

RESOLUTION NO. 202237

RE: LOCAL LAW NO. 5 OF 2002, PUBLIC HEALTH LAW TO REGULATE
SECONDHAND SMOKE

Legislators KLOSE, Molinaro, Clearwater, Hinkley, Meserve, Horton, Jemiolo,
Kendall, Price, Johnson and Fettes offer the following and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt
Local Law No. 5 of 2002, which has been submitted this day for consideration by said
Legislature, and, be it further

RESOLVED, that this Legislature petition the New York State Legislature to
adopt a State Law identical or similar to this Local Law.

RES. 202237 8/18/02 lw
Revised 8/27/02 lw
STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared
the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by
said Legislature on the 9th day of September, 2002, and that the same is a true and correct transcript of said
original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 9th day
of September, 2002.

PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

LOCAL LAW NO. 5 OF 2002

RE: PUBLIC HEALTH LAW TO REGULATE SECONDHAND SMOKE

BE IT ENACTED by the County Legislature of the County of Dutchess as follows

SECTION 1. A Clean Indoor Air Law of the Dutchess County Legislature is hereby established to read as follows:

ARTICLE 1

Section 1

Finding and Intent

The Dutchess County Legislature hereby finds as follows:

1. Significant health risks have been determined to be attributable to exposure to environmental tobacco smoke (ETS) including lung cancer, heart disease, respiratory infection and decreased respiratory function, and
2. According to the United States Environmental Protection Agency (EPA) ETS also known as secondhand smoke, has been proven to be carcinogenic and has been designated a Group A (known human) carcinogen responsible for 3,000 lung cancer deaths each year in non-smoking adults, and
3. The EPA also concludes the ETS causes other significant health problems in adults and children, including increasing the risks of respiratory and middle ear disease and contributing to an estimated 150,000 – 300,000 cases of bronchitis and pneumonia in infants and young children each year, and
4. Exposure to ETS significantly worsens the condition of up to 1,000,000 asthmatic children and contributes to an estimated 26,000 new cases of asthma each year, and
5. Involuntary exposure to ETS presents a substantial and serious health risk to the residents and workers of Dutchess County, and

Therefore, the Dutchess County Legislature declares the intent and purpose of this Article is to preserve and improve the public health by prohibiting smoking in public places and places of employment.

Unless otherwise noted Article 13-E of the New York State Public Health Law applies.

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 for on-premises consumption does not exceed 40 percent of annual gross

- sales. Any “Bar” or “Tavern” that generates 40 percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a restaurant.
- B. “Business” means any sole proprietorship, partnership, joint venture, corporation, or other business entity whether for profit or not-for-profit, including retail establishments where goods or services are sold as well as professional corporations, social agencies, and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
 - C. “Dining Area” means any indoor or enclosed outdoor area in a restaurant where people dine.
 - 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 non-profit entity.
 - E. “Employer” means any person, partnership, corporation, including a Municipal Corporation, or non-profit entity that employs the services of one or more individual persons.
 - F. “Place of Employment” means any indoor or enclosed outdoor 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, vehicles, employee cafeterias and hallways.
 - G. “Private Social Function” shall mean any weddings, parties, testimonial dinners, or other similar gatherings in which the seating and/or eating 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.
 - H. “Public Place” means any indoor or enclosed outdoor area to which the public is invited or in which the public is permitted, including, but not limited to banks, educational facilities, health facilities, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, lobbies, elevators, stairwells, waiting rooms, spectator facilities, and places of worship. Areas in a private residence which constitute common areas of a multiple dwelling are “public places” within the meaning of this regulation as well as areas in a private residence where a child care center, health care facility or other business open to the public is operated.
 - I. “Restaurant” means any indoor or enclosed outdoor area of a coffee shop, cafeteria, sandwich shop or private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

- J. “Service Line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- K. “Smoking” means to inhale or exhale the smoke 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.
- L. “Sports Arena” means any indoor sports pavilion, including, but not limited to, concourses, gymnasias, health spas, boxing arena, swimming pools, roller or ice skating rink, and other similar places. This term also applies to places where the general public assembles either to engage in physical exercise, participate in athletic or recreational activity or to witness sports, cultural, recreational or similar activities.
- M. “Tobacco Business” shall be defined as set forth in Article 13-E of the Public Health Law of the State of New York.
- N. “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 Article to Government Owned and/or Operated Facilities

All enclosed facilities owned or leased by the county and any political subdivision of the county shall, without exception, be smoke free and subject to the provisions of this Article.

Section 4

Regulation of Environmental Tobacco Smoke in Public Places

- A. Smoking shall be prohibited in all indoor or enclosed outdoor public places within Dutchess County, unless otherwise provided by this regulation. This regulation shall include, but not be limited to restaurants, sports arenas, and spectator facilities.

Section 5

Regulation of Environmental Tobacco Smoke in Hotels and Motels

Hotels and motels shall be required to designate a group of contiguous bedrooms, at least 50 percent of all bedrooms, as smoke-free rooms and shall be required to keep them consistently so. Lobbies, hallways, meeting rooms, and other common areas shall be smoke free.

Section 6

Regulation of Environmental Tobacco Smoke in Places of Employment

- A. It shall be the responsibility of employers to provide a smoke free workplace 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 Article, each employer having any enclosed place of employment located within the county 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, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- C. The smoking policy shall be communicated to all employees at least three (3) weeks prior to its adoption. Employers shall prominently post the smoking policy in the workplace, and supply a written copy upon request to any existing or prospective employee.
- D. Any employee working in a smoking area in a bar/tavern must sign an acknowledgement, which is provided by the employer upon hiring, that they will be working in a smoking area and they are aware of the negative health effects of secondhand tobacco smoke.

Section 7

Where Environmental Tobacco Smoke is not Regulated

Notwithstanding any other provisions of this regulation to the contrary, the following shall not be subject to the smoking restrictions contained in this regulation.

- A. Private residences.
- B. Private vehicles.
- C. Tobacco business.
- D. Private social function.
- E. Non-enclosed outdoor areas, except as provided otherwise by Article 13-E of the New York State Public Health Law.
- F. Bars and Taverns.

Section 8

Further Restrictions on 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 (hereafter 'owner/manager') may declare that entire establishment as a non-smoking establishment.

Section 9

Posting of Signs

- A. “No Smoking” signs or 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 clearly, sufficiently, and conspicuously posted at each entrance to every building or other facility where smoking is prohibited. The Dutchess County Health Department shall provide such signs.
- B. The owner, operator, or manager of a hotel or motel must post a notice at the reception area of the establishment as to the availability, upon request, of smoking or non-smoking rooms. The entry door and interior of all smoking rooms must be properly posted.

Section 10

Notes and Enforcement

- A. The owner, manager, or operator of any establishment regulated by this Article shall be responsible for configuring and constructing said establishment within the confines of this Article. The owner, manager, or operator shall also be required to inform persons violating this Article of the appropriate provisions hereof verbally or by presentation of written explanation of the law, and to prohibit staff from smoking in non-smoking areas.
- B. The owner/manager may, at his sole discretion, either ask a customer violating any provision of this law to leave or ask any local law enforcement officer to order that customer to leave, or do both.
- C. Nothing in “B” above implies that the owner/manager must ask a customer to leave or ask a local law enforcement officer to order the customer to leave. The owner/manager’s responsibility is merely to inform the customer that he is in violation of this local law. If the owner/manager chooses, also at his sole discretion, to report the violation to the County Health Commissioner, the Commissioner shall record the report as evidence that the owner/operator has complied with his responsibility under this local law.
- D. Any citizen may register a complaint under this Article to the Dutchess County Health Department.
- E. The Dutchess County Health Department shall be charged with enforcement of this Article. The County Health Commissioner or his representative is authorized to issue all notices, orders, and other processes that may be necessary in the enforcement of this Article.
- F. Upon written notice of a violation of any provision of this Article, the County Health Commissioner shall cause a hearing to be held in accordance with this Code and shall rule whether the person so charged is or is not guilty of a violation.

- G. The Board of Health may overturn the Commissioner's decision by a 2/3 majority of its full membership.

Section 11

Public Education

The Dutchess County Board of Health and the County Health Commissioner shall be responsible for public education concerning this local law.

Section 12

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 Article to fail to comply 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 Article.
- C. Any person who is convicted of violating any provision of this Article may be punishable by a fine not to exceed \$1,000 per violation and/or 40 hours of community service.
- D. It is the intent of this law for the Dutchess County Department of Health to use all fines and/or penalties for the education of the public as to the negative health effects of smoking and secondhand smoke and smoking cessation programs.

Section 13

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 Article.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 14

Severability

If any provisions, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the remaining provisions of this Article are declared to be valid.

Section 15

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 2. EFFECTIVE DATE.

This local law shall take effect January 1, 2003.