

Cayuga County Board of Health Clean Indoor Air Act Waiver Process

The Clean Indoor Air Act states that the Board of Health of a county is the enforcement officer of the Clean Indoor Air Act for that county. An establishment seeking a waiver from the Clean Indoor Air Act must submit to the Cayuga County Health and Human Services Department the Cayuga County Waiver Application Form that is based upon the following waiver criteria:

1. The applicant must either
 - a. demonstrate a significant decrease in sales receipts for business for the time period from August 1, 2001 to the month prior to application submission, (if included in sales receipts, Lotto receipts must be reported separately because revenue from Lotto sales will not be used in this determination), and demonstrate that loss of sales receipts is not due to other independent factors unrelated to the Clean Indoor Air Act such as:
 - i. New competing business established in immediate vicinity
 - ii. Reduction in hours or change in operation
 - iii. Construction near establishment
 - iv. Power Outages
 - v. Severe weather
 - vi. Fire, flood, or other catastrophe causing a shutdown
 - vii. Renovation of the premises
 - viii. Labor disputes
 - ix. Sidewalk or street repairs
 - x. Installation of parking meters, or other factors affecting parking
 - xi. Change in marketing/advertising
 - xii. Inspections and actions by government enforcement entities with respect to the applicant's liquor license
 - xiii. Health inspections and enforcement actions
 - xiv. Lower blood alcohol levels enforced
 - xv. Other factors as detailed on the application submittedThe financial information submitted will be reviewed to determine if the documentation provided demonstrates that the facility has experienced at least a 15% reduction in state sales tax receipts since the law was enacted compared to the two years prior to the enactment of the law.
 - b. OR demonstrate other factors, which would render compliance unreasonable.
2. **AND**, all applicants must present a mitigation plan that will 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 the Act. This plan must include a detailed description, including a floor plan, showing where the applicant proposes to permit smoking. The mitigation plan will be reviewed to ensure at a minimum the following:
 - a) That any area set aside for smoking shall be limited to a separate enclosed room, which shall not exceed 25% of the aggregate square footage of the public areas of the premises.
 - b) A separate enclosed room shall
 - a) Be completely enclosed on all sides by solid floor-to-ceiling walls,

- b) Comply with all applicable fire and building code requirements,
 - c) Not contain the sole means of ingress and egress to restrooms or any other smoke-free area, and shall not constitute the sole indoor waiting area of the premises.
 - d) Have self-closing doors that meet the current building code and that shall remain closed except to the extent necessary to permit ingress and egress to such room.
 - e) Have a separate ventilation system whereby the air from such enclosed room is immediately exhausted to an outdoor area (exclusive of any seating area) by an exhaust fan rather than being re-circulated inside the facility.
- c) The ventilation system shall
 - a) Be operated to prevent smoke drift into the non-smoking areas of the facility.
 - b) Discharge air from the smoking room at least twenty-five feet away from operable windows, doors, air conditioning, and any other heating, ventilation and air conditioning intakes.
 - d) No employee shall be permitted to enter the separate enclosed room when smoking is occurring or until smoke has cleared the area after smoking has ceased for the purposes of conducting any business transaction, including, but not limited to the sale of food, beverages, or any other product. A sign stating that it is prohibited for any employee to enter such room when smoking is occurring or until such time that smoke has cleared the area after smoking has ceased shall be posted at the entrance to such room.
 - e) The applicant must obtain a building permit from the Code Enforcement Officer if any new construction to create a separate enclosed room is proposed. Upon completion of construction, the applicant must obtain a certificate of compliance from the code enforcement officer.

The above information will be submitted as part of an application package developed by the Cayuga County Board of Health. This application must be submitted with a \$150 fee that will not be refundable, even in the event that the waiver request is denied.

The Cayuga County Health and Human Services Department will review waiver applications and make a written determination with respect to whether the applicant has established that compliance with a specific provision of the Clean Indoor Air Act would cause undue financial hardship or other factors exist which would render compliance unreasonable, the mitigation plan minimizes the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke, and the waiver is consistent with the general purpose of the Clean Indoor Air Act.

The Applicant will be notified of the Department's decision by mail. The decision will become the final decision unless the applicant requests the opportunity for a hearing by making a written request to the Cayuga County Health and Human Services Department Environmental Health Division, 160 Genesee Street, Auburn, NY 13021. A hearing request must be submitted within 15 days of notification of the Department's decision. An Administrative Hearing will then be scheduled. The applicant and County will both present evidence and testimony at the Hearing. The Hearing officer will then make a decision that will be presented to the Cayuga County Board of Health for review and, if necessary, modification. The decision adopted by the Cayuga County Board of Health

will be the final decision. The applicant can appeal this final decision in accordance with the Clean Indoor Air Act.

The term of a granted waiver shall be one year, and shall expire if not extended. Every establishment issued a waiver shall post a notice informing the general public of the waiver and the right to register a complaint. Waivers are non-transferable. A waiver may be revoked at any time during the waiver period by the Cayuga County Health Department due to a failure to abide by the conditions of the waiver, or failure to comply with any provision of Public Health Law Article 13-E.

The Cayuga County Health Department reserves the right to change the application and or the application process.

The procedures set forth in this document and accompanying application are solely for initial applications for a waiver. These standards may not be relied upon in any re-application process. Criteria for re-application of a waiver of the Clean Indoor Air Act will be available at a later date.