations to this Legislature on or before September 15, 2004. This Legislature shall determine whether to take any action, including whether to extend the exemption to restaurants with an indoor seating capacity of fifty persons or less, by September 15, 2004, and shall make that determination effective December 15, 2004.

Said Review Committee shall consider any surveys conducted by the Legislature and the County Executive on the effect of this local law on restaurants with an indoor seating capacity of fifty persons or less.

Section 12. Limitation of Causes of Action.

Any owner, operator, manager, sponsor or organizer of any establishment referred to herein who complies or fails to comply with the provisions of this local law shall not be subject to any legal liability or action solely as a result of such compliance or noncompliance except as provided in Section 10 of this local law. Nothing in any other section of this local law shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any theory of liability upon which any person may be held liable to any other person for exposure to smoke.

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. Effective Date.

This Local Law shall take effect one year from the date of its passage by the Onondaga County Legislature. Provided, however, that with respect to any food service establishment that has an indoor seating capacity equal to or less than fifty (50) persons, the provisions of this local law shall not apply until two years after the date of passage by the Onondaga County Legislature.

Section 15. Repeal of Prior Local Laws.

This local law supercedes and hereby repeals any prior local law of this Onondaga County Legislature regulating smoking in Onondaga County, including any local law passed at the same legislative session as this local law and including the local law passed by this Legislature on December 2, 2002 entitled "A local law regulating smoking in areas generally accessible or open to the public, including food service establishments, and in places of employment in Onondaga County".

G:\DATA\MSODATA\WORD\Lt\resolution\Smoking\SmokingLLWarner12.04.02.doc

ADOPTED

DEC 16 2002

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF LEGISLATION DULY ADOPTED BY THE COUNTY LEGISLATURE OF ONONDAGA COUNTY ON THE 16th DAY OF December 20 02.

CLERK COUNTY LEGISLATURE
ONONDAGA COUNTY, NEW YORK

02 DEC -5 AM 11:23
RECEIVED
ONONDAGA COUNTY
LEGISLATURE