

Chapter 534 WESTCHESTER SMOKE-FREE WORKSITE LAW

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Sec. 534.01. Legislative intent.

The Westchester County Legislature declares that the intent and purpose of this Local Law is to preserve and improve the public's health by improving indoor air quality in places of employment.

This Legislature hereby finds that the effects of secondary and tertiary smoke generated by the smoking of cigars, cigarettes, pipes and similar articles poses a threat to the health, safety and well-being of the citizens of the County who do not smoke.

This Legislature further finds that the Surgeon General's 1984 report on smoking hazards for the first time linked high levels of involuntary smoke exposure to reduced breathing ability in passive smokers, buttressing the need to provide more protection to nonsmokers in public settings.

This Legislature further finds and determines that human health is seriously threatened by exposure to environmental tobacco smoke (ETS) and that recent findings by the federal Environmental Protection Agency (EPA) make clear that ETS, or secondhand smoke, is a human carcinogen responsible for 3,000 lung cancer deaths each year in non-smoking adults.

This Legislature finds that the EPA has concluded that exposure to ETS increases the risks of respiratory and middle ear diseases in children, contributing to between one hundred fifty thousand (150,000) to three hundred thousand (300,000) cases of bronchitis and pneumonia in infants and young children each year. Further, exposure to ETS significantly worsens the condition of two hundred thousand (200,000) to one million (1,000,000) asthmatic children and contributes to new cases of asthma in once-healthy children.

This Legislature finds that primary tobacco use is a major cause of mortality and morbidity, directly causing an estimated 434,000 deaths per year in the United States, more deaths than are caused by the use of any other legal or illegal substance or drug.

This Legislature further finds that individuals are subject to ETS at their places of employment and have no practical alternative but to suffer the exposure so as to keep their employment.

Therefore, the purpose of this legislation is to place reasonable limitations on smoking within the County while striking a balance between the health needs of all nonsmoking individuals, the rights of smokers and the imposition of regulatory burdens on business.

(L.L. No. 3-2003)

Sec. 534.02. Definitions.

1. *Employee* shall mean any person who is employed or engaged by any employer for direct or indirect monetary wages or profit.
2. *Employer* shall mean any person, partnership, corporation, including a municipal corporation, or non-profit entity that employs the services of one or more individual persons.
3. *Place of employment* shall mean any indoor and outdoor enclosed area located within the County of Westchester under the control of a public or private employer which employees normally frequent during the course of employment. Place of employment shall also include, but not be limited to, indoor and outdoor areas of restaurants and bars. A private residence is not a "place of employment" unless it is used as a childcare or health care facility.
4. *Smoking* shall mean the inhaling, exhaling or burning of any tobacco products, weed, or other plant in any manner or in any form.
5. *Retail tobacco shop* shall mean a retail establishment which derives ninety (90) percent or more of its total annual gross revenue from the sale of cigarettes, cigars, pipes, chewing tobacco, powdered tobacco, herbal cigarettes, rolling papers or other tobacco products.

(L.L. No. 3-2003)

Sec. 534.03. Regulation of smoking in places of employment.

1. Smoking shall be prohibited in all places of employment, as defined herein, without exception.
2. It shall be the responsibility of employers to provide a smoke free worksite 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.
3. Each employer having any place of employment, as defined herein, shall adopt, implement, make known, and maintain a written smoking policy consistent with the requirements of this Local Law.
4. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
5. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
6. This prohibition shall not apply to retail tobacco shops where smoking is permitted.

(L.L. No. 3-2003)

Sec. 534.04. Regulation of smoking in hotels and motels.

Nothing herein shall prohibit owners, operators or managers of hotels or motels located in Westchester County from designating a certain number of contiguous bedrooms and/or suites as "smoking rooms" where smoking shall be permitted. Such smoking rooms shall be conspicuously marked. Lobbies, hallways, meeting rooms, and

other common areas shall otherwise be subject to the provisions of this law.

(L.L. No. 3-2003)

Sec. 534.05. Regulation of smoking in residential health care facilities.

Nothing herein shall prohibit owners, operators or managers of residential health care facilities from designating a "smoking area" within the facility consistent with the provisions of Article 13-E of the New York State Public Health Law. Such smoking area or room shall be conspicuously marked. Any other area not designated a "smoking area" shall be subject to the provisions of this law.

(L.L. No. 3-2003)

Sec. 534.06. 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 this Local Law prohibits smoking. The owner, operator, manager or other person having control of such place shall post these signs. All signs shall be protected from tampering, damage, removal or concealment.

(L.L. No. 3-2003)

Sec. 534.07. Enforcement.

1. For the purpose of this Local Law the term "enforcement officer" shall mean the Westchester County Board of Health, or its designee, the Westchester County Commissioner of Public Safety Services/Sheriff and other municipal law enforcement agencies operating in Westchester County.
2. If the enforcement officer determines after a hearing that a violation of this Local Law has occurred, a civil penalty may be imposed by the enforcement officer pursuant to Section 534.06 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.
3. Any person who desires to register a complaint under this Local Law may do so with any appropriate enforcement officer.
4. The decision of any enforcement officer shall be reviewable pursuant to Article seventy-eight of the New York State Civil Practice Law and Rules.
5. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in Section 534.06 of this Local Law.
6. The owner, operator, manager, or person in charge of the facility shall permit the Commissioner of Health or the Commissioner's designees' entrance to the facility to determine compliance with this Local Law.

(L.L. No. 3-2003)

Sec. 534.08. Violations and penalties.

1. 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 provisions.
2. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Local Law.
3. Any person who violates any provision of this Local Law shall be guilty of an infraction punishable as provided for in the provisions of Article II of Chapter 873 of the Laws of Westchester County also known as the Westchester County Sanitary Code.
4. Notwithstanding any other provision of this Local Law, an employee or private citizen may bring legal action to enforce this Local Law.

(L.L. No. 3-2003)

Sec. 534.09. Other applicable laws.

This Local Law shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws, rules or regulations.

(L.L. No. 3-2003)

Sec. 534.10. Severability.

If any section of this chapter or the application thereof to any individual, partnership, or circumstance shall be adjudged invalid or unconstitutional by any court of competent jurisdiction, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the controversy in which such order or judgment was rendered.

(L.L. No. 3-2003)