

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

~~CITY~~ of Livingston

~~TOWN~~

~~VILLAGE~~

Local Law No. 4 of the year 1998

A local law entitled Livingston County Smoking Code
(Insert Title)

Be it enacted by the Board of Supervisors of the
(Name of Legislative Body)

County

~~CITY~~ of Livingston

~~TOWN~~

~~VILLAGE~~

as follows:

See attachment.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 1: Definitions.

The following words and phrases, whenever used in this Article, 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 employs 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, where 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 child care or health care facility.
8. **“Private Social Function”** 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, and waiting rooms and places of worship. A private residence is not a "public place" within the meaning of this Article, except that areas in a private residence where a child day 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 places" within the meaning of the Article.

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.
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 shall include seating that is immediately contiguous to the bar if the bar area is separated from the remaining seating area by a permanent partition or is on a separate floor.
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 a room provided for smoking for employees in a place of employment. It must be served by a properly operating and properly maintained separate ventilation system, exhausted to the outside of the building in such a way as to prevent the re-introduction of smoke into the building and it must be negatively pressurized or provided with doors which are self-closing or otherwise constructed in such a way as to prevent the escape of tobacco smoke to the smoke-free areas of the facility. A Separate Smoking Room shall not comprise more than twenty five percent (25%) of the total area open to the employees in a place of employment.
15. **"Service Line"** shall mean any indoor line at 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 or, burning of, or carrying of any lighted cigar, cigarette, weed, or other plant in any manner or in any form.
17. **"Sports Arena"** shall mean any indoor 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 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 2: Application of Article to County-Owned and Leased Facilities.

All enclosed facilities owned or leased by the County of Livingston shall be subject to the provisions of this Article.

Section 3: Regulation of Smoking in Public Places.

A. Smoking shall be prohibited in all enclosed public places within the County of Livingston, 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 shall designate as a non-smoking area its entire Restaurant Dining Area, the full 100% of its seating capacity.
 - (b)(1) Restaurants with a bar shall designate as a non-smoking area its entire Restaurant Dining Area, the full 100% of its seating capacity.
 - (2) Smoking may be allowed in the Restaurant Bar Area. However, effective January 1, 2005, smoking may only be allowed in the Restaurant Bar Area provided the bar area is serviced by a separate ventilation system. Such a system shall be properly operated and maintained and shall exhaust to the outside of the building in such away as to prevent the re-introduction of smoke into the building. The bar area and ventilation system shall be negatively pressurized under

all operating conditions so as to prevent the escape of tobacco smoke to the smoke free areas of the facility.

- (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.
 - (a) Smoking shall be prohibited in the settee area (the area that includes the approach to the lanes, the scorers' tables and the adjacent seats occupied by the participating bowlers), restrooms and locker rooms. Additionally, Bowling Centers must provide a nonsmoking area in the concourse area (the area directly behind and immediately contiguous to the settee area) constituting at least 25% of the concourse area. The restrooms and locker rooms shall be considered a part of the concourse area.
 - (b) Notwithstanding the provisions of subdivision (a) of this section, smoking shall not be allowed in any area of a Bowling Center during youth leagues and one hour prior to the commencement of youth leagues.
 - (12) Bingo Halls

Fifty per cent (50%) of the seating capacity must be designated as non-smoking unless otherwise prohibited by state or federal law.
 - (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) Lobbies, hallways, offices and other common areas in multiple unit residences, condominiums, retirement facilities, nursing homes, and multiple unit commercial facilities.
 - (16) Livingston County Jail
- B. This section shall not prohibit smoking rooms as defined in Section 1(14).

- C. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare the entire establishment or facility as a non-smoking establishment.

Section 4: 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.
- B. 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, building entryways, classrooms, conference and meeting rooms, indoor loading docks, garages, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairways, restrooms, 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 smoking in separate rooms as defined in Section 1(14).

Section 5: Further restriction of smoking.

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

Section 6: Where Smoking Is Not Regulated.

- A. Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:
 - (1) Bars, including Restaurant Bar Areas of restaurants.
 - (2) Private residences, except when used as child care 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.
 - (6) Separate smoking room(s) as defined in Section 1(14).
- B. No area may be designated for smoking where prohibited by regulation of another agency having jurisdiction.

Section 7: Additional Responsibilities of Management.

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

- A. Provide ashtrays and smoking receptacles where smoking is permitted by this Article and maintain locations where smoking is prohibited free of ashtrays or smoking receptacles.
- B. Enforce this Article by requesting compliance from patrons verbally or by presenting a non-smoking card, and by prohibiting employees from smoking, except in designated separate, totally enclosed, and separately ventilated smoking rooms.
- C. Develop and implement a plan of compliance that is acceptable to the Livingston County Department of Public Health 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 and shall be provided to the Livingston County Department of Public Health upon request.

Section 8: Variances and Waivers.

- A. **Variance.** The Livingston County Director of Public Health may, on written application and after review, grant a variance from a specific provision of this Article, 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 Article, and when there are practical difficulties or unnecessary hardship in complying with such provision.

- B. **Waiver.** The Livingston County Director of Public Health, in his or her sole discretion, may waive, in writing, any of the requirements of this Article when it reasonably appears to the Livingston County Director of Public Health that the public 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 Livingston County Director of Public Health.
- C. **Revocation.** The Livingston County Director of Public Health may revoke any waiver or variance after providing thirty (30) days written notice to the applicant/holder.

Section 9: 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 Article. 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 Article have been met. Such signs shall be conspicuously posted at doors and entrance ways to all facilities where smoking is permitted anywhere within the facility and at the entrances to the areas within these facilities where smoking is to be permitted. **SMOKING PERMITTED** or **NO SMOKING** signs shall be protected from tampering, damage, removal or concealment.

Section 10: Enforcement.

- A. For the purpose of this Article the term “enforcement officer” shall mean the Livingston County Board of Health, or its designee.
- B. If the enforcement officer determines after a hearing that a violation of this Article has occurred, a civil penalty may be imposed by the enforcement officer pursuant to Section 11 of this Article. Nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this Article.
- C. Any person who desires to register a complaint under this Article 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 Article, 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 Article.

- E. The decision of any enforcement officer shall be reviewable pursuant to Article seventy-eight of the 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 11 of this Article.
- G. The owner, operator, manager, or person in charge of the facility shall permit the Director of Public Health or the Director's designees entrance to the facility to determine compliance with this Article.

Section 11: 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 Article to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.
- C. Any person who violates any provision of this Article shall be guilty of a violation, punishable by a civil penalty not to exceed one thousand dollars (\$1,000).

Section 12: Other Applicable Laws.

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

Section 13: Severability.

If any provision, 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 valid provision or application, and to this end the provisions of this Article are declared to be severable.

Section 14: Effective Date.

- A. This Article shall take effect one (1) year from the date of adoption.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

.. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No.⁴..... of 1928... of the (County)(City)(Town)(Village) of Livingston Board of Supervisors was duly passed by the on August 19, 1998, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19..... of the (County)(City)(Town)(Village) of was duly passed by the on 19 ... , and was (approved)(not approved)(repassed after disapproval) by the and was deemed duly adopted on 19...., in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19..... of the (County)(City)(Town)(Village) of was duly passed by the on 19...., and was (approved)(not approved)(repassed after disapproval) by the on 19.... . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on 19...., in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19..... of the (County)(City)(Town)(Village) of was duly passed by the on 19...., and was (approved)(not approved)(repassed after disapproval) by the on 19.... . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 19...., in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____
the City of _____ having been submitted to referendum pursuant to the provisions of
section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the
qualified electors of such city voting thereon at the (special)(general) election held on _____ 19____,
became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____
of the County of _____ State of New York, having been submitted to the electors
at the General Election of November _____ 19____, pursuant to subdivisions 5 and 7 of section 33 of the
Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cit-
ies of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit
voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same
is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner in-
dicated in paragraph _____, above.



Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

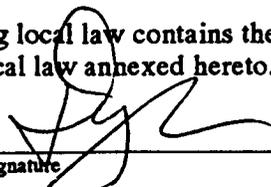
Date: August 19, 1998

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or
other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Livingston

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings
have been had or taken for the enactment of the local law annexed hereto.



Signature
County Attorney

Title

County
~~City~~
~~Town~~ of Livingston
~~Village~~

Date: August 24, 1998