

# Local Law Filing

(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  Town  Village  
(Select one:)

of SENECA

Local Law No. 3 of the year 2011

A local law Prohibiting Smoking Upon All Real Property Owned Or Leased By The County  
(Insert Title)

Be it enacted by the BOARD OF SUPERVISORS of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one:)

of SENECA

as follows:

## Section 1: Findings

The Board of Supervisors of the County of Seneca finds that smoking on real property owned or leased by the County should be prohibited in order to:

- A) Protect the public health, safety and general welfare by eliminating exposure to secondhand smoke
- B) Acknowledge the need of nonsmokers, especially children, to breathe smoke-free air, recognizing the danger to public health which secondhand smoke causes.
- C) Recognize that the need to breathe air free of the disease-causing toxins in secondhand smoke should have priority over the desire to and convenience of smoking on real property owned or leased by the County.
- D) Recognize the right and benefit to municipal residents and visitors to be free from unwelcome secondhand smoke while on real property owned or leased by the County.

## Section 2: Application of Article to County-Owned and Leased Real Property

All real property owned or leased by the County of Seneca shall be subject to the provisions of this Local Law. The term "real property" shall include real estate, lands and any structures, buildings or facilities located upon said real estate and lands. The term "real property" shall not include roadways and right of ways located within the county road system established under section 115 of the New York State Highway Law.

## Section 3: Regulation of Smoking upon County-Owned and Leased Real Property

- A) "Smoking" shall mean inhaling of, exhaling or, burning of, or carrying of any lighted cigar, cigarette, pipe, weed, or other plant in any manner or in any form.
- B) Smoking shall be prohibited upon all real property owned or leased by the County of Seneca, except when located within a moving motor vehicle which is in the process of exiting or entering real property owned or leased by the County of Seneca.

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

#### Section 4: 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 upon the entrance to all real property where smoking is regulated by this Article. NO SMOKING signs shall be protected from tampering, damage, removal or concealment.

#### Section 5: Enforcement

- A) For the purpose of this Local Law the term "enforcement officer" shall mean the Seneca County Board of Health, or its designee.
- B) The enforcement officer may cause to have issued and served upon the person complained against a written notice, together with a copy of the complaint made against him, which shall specify the provisions of this Local Law of which such person is said to be in violation and a statement of the manner in which that person is said to violate it and shall require the person so complained against to answer the charges of such complaint at a public hearing before a Hearing Officer designated by the Board of Health at a time not less than fifteen (15) days after the date of service of notice.
- C) The Board of Health may serve, together with a copy of the complaint, a stipulation offer to the person complained against. The stipulation offer shall allow the person complained against to enter into a stipulation under the terms and conditions as set forth in the stipulation offer. The person complained against shall have the option of entering into the stipulation or proceeding with a formal hearing before a Hearing Officer designated by the Seneca County Board of Health.
- D) If the Hearing 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 6 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.
- E) Any person who desires to register a complaint under this Local Law may do so with any appropriate enforcement officer.
- F) Any person who elects to seek review of a final decision or order of the Hearing Officer shall file a notice of appeal with the Seneca County Department of Health within 15 days of receipt of a copy of the decision and order of the Officer. The notice of appeal is to be accompanied by a brief or memorandum outlining the specific reasons why the decision and order should be changed. The filing of a notice of appeal will stay the collection of any fine or imposition of a penalty or order until the Board has rendered its decision. Appeals shall be made upon the record of the hearing and are to be made without physical appearance of the appellant unless requested by the appellant in the notice of appeal. Any appeal in which an appearance is made by the appellant will be open to the public.
- G) Appeals shall be reviewed by the Seneca County Board of Health which shall issue its decision in writing within thirty days of the later of, receipt of the appeal or of the appearance of the appellant before the Board. A copy of the decision shall be provided by mail to the appellant.

H) The decision of any Board of Health shall be reviewable pursuant to Article seventy-eight of the Civil Practice Law and Rules.

I) The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in Section 6 of this Local Law.

#### Section 6: Violations and Penalties

A) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Local Law.

B) Any person who violates any provision of this Local Law shall be guilty of a violation, punishable by a civil penalty not to exceed one thousand dollars (\$1,000.00).

#### Section 7: Other Applicable Laws

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

#### Section 8: Severability

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

#### Section 9: Effective Date

This local law shall take effect immediately upon filing with the Secretary of State in accordance with Section 27 of the New York State Municipal Home Rule Law.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2011 of the (County)(City)(Town)(Village) of SENECA was duly passed by the BOARD OF SUPERVISORS on SEPT 27 2011, in accordance with the applicable provisions of law.

~~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 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on 20\_\_\_\_, in accordance with the applicable provisions of law.~~

~~3. (Final adoption by referendum.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.~~

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 \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

~~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 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.~~

\* 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.)~~

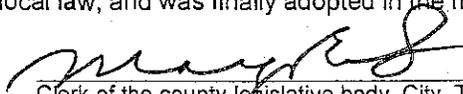
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, 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 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, 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 cities 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 indicated in paragraph   1   above.



\_\_\_\_\_  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

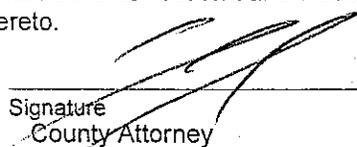
Date:   9/29/2011  

(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   SENECA  

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 of   Seneca    
Town \_\_\_\_\_  
Village \_\_\_\_\_

Date:   9/29/2011