

State of New York

Regulation of Smoking in Public and Work Places

Effective July 24, 2003

§ 1399-n. Definitions.

For purposes of this article:

1. "Bar" means any area, including outdoor seating areas, 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.
2. "Employer" means any person, partnership, association, limited liability company, corporation or nonprofit entity which employs one or more persons, including the legislative, executive and judicial branches of state government and any political subdivision of the state.
3. "Food service establishment" means any area, including outdoor seating areas, or portion thereof in which the business is the sale of food for on-premises consumption.
4. **"Membership association" means a not-for-profit entity which has been created or organized for a charitable, philanthropic, educational, political, social or other similar purpose.**
5. **"Place of employment"** means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, and shall include, but not be limited to, offices, school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment or other office equipment used in common, and company vehicles.
6. "School grounds" means any building, structure, and surrounding outdoor grounds contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk's office, and any vehicles used to transport children or school personnel.
7. "Retail tobacco business" means a sole proprietorship, limited liability company, corporation, partnership or other enterprise in which the primary activity is the retail sale of tobacco products and accessories, and in which the sale of other products is merely incidental.
8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

§ 1399-o. Smoking restrictions.

Smoking shall not be permitted and no person shall smoke in the following indoor areas:

1. Places of employment;
2. Bars;
3. Food service establishments, except as provided in subdivision six of section thirteen hundred ninety-nine-q of this article;
4. Enclosed indoor areas open to the public containing a swimming pool;
5. public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines;
6. Ticketing, boarding and waiting areas in public transportation terminals;
7. Youth centers and facilities for detention as defined in sections five hundred twenty-seven-a and five hundred three of the executive law;
8. Any facility that provides child care services as defined in section four hundred ten-p of the social services law, provided that such services provided in a private home are excluded from this subdivision when children enrolled in such day care are not present;
9. Child day care centers as defined in section three hundred ninety of the social services law and child day care centers licensed by the city of New York;
10. Group homes for children as defined in section three hundred seventy-one of the social services law;
11. Public institutions for children as defined in section three hundred seventy-one of the social services law;
12. Residential treatment facilities for children and youth as defined in section 1.03 of the mental hygiene law;
13. All public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities and other educational and vocational institutions, except that these restrictions shall not apply in any off-campus residential unit occupied by a person who is not enrolled as an undergraduate student in such college, university or other educational institution;
14. General hospitals and residential health care facilities as defined in article twenty-eight of this chapter, and other health care facilities licensed by the state in which persons reside; provided, however, that the provisions of this subdivision shall not prohibit smoking by patients in separate enclosed rooms of residential health care facilities, adult care facilities established or certified under title two of article seven of the social services law, community mental health residences established under section 41.44 of the mental hygiene law, or facilities where day treatment programs are provided, which are designated as smoking rooms for patients of such facilities or programs;
15. Commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;
16. Indoor arenas;
17. Zoos; and Bingo facilities.

§ 1399-p. Posting of signs.

1. "Smoking" or "No Smoking" signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained where smoking is regulated by this article, by the owner, operator, manager or other person having control of such area.
2. The owner, operator or manager of a hotel or motel that chooses to develop and implement a smoking policy for rooms rented to guests shall post a notice at the reception area of the establishment as to the availability, upon request, of rooms in which no smoking is allowed.

§ 1399-q. Smoking restrictions inapplicable.

This article shall not apply to:

1. Private homes, private residences and private automobiles;
2. A hotel or motel room rented to one or more guests;
3. Retail tobacco businesses;
4. Membership associations; provided, however, that smoking shall only be allowed in membership associations in which all of the duties with respect to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work, and the security services of the membership association are performed by members of such membership association who do not receive compensation of any kind from the membership association or any other entity for the performance of such duties;
5. Cigar bars that, in the calendar year ending December thirty-first, two thousand two, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the appropriate enforcement officer, as defined in subdivision one of section thirteen hundred ninety-nine-t of this article. Such registration shall remain in effect for one year and shall be renewable only if:
 - a. in the preceding calendar year, the cigar bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and
 - b. the cigar bar has not expanded its size or changed its location from its size or location since December thirty-first, two thousand two;
6. Outdoor dining areas of food service establishments with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous area designated for smoking so long as such area:
 - a. constitutes no more than twenty-five percent of the outdoor seating capacity of such food service establishment,
 - b. is at least three feet away from the outdoor area of such food service establishment not designated for smoking, and
 - c. is clearly designated with written signage as a smoking area; and
7. Enclosed rooms in food service establishments, bars, catering halls, convention halls, hotel and motel conference rooms, and other such similar

facilities during the time such enclosed areas or rooms are being used exclusively for functions where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose, provided that the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts notice at the entrance of the facility and has provided notice of such function to the appropriate enforcement officer, as defined in subdivision one of section thirteen hundred ninety-nine-t of this article, at least two weeks prior to such function. The enforcement officer shall keep a record of all tobacco sampling events, and such record shall be made available for public inspection. No such facility shall permit smoking under this subdivision for more than two days in any calendar year.

§ 1399-r. General provisions.

1. Nothing in this article shall be construed to deny the owner, operator or manager of a place covered by this article the right to designate the entire place, or any part thereof, as a nonsmoking area.
2. The provisions of this article shall apply to the legislative, executive and judicial branches of state government and any political subdivision of the state.
3. Smoking may not be permitted where prohibited by any other law, rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.

§ 1399-s. Violations.

1. It shall be unlawful for any person, firm, limited liability company, corporation or other entity that owns, manages, operates or otherwise controls the use of an area in which smoking is prohibited or restricted pursuant to section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of this article. For violations of this subdivision, it shall be an affirmative defense that during the relevant time period actual control of the area was not exercised by the respondent, but rather by a lessee, the sublessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the appropriate enforcement officer within thirty days of receipt of such notice of violation.
2. It shall be unlawful for an employer whose place of employment is subject to subdivision one of section thirteen hundred ninety-nine-o of this article to fail to comply with the provisions of such subdivision. For violations of such subdivision, it shall be an affirmative defense that the employer has made good faith efforts to ensure that employees comply with the provisions of this article.

3. It shall be unlawful for any person to smoke in any area where smoking is prohibited or restricted under section thirteen hundred ninety-nine-o of this article.

§ 1399-t. Enforcement.

1. For the purpose of this article the term "enforcement officer" shall mean the board of health of a county or part county health district established pursuant to title three of article three of this chapter, or in the absence thereof, an officer of a county designated for such purpose by resolution of the elected county legislature or board of supervisors adopted within sixty days after the effective date of this article. Any such designation shall be filed with the commissioner within thirty days after adoption. If no such designation is made, the county will be deemed to have designated the department as its enforcement officer. Any county that does not designate an enforcement officer during the time period specified above may do so at any time, thereafter, such designation will be effective thirty days after it is filed with the commissioner. The enforcement officer shall have sole jurisdiction to enforce the provisions of this article on a county-wide basis pursuant to rules and regulations promulgated by the commissioner. In a city with a population of more than one million the enforcement officer shall be the department of health and mental hygiene of such city which shall have sole jurisdiction to enforce the provisions of this article in such city.
2. 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 thirteen hundred ninety-nine-v of this article. When the enforcement officer is the commissioner, the hearing shall be conducted pursuant to the provisions of section twelve-a of this chapter. When the enforcement officer is a board of health or in a city with a population of more than one million, the department of health and mental hygiene, or an officer designated to enforce the provisions of this article, the hearing shall be conducted pursuant to procedures set forth in the county sanitary code, or health code of such city, or in the absence thereof, pursuant to procedures established by the elected county legislature or board of supervisors. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this article.
3. Any person who desires to register a complaint under this article may do so with the appropriate enforcement officer.
4. The owner, manager, operator or other person having control of any area subject to the provisions of 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.
5. Any person aggrieved by the decision of an enforcement officer other than the commissioner may appeal to the commissioner to review such decision within thirty days of such decision. The decision of any enforcement officer shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.
6. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in

section thirteen hundred ninety-nine-v of this article in any court of competent jurisdiction.

7. An enforcement officer who discovers a retail dealer who or which does not display a retail dealer certificate of license or registration from the department of taxation and finance issued pursuant to section four hundred eighty-a of the tax law shall notify the commissioner of taxation and finance within thirty days of the name and address of any such establishment so that the commissioner of taxation and finance can take appropriate action.

§ 1399-u. Waiver. (See Below)

1. The enforcement officer 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:
 - a. Compliance with a specific provision of this article would cause undue financial hardship; or
 - b. Other factors exist which would render compliance unreasonable.
2. 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 second-hand smoke and to ensure that the waiver is consistent with the general purpose of this article.

§ 1399-v. Penalties.

The commissioner may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in subdivision one of section twelve of this chapter. Any other enforcement officer may impose a civil penalty for a violation of this article in an amount not to exceed that set forth in paragraph f of subdivision one of section three hundred nine of this chapter.

[§ 12. Violations of health laws or regulations; penalties and injunctions.

1. Any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to **exceed two thousand dollars for every such violation.**
2. The penalty provided for in subdivision one of this section may be recovered by an action brought by the commissioner in any court of competent jurisdiction.
3. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them to be misdemeanors or felonies or prescribing the penalty therefore.
4. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general, and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner.

5. It shall be the duty of the attorney general upon the request of the commissioner to bring an action for an injunction against any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto; provided, however, that the commissioner shall furnish the attorney general with such material, evidentiary matter or proof as may be requested by the attorney general for the prosecution of such an action.
6. It is the purpose of this section to provide additional and cumulative remedies, and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provision of this section, nor any action done by virtue of this section, be construed as stopping the state, persons or municipalities in the exercising of their respective rights to suppress nuisances or to prevent or abate pollution.]

§ 1399-w. Limitation of causes of action.

An employer, administrator, manager, owner or operator of any indoor area, food service establishment, or place of employment regulated by this article who complies or fails to comply with the provisions of this article shall not be subject to any legal liability or action solely as a result of such compliance or noncompliance except as provided in section thirteen hundred ninety-nine-v of this article. Nothing in any other section of this article shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any theory of liability upon which any person may be held liable to any other person for exposure to smoke.

§ 1399-x. Rules and regulations.

The commissioner shall not promulgate any rules or regulations to effectuate the provisions of section thirteen hundred ninety-nine-n, subdivision six of section thirteen hundred ninety-nine-o or subdivision one of section thirteen hundred ninety-nine-p of this article. The commissioner shall not promulgate any rules or regulations that create, limit or enlarge any smoking restrictions.

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The law that let's us smoke with volunteer bartenders.

12/12/03

New York State Department of Health

Clean Indoor Air Act (CIAA) Guidance - Applicability of Membership Associations as defined in Section 1399-n(4) and described in Section 1399-q(4) of the Public Health Law

A "membership association" in which all the duties are performed by members who do not receive compensation of any kind from the membership association or any other entity for the performance of their membership association duties, is exempt from all smoking restrictions contained within the CIAA. Compensation includes pay, tips, free membership, life insurance, drinks, meals, lodging, or any other items that would be considered compensation for performance of their duties. Any membership association that meets the criteria described in Section 1399-q(4) for "membership associations" is not subject to any of the provisions in the CIAA. Such organization could allow smoking in facilities that serve food and alcoholic beverages, operate bingo games or operate other fund raising activities. These activities could be attended by members, member guests and the general public.

Any organization seeking exemption from the applicability of the CIAA as a membership association must show that:

- 1. It is a membership association, which is defined in Section 1399-n(4) as a not-for-profit entity which has been created or organized for a charitable , philanthropic, educational, political, social or other similar purpose; and**
- 2. All of the duties with respect to the operation of such association, including, but not limited to**
 - o **the preparation of food and beverages,**
 - o **the service of food and beverages,**
 - o **reception and secretarial work, and**
 - o **the security of the membership association**

are performed by members of such membership association who do not receive compensation of any kind from the membership association or any other entity for the performance of such duties.

12/12/03

New York State Department of Health

Clean Indoor Air Act (CIAA) Guidance - Criteria for the Issuance of a Waiver (Section 1399-u of the Public Health Law)

A waiver applicant may be granted a waiver if the applicant demonstrates that compliance with a specific provision of the CIAA created an "undue financial hardship" or other factors exist that make compliance unreasonable. The merits of

each waiver application should be assessed individually, taking into account the particular circumstances of each facility for which a waiver is sought.

- I. **An "undue financial hardship" may be found to exist based on (A) a facility's loss of revenue due to compliance with the law; (B) a facility's capital expenditures prior to the law; or (C) other exceptional circumstances resulting in adverse economic impact(s) on the facility.**

- A. **Undue financial hardship due to loss of revenue:** An undue financial hardship due to loss of revenue may be found to exist if documentation provided pursuant to Paragraph I (A)(1) below demonstrates that the facility has experienced at least a fifteen percent (15%) reduction in state sales tax receipts from the sale of food and beverages for a period of three (3) consecutive months during which the facility has operated smoke-free as compared to the combined average of such receipts during the same three (3) consecutive month period in the two (2) years immediately prior to smoke-free operation. The operator of a facility that was in operation prior to July 24, 2003 may apply for a waiver pursuant to Section I(A). The operator is the legal entity of record for the facility on July 23, 2003. If the facility has not been in operation for an entire two (2) years prior to the date of its application for a waiver, an "undue financial hardship" may be found to exist if documentation provided pursuant to Paragraph I (A)(1) below demonstrates that the facility has experienced at least a 15% reduction in state sales tax receipts from the sale of food and beverages for a period of three (3) consecutive months during which the facility has operated smoke-free as compared to the three (3) consecutive month period immediately prior to the three (3) month period of smoke-free operation. A waiver applicant whose facility has not experienced at least a 15% reduction in state sales tax receipts as set forth in Section I (A) may seek a waiver based on undue financial hardship pursuant to Sections I (B) or I (C) below.

- A. A waiver application based on loss of revenue should contain the following:
 - A. The specific provision from which the applicant seeks a waiver;
 - B. A description of all efforts made to operate the facility profitably as a smoke-free environment; and
 - C. Exact copies of State sales tax statements that were submitted by the operator to the State of New York to support the operator's contention that the facility has experienced at least a 15% reduction in state sales tax receipts from the sale of food and beverages for a three (3) consecutive month period of smoke-free operation immediately prior to filing as compared to the combined average of such receipts during the same three (3) consecutive month period in the two (2) years immediately prior to smoke-free operation; and
 - D. Evidence which demonstrates that the facility's purported reduction in State sales tax receipts from the sale of food

and beverages has occurred under similar operational conditions, other than the presence of a smoke-free environment, and is not due to other factors. Such evidence should include, but need not be limited to: evidence that the facility operated during the same number of hours, was open the same number of days, was open on the same high business days, such as holidays, and sold food and beverages from a menu similar in selection and cost; and

- E. A description of conditions or restrictions that may be necessary for the facility to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure the waiver is consistent with the general purpose of Public Health Law Article 13-E.
- F. When assessing whether a facility will minimize the effects of a waiver, the following actions by the facility should be sought; and the extent to which such actions will be undertaken by the facility should be determined:
 - A. Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
 - B. Separate smoking/non-smoking areas, possibly physically separated or utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers.
 - C. Maintenance of smoking/non-smoking area signs.
 - D. Efforts to limit employee exposure to second hand smoke.
- B. All materials submitted by the waiver applicant should be considered in deciding whether or not to grant the waiver sought by the applicant.
- B. **Undue financial hardship due to capital expenditures prior to the law:** An undue financial hardship due to capital expenditures prior to the law may be found to exist if documentation provided pursuant to Paragraph I (B)(2) below demonstrates that the operator is unable to recover the costs associated with a capital improvement project that was initiated prior to July 24, 2003 (the effective date of the 2003 amendments to the CIAA) and was designed to provide a smoke-free environment at the facility. The operator of a facility that was in operation prior to July 24, 2003 may apply for a waiver pursuant to Section I(B). The operator is the legal entity of record for the facility on July 23, 2003.
 - A. The operator of the facility should demonstrate that structural/equipment improvements of the facility were made before the law was amended and that these modifications controlled secondhand smoke exposure to nonsmokers.
 - B. A waiver application based on capital expenditures prior to the law should contain the following:

- A. The specific provision from which the applicant seeks a waiver;
 - B. A description of all efforts made to operate the facility profitably as a smoke-free environment;
 - C. Cost receipts for, and a description of, the capital project improvements, including documentation as to the effectiveness of these improvements;
 - D. A description of conditions or restrictions that may be necessary for the facility to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure the waiver is consistent with the general purpose of Public Health Law Article 13-E.
 - E. When assessing whether a facility will minimize the effects of a waiver, the following actions by the facility should be sought; and the extent to which such actions will be undertaken by the facility should be determined:
 - A. Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
 - B. Separate smoking/non-smoking areas, possibly physically separated or utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers.
 - C. Maintenance of smoking/non-smoking area signs.
 - D. Efforts to limit employee exposure to second hand smoke.
 - C. All materials submitted by the waiver applicant should be considered in deciding whether or not to grant the waiver sought by the applicant.
- C. Undue financial hardship due to other exceptional circumstances resulting in adverse economic impact(s) on the facility:** An undue financial hardship due to other exceptional circumstances resulting in adverse economic impact(s) on the facility may be found to exist if documentation provided pursuant to Paragraph I (C)(2) below demonstrates that the facility has experienced, or will experience, due to exceptional circumstances other than those described in Sections I (A) and I (B), adverse economic impact(s) from the implementation of the CIAA.
- A. The operator of the facility should demonstrate that, due to exceptional circumstances other than those described in Sections I (A) and I (B), the facility has experienced or will experience adverse economic impacts that result from the implementation of the CIAA.
 - B. A waiver application based on other exceptional circumstances resulting in adverse economic impact(s) on the facility should contain the following:

- A. The specific provision from which the applicant seeks a waiver;
- B. A description of all efforts made to operate the facility profitably as a smoke-free environment;
- C. Cost receipts associated with, and a complete description of, the exceptional circumstances purported to result in adverse economic impact(s) on the facility.
- D. A description of conditions or restrictions that may be necessary for the facility to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure the waiver is consistent with the general purpose of Public Health Law Article 13-E.
- E. When assessing whether a facility will minimize the effects of a waiver, the following actions by the facility should be sought; and the extent to which such actions will be undertaken by the facility should be determined:
 - A. Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
 - B. Separate smoking/non-smoking areas, possibly physically separated or utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers.
 - C. Maintenance of smoking/non-smoking area signs.
 - D. Efforts to limit employee exposure to second hand smoke.
- C. All materials submitted by the waiver applicant should be considered in deciding whether or not to grant the waiver sought by the applicant.

II. Demonstration that (A) safety or security factors or (B) other factors exist that would make compliance unreasonable.

A. Safety or Security Factors Exist That Would Make Compliance Unreasonable:

- A. The operator of the facility should demonstrate, through documentation provided pursuant to Paragraph II (A) (2) below, that compliance with the law will jeopardize the safety and/or security of facility staff, patrons or others.
- B. A waiver application based on safety or security factors should contain the following:
 - A. The specific provision from which the applicant seeks a waiver;
 - B. A description of all efforts made to operate the facility safely or securely as a smoke-free environment;
 - C. A complete description of how the specific provision from which the applicant seeks a waiver caused or contributed to, or will cause or contribute to, safety or security concerns.

- D. A description of conditions or restrictions that may be necessary for the facility to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure the waiver is consistent with the general purpose of Public Health Law Article 13-E.
- E. When assessing whether a facility will minimize the effects of a waiver, the following actions by the facility should be sought; and the extent to which such actions will be undertaken by the facility should be determined:
 - A. Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
 - B. Separate smoking/non-smoking areas, possibly physically separated or utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers.
 - C. Maintenance of smoking/non-smoking area signs.
 - D. Efforts to limit employee exposure to second hand smoke.
- C. All materials submitted by a waiver applicant should be considered in deciding whether or not to grant the waiver sought by the applicant.
- B. **Other Factors Would Make Compliance Unreasonable:**
 - A. The operator of the facility should demonstrate, through documentation provided pursuant to Paragraph II (B)(2) below, that factors other than safety, security or financial hardship would make compliance with a specific provision of the CIAA unreasonable.
 - B. A waiver application based on factors other than safety, security or financial hardship that would make compliance with a specific provision of the CIAA unreasonable should contain the following:
 - A. The specific provision from which the applicant seeks a waiver;
 - B. A description of all efforts made to operate the facility as a smoke-free environment;
 - C. A complete description of those factors that are believed to make compliance unreasonable.
 - D. A description of conditions or restrictions that may be necessary for the facility to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure the waiver is consistent with the general purpose of Public Health Law Article 13-E.
 - E. When assessing whether a facility will minimize the effects of a waiver, the following actions by the facility should be sought; and the extent to which such actions will be undertaken by the facility should be determined:

- A. Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
 - B. Separate smoking/non-smoking areas, possibly physically separated or utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers.
 - C. Maintenance of smoking/non-smoking area signs.
 - D. Efforts to limit employee exposure to second hand smoke.
- C. All materials submitted by the waiver applicant should be considered in deciding whether or not to grant the waiver sought by the applicant.

If a waiver is granted, one of its written conditions should state that "if the actions to be taken by the facility to meet the conditions and restrictions for the following item listed above that is applicable to the facility:

IA(1)(f), IB(2)(e), IC (2)(e), IIA(2)(e), IIB(2)(e) are determined by the enforcement officer to not be effective in minimizing the adverse effects of the waiver, the enforcement officer reserves the right to require other actions and/or if necessary rescind the waiver." All waivers should be issued for a two-year time period. Periodically, and in response to any complaints received, there should be a re-evaluation of the establishment to assure that the waiver's conditions to minimize the adverse effects of the waiver have been, and continue to be, implemented. The history of the facility should also be reviewed to determine if there have been any complaints filed against the facility regarding the implementation of the waiver. Issued waivers should not be transferable upon change of ownership.

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