

November 5, 2012

Finance Committee: 10-30-2012

RESOLUTION NO. 270-2012

**PROPOSED LOCAL LAW C (NO.    ) FOR THE YEAR 2012  
A LOCAL LAW PROHIBITING OUTDOOR USE OF TOBACCO PRODUCTS UPON  
REAL PROPERTY OWNED OR LEASED BY ST. LAWRENCE COUNTY**

Mr. Morrill, Chair, Finance Committee

**BE IT ENACTED** by the Board of Legislators of the County of St. Lawrence as follows:

**Section 1.**     **Title:** This Local Law shall be known as “**A LOCAL LAW PROHIBITING OUTDOOR USE OF TOBACCO PRODUCTS UPON REAL PROPERTY OWNED OR LEASED BY ST. LAWRENCE COUNTY**”.

**Section 2.**     **Findings:** The St. Lawrence County Board of Legislators finds that, in addition to the indoor smoking ban under New York State Law, outdoor tobacco use 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 tobacco smoke and tobacco residue.
- 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 and convenience of tobacco use on real property owned or leased by the County.
- D. Encourage the cessation of tobacco use by all persons, to promote longevity and reduce disease and its cost to society.

**Section 3.**     **Definitions**

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

**Beach** means any area that is owned or leased by the County along a shoreline of a lake, river or pond and extending one thousand (1,000) feet from the shoreline and is open to the general public, regardless of any fee or age requirement.

**Entrances and Exits** means the areas of ingress and egress by which persons may enter a building, including any landing, steps, or ramp leading from a sidewalk, parking lot or pavement to such area.

**Person** means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the County.

**Playing Field** means that portion of an outdoor Recreational Area that is set up and marked in some way for the playing of one or more specific games or sports (such as baseball, football, or soccer), and that is owned or operated by the County and open to the general public. For the purposes of this local law, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated shall be deemed to include all of the area inside such fence or demarcation, together with any bleachers or other designated viewing area; a playing field that is

not fenced or otherwise demarcated (as to its outside perimeter) shall be deemed to include all of the area customarily required for playing the game for which it is being used, together with any bleachers or other designated viewing area.

**Reasonable Distance** means a distance that ensures that persons located within an area in which Tobacco Product Use is prohibited are not exposed to secondhand smoke created outside the area. Under any circumstances this distance shall not be less than twenty (20) feet in any direction from the area within which Tobacco Product Use is prohibited.

**Recreational Area** means any outdoor area that is owned or leased by the County and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes but is not limited to Playing Fields, playgrounds, parks, picnic areas, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, and amusement parks. The term "Recreational Area" is not intended to include streets and sidewalks unless they are located within a demarcated Recreational Area such as a park.

**Smoking** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, electronic cigarette or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

**Tobacco Product Use** means smoking with or without inhaling, chewing, ingesting or placing of tobacco products in the mouth and nose.

**Tobacco Product** means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and electronic cigarette cartridges. Provided, however, "Tobacco Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

#### **Section 4. Prohibition**

A. The use of Tobacco Products is hereby prohibited within all county owned vehicles and upon all outdoor areas of real property owned or leased by St. Lawrence County except as provided in Section 6 of this Local Law.

B. The outdoor use of Tobacco Products is hereby further prohibited within a reasonable distance of Entrances and Exits to County owned or leased buildings within which smoking is prohibited by Article 13-E of the New York Public Health Law.

C. Nothing in this Local Law prohibits any Person with legal control over any property from prohibiting Smoking or other Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.

**Section 5. Other Requirements and Prohibitions**

- A. No ash can, ashtray, or other Tobacco Product Use waste receptacle shall be placed in any area in which Tobacco Product Use is prohibited by this Local Law.
- B. No Person shall permit Tobacco Product Use in an area under the Person's control in which Tobacco Product Use is prohibited by this Local Law;
- C. The St. Lawrence County Board of Health shall issue guidelines for the content and placement of signs advising the public of the restriction of the use of Tobacco Products or Smoking in the prohibited areas.
- D. The presence of Tobacco Product Use waste receptacles in violation of subsection (A) above and the absence of signs required by subsection (C) above shall not be a defense to a violation of any provision of this Local law.
- E. The President of the Board of Health or his or her designee shall engage in an ongoing educational program to explain and clarify the purposes and requirements of this Local law. However, lack of such education shall not be a defense to a violation of this Local law.

**Section 6. Exceptions**

The provisions of this Local Law shall not apply to the following designated places:

- A. A privately owned moving motor vehicle which is not being used to carry out county business and which is in the process of exiting or entering real property owned or leased by St. Lawrence County
- B. Roadways and rights of way that are a part of the County road system established under Section 115 of the New York State Highway Law.
- C. St. Lawrence County owned forest land, except pedestrian trails and multiuse trails and extending one hundred feet there from in any direction.

**Section 7. Penalties and Enforcement**

- A. The remedies provided by this Local Law are cumulative and in addition to any other remedies available at law or in equity.
- B. Each instance of Tobacco Product Use in violation of this Local Law shall constitute a separate offense.
- C. Any police officer, peace officer, or code enforcement official may enforce this Local Law.
- D. A violation of this Local Law is hereby declared a public nuisance. The license or privilege to be or remain on county owned or leased property of persons engaging in such a public nuisance may be revoked by a head of a county department or his or her designee and the person whose license to remain is revoked will be instructed to leave the county owned or leased property. Remaining on county owned or leased property after a direction to leave shall constitute a trespass and may subject the violator to prosecution.

- E. Tobacco Product Use in violation of this local law shall be a violation punishable by a fine of not more than \$50.00 for a first offense and a fine of not more than \$100.00 for a second or subsequent offense committed within one year of a prior offense.
- F. Nothing in this Local law shall create a private right of action in any Person against the County or its agents to compel public enforcement of this Local law against private parties.

**Section 8. Other Applicable Laws**

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

**Section 9. 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 invalid provision or application, and to this end the provisions of this Local Law are declared to be severable.

**Section 10. Effective Date**

This local law shall take effect (180) days after it shall have been adopted.

STATE OF NEW YORK                    )  
   ) ss:  
 COUNTY OF ST. LAWRENCE         )

I, Kelly S. Pearson, Deputy Clerk of the St. Lawrence County Board of Legislators, **DO HEREBY CERTIFY**, that I have compared this Resolution No. 270-2012 entitled "Proposed Local Law C (No.\_\_\_\_) for the Year 2012 a Local Law Prohibiting Outdoor Use of Tobacco Products upon Real Property Owned or Leased by St. Lawrence County", Adopted November 5, 2012, with the original record in this office and that the same is a correct transcript thereof and of the whole of said original record.

Kelly S. Pearson  
 Kelly S. Pearson, Deputy Clerk  
 St. Lawrence County Board of Legislators  
 November 7, 2012