

Referral No. 8886  
September 1, 2015

**LOCAL LAW NO. 5 OF 2015  
COUNTY OF ROCKLAND  
STATE OF NEW YORK**

(Introduced by: Hon. Aney Paul)  
(Co-Sponsors: Hon. Philip Soskin, Hon. Alden H. Wolfe)

Mrs. Paul offered the following Local Law, which was seconded by Chairman Wolfe and unanimously adopted

A Local Law amending Chapter 349 of the Laws of Rockland County to include, among other things, the smoking of electronic cigarettes.

Be it enacted by the Legislature of the County of Rockland as follows:

**Section 1. Legislative Intent.**

It has been determined that carcinogenic chemicals, including formaldehyde, have been found in varying amounts in electronic cigarette aerosols, raising significant health and safety concerns. For example, it has been determined that carcinogenic chemicals, including formaldehyde, have been found in variable amounts in electronic cigarette aerosols. In the absence of Federal and New York State enacted laws, Rockland County is committed to protecting the public health and welfare of infants, children, and other members of the public who might be exposed to toxic chemicals found in electronic cigarette aerosols.

This Amendment makes changes to the definition of "smoking" and "smoke" in Chapter 349 of the Laws of Rockland County so as to include the smoking of electronic cigarettes within the meaning of the term. This Amendment also streamlines Chapter 349 so that its Definitions and its Declaration of Policy apply uniformly to all Articles of the said Chapter.

**Section 2. Chapter 349 is hereby amended as follows:**

**Chapter 349. Smoking**

**Article I. Policy and Definitions For Laws Pertaining To Smoking.**

§ 349-1. Title.

This chapter shall be known as the "Smoke-Free Air Act of Rockland County."

§ 349-2. Declaration of policy.

It is hereby declared to be the health policy of the County of Rockland to limit the exposure of the public to smoke and to accommodate the personal preferences of County residents and, at the same time, to support the health, safety and welfare of the general public.

§ 349-3. Findings and intent.

A. Reliable studies have shown that breathing secondhand smoke is a significant health hazard for several population groups, including children, fetuses, adults and elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

B. These health hazards include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction and bronchospasm.

C. It has been determined that carcinogenic chemicals, including formaldehyde, have been found in variable amounts in electronic cigarette aerosols, raising significant health and safety concerns.

D. Exposure to smoke precipitates and/or aggravates allergic attacks in persons with respiratory allergies and accelerates such allergic symptoms as eye irritation, nasal symptoms, headaches, cough, wheezing, sore throat and hoarseness.

E. The preponderance of the evidence and the trends reflected in that evidence all indicate that exposure to secondhand smoke is a significant health hazard which does adversely affect the public health. Such exposure has caused and continues to cause needless pain, suffering and death.

F. The hazard of secondhand smoke is of variable degree depending upon such factors as length of exposure and the age and physical condition of those exposed. In some cases, there is a voluntary assumption of the hazard and, in other cases, an involuntary or coerced exposure. This wide range of conditions necessitates a tailoring of the regulations to match various circumstances.

§ 349-4. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

BAR

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 40% of the total annual gross sales of such establishment.

BIDI (alternate spelling BEEDI)

A thin, often flavored, South-Asian-style cigarette made of tobacco wrapped in a tendu (or temburini; Diospyros melonoxylon roxB.) leaf, and secured with colored thread at one end.

CHILD or CHILDREN

Any person under the age of 18.

COUNTY

The County of Rockland, New York.

COMMISSIONER

The Commissioner of Health of the Rockland County Health District.

DWELLING UNIT

Any room or group or rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living or sleeping by human occupants.

ELECTRONIC CIGARETTE

Battery-powered device that emits doses of vaporized nicotine that are inhaled.

EMPLOYER

Any person, partnership, corporation, or association, of either a for-profit or not-for-profit classification, which employ's one or more persons.

FOOD SERVICE ESTABLISHMENT

Any indoor area or portion thereof open to the public, in which the business is the sale of food for on-premises consumption and which has an indoor seating capacity of greater than 35 persons, including but not limited to restaurants, cafeterias, coffee shops, diners, sandwich shops, or short order cafes. A food service establishment shall not include the bar area of such establishment; provided, however, that any bar that generates 40% or more of total annual gross sales from the sale of food for on-premises consumption shall be deemed a food service establishment.

### MULTIPLE DWELLING

Any dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the temporary or permanent residence or home of three or more households living independently of each other. This does not include condominium units, cooperative apartments and/or property owned by a homeowners' association.

### OWNER

Any person who, alone or jointly or severally with others:

A. Shall have legal title to any multiple dwelling, with or without accompanying actual possession thereof; or

B. Shall have charge, care, or control of any dwelling or dwelling unit, as owner, lessee, mortgagee or vendee in possession, assignee of rents, or as a receiver; or an executor, administrator, trustee, or guardian of the estate of the owner. Any agent for any of the above shall be bound to comply with the provisions of this article to the same extent as if he were the owner.

### PERSON

Any individual, firm, corporation, association, partnership, institution, public body, joint-stock association or any other group of individuals, and includes the plural as well as the singular.

### PLACE OF EMPLOYMENT

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.

### SMOKE or SMOKING

The inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, electronic cigarette, pipe, or any lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form.

### SMOKING AREA

Any indoor area in which smoking is permitted. Such smoking area shall be clearly designated as such and shall be separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from the smoke-free work area by walls or partitions.

### SPORTS ARENA AND RECREATIONAL AREA

Any sports pavilion, stadium, gymnasium, health spa, swimming pool, roller or ice rink, bowling alley, billiard parlor, and area where bingo is held and other similar places where members of the general public assemble either to engage in physical exercise, athletic or recreational competitions or to witness sports, cultural, recreational or similar activities.

## VEHICLE

Any vehicle, registered or unregistered, commercial or passenger, with an enclosed compartment for driver and passengers, whether any windows on such vehicle are open or closed.

## WORK AREA

An area in a place of employment where one or more employees are routinely assigned to perform services for their employer.

## ARTICLE II. Smoking In Public.

### § 349-5. Restrictions on smoking in public.

A. Except as otherwise permitted by this article, no person shall smoke or carry a lighted cigar, cigarette, electronic cigarette, pipe or any other form of smoking object or device in any indoor area open to the public, including but not limited to:

(1) Areas in which smoking is prohibited by Article 13-E of the Public Health Law.

(2) Taxicabs and limousines.

(3) All schools, including elementary and secondary schools, colleges and other education and vocational institutions.

B. Food service establishments. The owner, operator, manager or other supervisory personnel of a food service establishment:

(1) Shall designate a contiguous nonsmoking area of at least 75% of a food service establishment's indoor seating capacity for dining.

(2) Shall prominently post notice of the smoking policy at each entrance to the food service establishment, and each patron shall be given an opportunity to state his or her seating preference.

(3) May designate a smoking area. Any such designated indoor smoking area shall be:

(a) Separated from the nonsmoking area by a wall or partition of at least 72 inches in height with appropriate openings for ingress and maintained at a negative pressure with respect to adjacent areas so that tobacco smoke does not escape. Air into the smoking area shall be supplied at a minimum ventilation rate of 20 cubic feet of air per minute per person and may be supplied by transfer air from other areas in the restaurant. Air from the smoking area shall be exhausted to the outside of the building unless filtered before recirculation; or

(b) In a completely separate and enclosed room.

(c) In the event that customer demand for a smoking section during a particular social or business function, such as a meeting of an organization or club, exceeds 25% of the seating area of the food service establishment, then the owner, operator, or manager of the food service establishment may designate, for the duration of the function only, a larger smoking section, subject to the requirements of this legislation, but in no event shall such designation at any time exceed 50% of the indoor seating capacity of the food service establishment. Upon the conclusion of any such meeting, the owner, operator, or manager of the food service establishment shall immediately redesignate a continuous nonsmoking area of 75% of the food service establishment's indoor seating capacity, subject to the requirements of this legislation.

(4) May designate the entire food service establishment a nonsmoking area.

(5) Notwithstanding any other provision of this article to the contrary, a food service establishment with a seating capacity of greater than 25 persons, and less than 35 persons, shall designate a contiguous nonsmoking area sufficient to meet customer demand. Food service establishments may not determine that no such demand exists. If an establishment designates 50% of its seating capacity as a nonsmoking area, customer demand shall be deemed to have been met.

C. Sports arena/recreational facility. The owner, operator, manager or other supervisory personnel of a sports arena or recreational facility may designate a contiguous area of its facility for smoking as set forth herein:

(1) With respect to bowling alleys, smoking is prohibited in the bowling settee area, the area occupied by bowlers while bowling and keeping score. Smoking may be permitted in a separate area of the concourse, the area directly behind the bowling settee area, so long as said separate area does not constitute more than 25% of the floor space of the concourse area; or

(2) May designate a separate, fully enclosed smoking room; or

(3) May designate the sports arena or recreational facility as a nonsmoking area.

D. Workplace. Each employer shall adopt and implement a smoking policy which shall be in writing, and prominently displayed at the workplace, requiring, at least, the following:

(1) All nonsmoking employees shall be provided with a smoke-free work area.

(2) All cafeterias, lunch rooms, lounges, and other areas where employees engage in the consumption of food and beverages shall have a contiguous nonsmoking area of at least 75% of the seating capacity of such room, and the smoking area shall be separated from the nonsmoking area by partitions, providing for ingress and egress from said smoking area, of at least 72 inches in height.

(3) Smoking shall be prohibited in auditoriums, gymnasiums, rest rooms, elevators, classrooms, hallways, employee medical facilities, mail rooms, and rooms or areas which contain photocopying equipment and equipment of similar nature used in common, and in company vehicles occupied by more than one occupant unless all the occupants of said vehicle agree that smoking may be permitted.

(4) Smoking shall be prohibited in conference rooms and meeting rooms.

(5) The employer may designate a separate enclosed room, not open to the public, for use as a smoking area, except when all persons present agree that smoking shall be permitted.

(6) Private, enclosed offices may be designated as smoking areas, so long as all the occupants of said office agree that smoking may be permitted.

(7) Employers will provide a written copy of its smoking policies to each employee.

(8) An employer shall not be required to expend any money or create any structural changes to create a nonsmoking area.

(9) Any provisions in a smoking policy that are more restrictive than the minimum requirements set forth in this Subsection D shall, if a collective bargaining agreement exists, be subject to the applicable law governing collective bargaining.

#### § 349-6. Posting of signs and advertising.

A. Posting of "smoking" signs or "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 prominently and conspicuously posted in every place where smoking is regulated by this article by the owner, operator, manager or other person having control of such place. Such signs shall be protected from tampering, damage, removal or concealment.

B. Advertising for tobacco products or for cigars, cigarettes, electronic cigarettes, pipes or any other forms of smoking objects or devices is hereby prohibited on any property owned by the County of Rockland.

#### § 349-7. Exceptions.

Smoking restrictions in this article will not apply to:

A. Private homes, private residences and private automobiles.

B. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager, supervisor or other person in charge of such indoor area.

C. Any indoor area open to the public exclusively reserved for conventions and trade shows if the sponsor or organizer of such convention or trade show gives prominent notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts such notices at all entrances to the convention or trade show advising the public that smoking will not be restricted.

D. Hotel and motel rooms rented to guests.

E. Retail tobacco or electronic cigarette stores where the sale of items other than tobacco products or electronic cigarettes is only incidental.

F. Bars and bar areas of food service establishments.

G. Outdoor areas of food service establishments.

H. Any food service establishment which has a seating capacity of fewer than 35 people.

I. Wholly enclosed private boxes in indoor sports arenas.

J. Notwithstanding anything to the contrary contained herein, this legislation shall not be construed to permit smoking in any building, premises, restaurant or portion thereof in which smoking was prohibited by law prior to the passage of this legislation.

#### § 349-8. General provisions.

A. Nothing in this article shall be construed to deny the owner, operator, manager or person in charge of a place covered by this article the right to designate the entire place, or any part thereof, as a nonsmoking area.

B. Any questions concerning the construction of this article shall be resolved in a manner which will provide the greater protection to nonsmokers.

C. Smoking may not be permitted where prohibited by any law, rule or regulation of the state or any of its agencies having jurisdiction thereof or any political subdivision of Rockland County.

D. The owner, operator, manager or person in charge of a place covered by this article shall request compliance with this article by all persons in such place.

#### § 349-8.1. Waivers.

A. The Rockland County Health Commissioner or a person specifically designated by him or her to grant waivers pursuant to this article may grant a waiver from the application of a specific provision of this article, provided that, prior to the granting of any such waiver, the applicant for a waiver shall establish that compliance with a specific provision of this article would cause the applicant undue financial hardship or that other factors exist which would render strict compliance unreasonable.

B. Every 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 secondhand smoke and to ensure that the waiver is consistent with the general purpose and intent of this article.

C. Waivers pursuant to this section shall be valid for a period of not more than 24 months and may be renewed upon application. Applications for renewal shall be reviewed in the same manner as provided for applications for waiver.

§ 349-8.2. Penalties for offenses.

A. A violation of any provision of this article shall constitute a violation punishable on conviction for a first offense by a fine not exceeding \$150 and for a second or subsequent offense by a fine not exceeding \$300.

B. Notwithstanding any other provision to the contrary, any person who violates a provision of this article shall be subject to the imposition of a civil penalty by the Commissioner of Health in an amount not exceeding \$300. The penalty provided for by this article may be sued for and recovered by the Commissioner of Health in the name of the County of Rockland in any court of competent jurisdiction. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him and has had an opportunity to be heard as provided for in Article One of the Rockland County Sanitary Code.

Article III. Smoking in and Around County Facilities

§ 349-9. Legislative intent.

In order to protect the health of County employees, patients and the public using County facilities, the Legislature of Rockland County hereby approves the County Executive's proposal to prohibit smoking in all County facilities, excepting existing designated employee and patient common smoking areas.

§ 349-10. Smoking restricted.

The smoking or carrying of a lighted cigar, cigarette, electronic cigarette, pipe or any other form of smoking object or device in any indoor area and within 25 feet from the entryways and exits of County facilities owned or operated by the County of Rockland is prohibited except for existing designated employee or patient common smoking areas.

§ 349-11. Indoor smoking areas provided.

Indoor smoking areas shall be provided in all County facilities to the extent practicable.

## Article IV. Smoking in Vehicles

### § 349-12. Title.

This article shall be known as "The Rockland County Kids in Cars Smoking Safety Act."

### § 349-13. Findings and intent.

This Legislature finds that numerous studies have conclusively demonstrated the effect secondhand smoking has in those who never smoke even one cigarette. These risks include, but are not limited to, heart disease, cancer, emphysema, and various other ailments that contribute to loss of life, loss of quality of life, and increased health care and other costs to individuals and governments. Studies also show that children are particularly vulnerable to the dangers of secondhand smoke; yet children are also among those least able to avoid secondhand smoke from adults or other children who smoke around them. One place that is currently unregulated is smoking in vehicles with children present. Even with open windows, children are essentially prisoners to secondhand smoke without the ability to remove themselves from the dangerous situations. With regard to smoking electronic cigarettes in vehicles, it has been determined that carcinogenic chemicals, including formaldehyde, have been found in varying amounts in the aerosols emitted upon the smoking of such cigarettes. There is therefore concern about the potential harm to children in vehicles from secondhand exposure to electronic cigarette aerosols. The Legislature finds, therefore, that a local law is necessary in order to protect and promote the public health, safety and welfare of children in Rockland County.

### §349-14. Prohibitions.

It shall be unlawful for the operator or any passenger in a vehicle to smoke when any child is present.

### §349-15. Penalties for offenses.

The first violation of the provisions of this article shall be a criminal violation punishable by a fine of between \$75 and \$150. A second or subsequent violation shall be a criminal violation, punishable by a fine of between \$150 and \$250.

## Article V. Smoking in Multiple Dwellings

### §349-16. Title.

This article shall be known as "The Rockland County Multiple Dwelling Smoking Policy Act."

### §349-17. Legislative intent.

A. Secondhand smoke is the smoke that comes from the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from the lungs of smokers. Secondhand smoke is often involuntarily inhaled by nonsmokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. Secondhand smoke can migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects in neighboring families. Secondhand smoke causes almost 50,000 deaths in adult nonsmokers in the United States each year, including approximately 3,400 from lung cancer and another 22,000 to 69,000 from heart disease. Furthermore, according to the U.S. Surgeon General, residential exposure is a leading source of secondhand smoke for both children and adults, and children exposed to secondhand smoke are at an increased risk for sudden infant death, acute respiratory infections, ear problems, and more severe asthma. (Note: U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.) With regard to smoking electronic cigarettes, it has been determined that carcinogenic chemicals, including formaldehyde, have been found in varying amounts in the aerosols emitted by them. There is therefore concern about the potential public harm from secondhand exposure to electronic cigarette aerosols. Although individuals can normally choose to stay away from smokers or establishments that permit smoking, there is no such option in multiple dwellings because secondhand smoke lingers in the air hours after cigarettes have been extinguished and can migrate between units in multifamily buildings. Heating, ventilating and air-conditioning systems do not control exposure to secondhand smoke; rather, these systems actually distribute secondhand smoke throughout the building.

B. While private owners as well as public housing authorities have the ability to restrict smoking in or on their properties, they are not required to do so. Furthermore, for those properties that have smoking policies that limit where or when people may smoke in or on the properties, there is no requirement that the policy be distributed to all prospective renters of dwelling units. If owners of multiple dwellings were required to develop a smoking policy and distribute it with a lease for the multiple dwelling, potential renters would be put on notice of where and when smoking is permitted and they could then make an educated decision about where they wish to live. Aside from the health considerations, this would also greatly reduce the number of conflicts between smokers and nonsmokers, as all people living in the multiple dwelling will be placed on notice about where and when people are permitted to smoke.

C. There are additional social factors to consider: it is usually the poorer segment of society that rents a dwelling unit in a multiple dwelling, as opposed to purchasing a residence. It is this same population that tends to suffer from less education, poor housing quality and nutrition, and inadequate health insurance, as well as decreased access to quality medical care. This often results in people in this population, particularly children, having a predisposition to illness. People in this category who are exposed to secondhand smoke suffer from more frequent and more severe illness as a result of this exposure. To the extent possible, people in this population should be afforded the necessary information to facilitate healthy living choices.

D. It should be noted that although the Rockland County Sanitary Code Section 22.3.1 permits smoking in private homes and private residences, including private living space within a multiple dwelling, Section 22.2.7 prohibits smoking in all multiple dwelling common areas, including but not limited to hallways and laundry rooms, and multiple dwelling areas with contiguous overhangs or awnings.

E. The purpose of this article is to safeguard the health and well-being of all Rockland County residents by requiring owners of multiple-dwelling rental properties to develop, implement and distribute a smoking policy for their properties to all current and prospective tenants of dwelling units. This will promote awareness of the dangers of secondhand smoke and provide prospective renters of dwelling units in multiple dwellings the necessary information to make informed decisions about where to live and enable them to choose to live in a smoke-free environment.

#### §349-18. Requirements.

A. Owners of multiple-dwelling rental properties are required to:

(1) Develop and implement a smoking policy that details where and when smoking is permitted in multiple dwellings, if at all;

(2) Distribute the smoking policy to all current tenants of multiple dwellings within 30 days of this article going into effect;

(3) Post a copy of the smoking policy in the following public areas of the multiple dwelling, if applicable: all entrances, walls adjacent to elevators and mailboxes, and laundry/common rooms;

(4) Attach a copy of the smoking policy to all leases for dwelling units in the multiple dwelling, to be provided to all prospective tenants or upon request; and

(5) Provide a copy of the smoking policy to all tenants who enter into oral leases or agreements to rent by the day, week, month or year, prior to the time tenants enter into such oral tenancy.

B. Owners of multiple dwellings with five or more dwelling units are required to file a copy of their smoking policy with the Rockland County Department of Health within 30 days of this article going into effect.

§349-19. Enforcement and penalties for offenses.

Any owner who violates the provisions of this article shall be subject to the imposition by the Rockland County Department of Health of a civil penalty pursuant to Section 1.25 of the Rockland County Sanitary Code. No civil penalty shall be imposed by the Department of Health as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard pursuant to the normal procedures of the Department of Health. Prior to the imposition of the first civil penalty on an alleged violator for failure to develop, implement and file a copy of a smoking policy with the Department of Health, if so required, the Department of Health shall make a good-faith effort to issue a warning to the alleged violator, shall make a good-faith effort to educate the alleged violator about the provisions of this article, and shall provide the alleged violator 30 days to comply with the provisions of this article and provide a copy of the smoking policy to the Health Department, even if not initially required to do so under this article. Failure to comply within 30 days will subject the alleged violator to a civil penalty of no less than \$500.

§349-20. Education.

The Department of Health shall promulgate and make available information regarding the dangers of smoking and secondhand smoke, in such manner as may be reasonably determined by the Commissioner of Health, or his/her designees. Smoking policies filed with the Department of Health may be made available to the public in such manner as may be reasonably determined by the Commissioner of Health, or his/her designees.

§349-21. Applicability.

This article shall apply to any and all actions occurring on or after the effective date of this article.

§349-22. Effective date.

This article shall take effect on January 1, 2012.

Section 3. Effective Date.

This Local Law shall take effect within thirty (30) days of filing with the New York State Secretary of State.

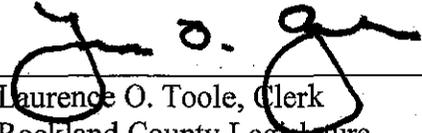
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ROCKLAND )

I, the undersigned, Clerk to the Legislature of the County of Rockland DO HEREBY CERTIFY that the attached is an original Local Law of such Legislature, duly adopted on the 1st day of September 2015 by a majority of the members elected to the Legislature while such Legislature was in regular session with a duly constituted quorum of members present and voting.

I FURTHER CERTIFY that at the time said Local Law was adopted said Legislature was comprised of seventeen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 2nd day of September 2015.

Date sent to the County Executive:  
September 2, 2015

  
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Laurence O. Toole, Clerk  
Rockland County Legislature

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Certified or Approved  
Edwin J. Day  
County Executive, County of Rockland

\_\_\_\_\_  
(date)

LOCAL LAW NO. **5** OF 2015