

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 St. Johnsville

Local Law No. 1 of the year 2017

A local law being an enactment pursuant to the authority of 1-7 of Local Law No. 1 of 2014 to add Chapter 218,
(Insert Title)
entitled 'Smoking', to the Code of the Village of St. Johnsville

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of St. Johnsville as follows:

AS ATTACHED HERETO

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

(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. 1 of 2017 of the ~~(County)(City)(Town)~~(Village) of St. Johnsville was duly passed by the Board of Trustees on February 21 2017, in accordance with the applicable (Name of Legislative Body) 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) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) 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) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. (Elective Chief Executive Officer*)

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) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. Such local (Elective Chief Executive Officer*) 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.)

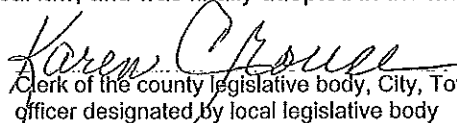
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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: February 22, 2017

(Seal)

LOCAL LAW NO. 1 OF 2017

An Enactment Pursuant To The Authority Of 1-7 Of Local Law No. 1 Of 2004 To Add Chapter 218, Entitled 'Smoking', To The "Code Of The Village Of St. Johnsville".

ARTICLE I. FINDINGS

218.1.

A. The Village of St. Johnsville Board of Trustees finds that: tobacco use causes death and disease and continues to be an urgent public health challenge; **and**, use of e-cigarettes and similar devices poses health hazards, may contribute to youth smoking and reduced cessation regardless of nicotine content, and undermines tobacco control progress, **and**, smokeless tobacco is not a safe alternative to smoking and also causes death and disease; **and**, secondhand smoke has been repeatedly identified as a health hazard; **and**, the Surgeon General concludes that even brief exposures to secondhand smoke may increase the severity of asthma and lower respiratory infections, especially in children, and have adverse effects on the heart; **and**, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors; **and**, cigarette butts are a major and persistent source of litter; **and**, cigarette butts and liquid nicotine pose a health threat to young children; **and**, children are currently unprotected from tobacco smoke in outdoor areas where they are likely to be present such as Village of St. Johnsville playgrounds; and, while devices like E-cigarettes may be used with nicotine free liquids such liquids remain unregulated and potentially pose confusion to law enforcement officers and the public; **and**, creating smoke and aerosol free zones in certain public spaces where children and adults are likely to congregate and/or where persons cannot readily escape the exposure to tobacco smoke will protect the health, safety and welfare of the residents of, and visitors to, our community; **and**, local regulation of tobacco use is important because while the federal government may regulate tobacco products, it is not authorized to impose local smoking restrictions.

B. It is the intent of the Village of St. Johnsville Board of Trustees to enact this local law in order to provide for the public health, safety and welfare by protecting the public and environment from tobacco related litter, discouraging the inherently dangerous behavior of smoking around non-tobacco users, reducing involuntary exposure to secondhand smoke and aerosol where people play, exercise, relax or otherwise congregate, reducing the potential for children to wrongly associate tobacco use with a healthy lifestyle, and affirming and promoting a healthy environment in, and around, the recreational areas of the Village.

ARTICLE II. DEFINITIONS.

218.2. As used in this local law the following terms shall have the meanings indicated, to wit:

ACCESSORY. Any product including, but not limited to, carrying cases, lanyards and holsters, that is intended or reasonably expected to be used with, or for, the human consumption of a **tobacco product**, and which does not contain tobacco, is not made or derived from tobacco, and meets either of the following, to wit: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents or characteristics of a tobacco product; **or**, (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product, or, (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product

BEACH. Any outdoor area along the shoreline of a lake, pond, river or stream and which is either owned or operated by the Village of St. Johnsville or is open to the general public regardless of any fee or age requirement.

COMPONENT. Any software or assembly of materials intended or reasonably expected to (1) alter or affect the performance, composition, constituents or characteristics of a **tobacco product**, or, (2) be used with, or for, the human consumption of a tobacco product including, but not limited to, e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for an **Electronic Aerosol Delivery System** but excluding anything that is an **accessory** of a tobacco product.

ELECTRONIC AEROSOL DELIVERY SYSTEM. An electronic device that, when activated, produces an aerosol that may be inhaled including, but not limited to, any **component** and any liquid or other substance to be aerosolized whether or not separately sold but excluding an **accessory**, drugs, devices or combination of products authorized for sale by New York State or US Food and Drug Administration as such terms are defined in the Federal Food, Drug and Cosmetic Act.

ENTRANCES. The door or doorway passageways by which persons may enter or exit a building including, but not limited to, any stoop, steps, or ramp leading from the sidewalk or pavement to such door or doorway.

FOOD SERVICE ESTABLISHMENT. Any business establishment, including outdoor seating areas thereof, which sells food or beverages for on-premises consumption.

PERSON. Any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee or other legal entity except for the Village of St. Johnsville.

PLACE OF EMPLOYMENT. Any indoor area, or portion thereof, under the control of an employer in which employees of the employer perform services including, but not 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 employer vehicles.

PLAYING FIELD. That portion of a **recreational area** which is set up and marked in some way for the playing of one or more specific games or sports including, but not limited to, baseball, football, or soccer, and which is open to the general public, such field, when fenced or when the outside perimeter of which is otherwise physically demarcated, to include all of the area inside such fence or demarcation together with any bleachers or other designated viewing area; or, when unfenced or not otherwise demarcated as to its outside perimeter, being 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.

RECREATIONAL AREA. Any outdoor area that is owned or operated by the Village of St. Johnsville and open to the general public for recreational purposes regardless of any age or fee requirement including, but not limited to, a **playing field**, playground, park, picnic area, golf course, walking path, garden, hiking trail, bike path, horseback riding trail, swimming pool, roller rink, ice skating rink, skateboard park, and amusement park but excluding streets and sidewalks unless they are located within a demarcated recreational area such as a park.

SERVICE AREA. Any area designed to be, or regularly, used by one or more **persons** to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money including, but not limited to, bus stops and other transit shelters, unsheltered bus pickup areas, ATMs, public telephones, ticket lines, taxicab stands, concert lines, sporting event lines and food vendor lines.

SMOKING. Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated **tobacco**, or plant, **product** intended for inhalation in any manner or form.

TOBACCO PRODUCT. Any product made or derived from tobacco or which contains nicotine marketed, sold, or capable of being used for human consumption, whether consumption occurs through inhalation or oral or dermal absorption but excluding drugs, devices or combination products authorized for sale by New York State or the US Food and Drug Administration as those items are defined in the Federal Food, Drug and Cosmetic Act.

ARTICLE III. PROHIBITIONS.

218.3.

A. **Smoking** and the use of a **tobacco product** or **Electronic Aerosol Delivery System** is prohibited in all of the following locations within the Village of St. Johnsville, to wit:

1. **Places of Employment**
2. Bars
3. Enclosed indoor areas open to the public
4. **Beaches**
5. **Recreational Areas**
6. **Food Service Establishments**
7. All outdoor areas of property owned or leased by the Village of St. Johnsville for official government use
8. Within one hundred (100) feet of **entrances** or outdoor areas of any public or private elementary or secondary school, provided, however, that the provisions of this subsection shall not apply to **smoking** or **Electronic Aerosol Delivery System** use in a residence or within the real property boundary lines of such residential real property
9. Within twenty five (25) feet of **entrances** to other buildings within which smoking is prohibited by Article 13-E of the New York Public Health Law
10. Within twenty five (25) feet of **food service establishments**, including the outdoor areas thereof
11. Outdoor **service areas** and within twenty five (25) feet thereof.

B. The outdoor areas of private residences are excluded as a prohibition under this Section.

C. Nothing in this local law prohibits any person with legal control over any property from prohibiting **smoking** and **tobacco product** or **Electronic Aerosol Delivery System** use on any part of such property even if smoking or the use of tobacco products or Electronic Aerosol Delivery Systems is not otherwise prohibited in that area, by this law or otherwise.

D. This Board of Trustees, and/or its designees, 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 thereof.

**ARTICLE IV.
OTHER PROHIBITIONS AND REQUIREMENTS.**

218.4.

A. No ash can, ashtray or other waste receptacle shall be placed in any area in which **smoking** is prohibited under this law.

B. No person shall permit **smoking**, the use of **tobacco products**, or **Electronic Aerosol Delivery Systems** in an area under control of such person and in which smoking, the use of tobacco products, or electronic aerosol delivery systems is prohibited by this law.

C. The Department of Public Works shall place approved signage advising the public of the restriction on the use of **tobacco products**, **Electronic Aerosol Delivery Systems**, and/or **smoking** in the designated areas.

D. The presence of **smoking** or **tobacco product** specific waste receptacles in violation of subsection A. herein and/or the absence of signs required by subsection C. shall not be a defense to a violation of any provision of this law.

E. No **person** or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by this law or reports, or attempts to report, a violation hereunder, any such action being deemed a chargeable violation hereunder.

**ARTICLE V.
PENALTIES AND ENFORCEMENT.**

218.5.

A. The remedies provided by this law are cumulative and in addition to any other remedies available at law or equity.

B. Each instance of **smoking**, **tobacco product**, or **Electronic Aerosol Delivery System** use in violation of this law shall constitute a separate violation. For violations other than smoking, tobacco product or Electronic Aerosol Delivery System use, each day of a continuing violation of this law shall constitute a separate violation.

C. Causing, permitting, aiding, abetting or concealing a violation of any provision of this law shall also constitute a violation hereunder.

D. Each violation of this law constitutes a violation as defined in the Penal Law and is subject to a fine not exceeding two hundred fifty (\$250.00) dollars, in addition to any surcharge required or allowable under law. Nothing herein shall preclude a Court of competent jurisdiction from imposing a sentence of conditional

discharge, unconditional discharge or disposition of adjournment in contemplation of dismissal as such are defined in the Penal Law and Criminal Procedure Law.

E. Enforcement of this law shall be the responsibility of any local police officer, peace officer or code enforcement officer who shall have the authority to issue a one time warning to any alleged violator of this law.

F. Any violation of this law is hereby declared to be a nuisance.

G. In addition to other remedies provided by this law, or by any other law, a violation hereunder may be remedied by a civil action brought by the Village Attorney including, but not limited to, administrative or judicial nuisance abatement proceedings, code enforcement proceedings, and suits for injunctive relief.

H. Nothing in this law shall create a right of action in any **person** against the Village, or its agents, to compel public enforcement against private parties.

I. Any **person** may bring a civil action to enjoin a violation of this law by a business or to enjoin repeat violations by an individual.

**ARTICLE VI.
STATUTORY CONSTRUCTION AND SEVERABILITY.**

218.6.

The provisions of this law are declared to be severable and if any section of such law is held to be invalid, such invalidity shall not affect the other provisions that can be given effect without the invalidated provision.

**ARTICLE VII.
EFFECTIVE DATE.**

218.7.

The effective date of this local law shall be upon its filing with the Secretary of State.