



NIAGARA COUNTY DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH DIVISION
5467 UPPER MOUNTAIN ROAD, SUITE 100
LOCKPORT, NEW YORK 14094-1894

Phone: (716) 439-7444
Fax: (716) 439-7427

January 2007

Dear Applicant:

This CIAA Waiver Application packet is in response to your interest in applying for a waiver from specific provisions of the amended New York State Clean Indoor Air Act (CIAA), which became effective July 24, 2003.

Enclosed are materials describing the guidelines, criteria, and the process to apply for a waiver from the Niagara County Department of Health. Please read all of the information before completing the application.

The completed application form and all of the required supporting documentation should be returned to:

Niagara County Department of Health
Attn: Environmental Health Division
5467 Upper Mountain Road, Suite 100
Lockport, NY 14094-1894

Failure to properly complete all required sections of the application or failure to submit all of the required documents may result in your application being returned as incomplete or held for processing pending receipt of missing information. It is noted that the Niagara County Board of Health will review each application on an individual basis and determine compliance with their criteria.

If questions should arise, please contact this office at 439-7444.

Yours very truly,
James J. Devald, P.E.
Director of Environmental Health

JJD:acm

Attachment: Niagara County Department of Health
CIAA Waiver Application & Attachments

**NIAGARA COUNTY DEPARTMENT OF HEALTH
CLEAN INDOOR AIR ACT WAIVER APPLICATION**

GUIDELINES
Public Health Law Article 13-E

Section 1399-u

Waiver Application Procedures

The operator of a place of employment, bar, food service establishment or other indoor area described in Section 1399-o of the Clean Indoor Air Act where smoking restrictions apply may submit an application to the Niagara County Department of Health (hereafter called the Department) for a waiver from a specific provision of Public Health Law, Article 13-E. To obtain a waiver, the applicant should establish that:

1. Compliance with a specific provision Public Health Law, Article 13-E would cause undue financial hardship; or other factors exist which would render compliance unreasonable;

- and -

2. The waiver applicant has developed, and will implement, a plan that describes conditions or restrictions necessary to eliminate the adverse affects of the waiver upon persons subject to involuntary exposure to second-hand smoke, and will ensure that the waiver is consistent with the general provisions of Public Health Law, Article 13-E.

For those applicants asserting that compliance with a specific provision of the law would cause undue financial hardship, the Department will consider all evidence offered by the applicant demonstrating:

- ❖ A facility's loss of revenue due to compliance with the law
(**Waiver Application Attachment A-1**).
- ❖ A facility's inability to recover costs associated with capital expenditures completed prior to the law, which were designed to provide a smoke-free environment at the facility (**Waiver Application Attachment A-2**).
- ❖ Other exceptional circumstances resulting in adverse economic impact(s) on the facility
(**Waiver Application Attachment A-3**).

For those applicants asserting that other factors exist that would render compliance unreasonable, the Department will consider all evidence offered by the applicant demonstrating:

- ❖ Safety or security factors exist that would make compliance unreasonable.
(**Waiver Application Attachment B**);

- or -

- ❖ Other factors that exist that would make compliance unreasonable
(**Waiver Application Attachment C**).

Criteria for Evaluating Waiver Applications

All waiver applications will be evaluated using the Department's Clean Indoor Air Act waiver criteria (see Niagara County Department of Health Clean Indoor Air Act "Waiver Guidelines/Criteria"). A copy of this guidance is attached.

Additional Information

1. Any applicant requesting a waiver for a bar or food service establishment should possess a valid permit to operate a food service establishment from the permit-issuing official.
2. To be processed, all relevant sections of the waiver application must be completed, all additional documents referred to in those sections must be provided and the application must be signed and notarized. Incomplete or illegible applications will be returned to the applicant, or held for processing pending receipt of the missing information.
3. All waivers will be issued for a maximum duration of two years. Periodically, and before renewal of the waiver, the Department will evaluate the facility's compliance with the waiver conditions.
4. A waiver may be recommended for revocation at any time during the waiver period by the Department due to a failure to abide by the conditions of the waiver.
5. Waivers are not transferable upon change of ownership.
6. An "Implementation Fee" will be charged for all waivers issued by the Department. The Department will charge a "Renewal Fee".
7. It is noted that the information provided may be subject to release under the Freedom of Information Law of New York State.

NCDOH CIAA Waiver Guidelines/Criteria

Niagara County Board of Health

CLEAN INDOOR AIR ACT - WAIVER GUIDELINES/CRITERIA

The provisions of the Clean Indoor Air Act, Section 1399-u of the New York State Public Health Law, allows for waivers and notes the obligation of the enforcement agencies "... to insure that the waiver is consistent with the general purposes of this article." Therefore, any waiver granted must conform to the purpose of the law and no waiver may be granted that would expose an employee of an establishment to environmental tobacco smoke.

I. WAIVER CRITERIA that exists that makes compliance unreasonable:

A. "UNDUE FINANCIAL HARDSHIP"

1. Criteria – Loss of Revenue:

- ❖ *10% reduction in state sales tax receipts*
- ❖ *Consecutive 3-month period*
- ❖ *Compare to previous 2 years prior to the law; provide 2 year data*
- ❖ *Conformance with the purpose and intent of the law*

2. Criteria – Capital Expenditures Prior to the Law:

- ❖ *Document the structural/equipment improvements done prior to the law implementation*
- ❖ *Document the improvements controlled second-hand smoke exposure to non-smokers*
- ❖ *Conformance with the purpose and intent of the law*

3. Criteria – Other Exceptional Circumstances:

- ❖ *Document exceptional circumstances other than above that have resulted in adverse economic impacts*
- ❖ *Document exceptional circumstances with actual data*
- ❖ *Conformance with the purpose and intent of the law*

B. SAFETY AND/OR SECURITY FACTORS

- ❖ *Document that the law compliance would jeopardize the safety and/or security of the employees and the facility*
- ❖ *Conformance with the purpose and intent of the law*

C. OTHER FACTORS

- ❖ *Document the factors other than financial, safety and/or security that would make compliance with the law unreasonable*
- ❖ *Conformance with the purpose and intent of the law*

II. CRITERIA THAT IS COMMON TO ALL CATEGORIES (A., B. or C.) AND CONFORMING WITH THE PURPOSE AND INTENT OF THE LAW:

- ❖ *Separate room with the sole purpose for smoking.*
 - 1) must be completely enclosed
 - 2) must have its own mechanical ventilation system operated under negative pressure
 - 3) must comply with all applicable laws and codes
- ❖ *Location concerns must be addressed*
- ❖ *Maintain appropriate signage*
- ❖ *No employee service*
- ❖ *No prepared food*
- ❖ *Adequate means of extinguishing fires*

III. OTHER GUIDANCE ITEMS:

- ❖ *No application fee*
- ❖ *Two year waiver with conditions, renewable*
- ❖ *“Implementation Fee” of \$150 (effective January 1, 2006)*
- ❖ *“Renewal Fee” (determined for year of expiration)*
- ❖ *An outdoor area with canopy will be accepted, as well as necessary heating devices, which must be approved by the local building inspections department. The placement of the outdoor area cannot be near entrances to indoor areas so as to cause secondhand smoke exposure to the employees of the facility, patrons, or the public.*

NOTE: The Niagara County Board of Health will review each waiver application on an individual basis with due consideration being given to the facts presented.

NIAGARA COUNTY DEPARTMENT OF HEALTH CLEAN INDOOR AIR ACT WAIVER APPLICATION

BASIC APPLICATION DATA

All applicants must complete the "Basic Application Data", pages 1-4 and the appropriate Attachment (A1, A2, A3 , B, or C) as applicable.

FACILITY INFORMATION:

Facility Name: _____ Facility Code # _____

Address: _____

Address: CITY: _____ STATE: _____ ZIP CODE: _____

Location: CITY: _____ TOWN: _____ VILLAGE: _____

Phone: (_____) _____

State Tax ID No. _____ Federal Tax ID No. _____

Current Hours of Operation:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
OPEN	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM
CLOSE	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM	AM / PM

MAIL TO:

Name: Mr. / Mrs. / Ms. / Miss _____

Address: _____

Address: _____

Address: CITY: _____ STATE: _____ ZIP CODE: _____

APPLICANT INFORMATION:

Name: Mr. / Mrs. / Ms. / Miss _____

Title: Owner Operator Manager Other: _____

Contact Phone: (_____) _____ Establishment Home Cell

OWNER:

Please complete either Name of Individual, Corporation or Partnership:

- INDIVIDUAL Mr. / Mrs. / Ms. / Miss Individual
-
- CORPORATION LLC
-
- PARTNERSHIP Partnership
-

OPERATOR:

Please complete either Name of Individual, Corporation or Partnership:

- INDIVIDUAL Mr. / Mrs. / Ms. / Miss Individual
-
- CORPORATION LLC
-
- PARTNERSHIP Partnership
-

BASIS for WAIVER APPLICATION:

1. Criteria in which you are applying for (choose one):

- Undue Financial Hardship Due to
- Loss of Revenue (complete Attachment A1).
- Undue Financial Hardship Due to
- Capital Expenditures Prior to the Law (complete Attachment A2).
- Undue Financial Hardship Due to
- Other Exceptional Circumstances Resulting in Adverse Economic
Impact on the Facility (complete Attachment A3).
- Safety or Security Factors Exist That Make Compliance Unreasonable
(complete Attachment B).
- Other Factors Exist That Make Compliance Unreasonable
(complete Attachment C).

2. Indicate the specific provision of the Clean Indoor Air Act from which the you seek a waiver:

(Note that the New York State Public Health Law, Section 13-E is available on our website at www.niagaracounty.com)

- 1399-o (1) Place of employment
- 1399-o (3) Food Service Establishment
- 1399-o (2) Bars
- Other: Specify _____

CHECKLIST of All Required Attachments:

PROVIDE ONE OF THE FOLLOWING

_____ Established businesses seeking to show a loss of revenue must include **exact copies** of New York State Sales Tax Statements that were submitted by the operator to the New York State Department of Taxation and Finance (**Form ST-100 or equivalent**) for the three (3) consecutive month period immediately prior to this filing, as well as New York State Sales Tax Statements for the two (2) years immediately prior to the amended law (July 24, 2003).

(OR) _____ New businesses (operating less than two years) attempting to show a loss of revenue must include the same documentation as above for a three (3) month period of smoke-free operation immediately prior to filing, as well as the entire operational period immediately prior to the amended law.

PROVIDE ONE OF THE FOLLOWING

_____ If Individual Owner

- a copy of the Business Certificate of Ownership must be provided.

(OR) _____ If Corporation, all of the following proof of incorporation is required:

A. Filing Receipt **or** Authority to Conduct Business, issued by the New York State Secretary of State (photocopy showing blue watermark seal is acceptable);

- *and* -

B. Corporate resolution **or** minutes of most recent annual meeting, listing the most current principal officers of the corporation and dated no earlier than one year preceding the date of application.

(OR) _____ If Partnership, provide both the Business Certificate of Partnership **and** the current Partnership Agreement.

NOTE: The Niagara County Department of Health reserves the right to request additional information necessary to make a final decision regarding a request for a waiver from the New York State Clean Indoor Air Act.

ACKNOWLEDGEMENT AND CERTIFICATION

I, _____, state that I am the _____
(NAME) (TITLE)

of _____, and have completed the above
(FACILITY NAME)

application, and that the statements made and the documents submitted are truthful to the best of my knowledge. I further acknowledge that I and the persons I represent are fully aware of the consequences, including the forfeitures and criminal penalties, which may result if any statement and/or document provided is determined to be false.

Sworn to before me this

_____ day of _____

Notary Public

Signature

Date

SUBMITTING THE APPLICATION:

Submit the completed application and all supporting documents to:

Niagara County Department of Health
Attn: Environmental Health Division
5467 Upper Mountain Road, Suite 100
Lockport, NY 14094-1894

The application will be reviewed to ensure that all relevant sections are complete and that all required documentation is provided. Incomplete applications will be returned or held for processing pending receipt of missing information.

**NIAGARA COUNTY DEPARTMENT OF HEALTH
CLEAN INDOOR AIR ACT WAIVER APPLICATION**

Attachment A-1

“Undue Financial Hardship Due to Loss of Revenue”

1. Describe how your facility’s loss of revenue is directly related to the requirements of the amended Clean Indoor Air Act, which became effective on July 24, 2003. Use additional sheets of paper if necessary.

2. Provide supporting documentation regarding loss of revenue. As a minimum, please attach exact copies of New York State Sales Tax statements that were submitted by the operator to the New York State Department of Taxation and Finance (**Form ST-100**) for the three (3) consecutive month period immediately prior to this application, as well as New York State Sales Tax Statements for the two (2) years immediately prior to the amended law (July 24, 2003).
3. A business in operation less than one year may submit the same documentation as above for a three (3) month period of smoke-free operation immediately prior to this application, as well as the entire operational period after the date of the amended law (July 24, 2003).

4. Please summarize the total sales figures from above Sales Tax Statements on the chart below. Provide all data for all months available up to the date of this application.

*** Information for the months of July 2001 through July 2003 is mandatory. This reflects data for two years prior to the start of the CIAA Law, which became effective July 24, 2003.

MONTH	2007	2006	2005	2004	2003	2002	2001
Jan.	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	
Feb.	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	
March	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	
April	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	
May	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	
June	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	
July	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$	*** SEE ABOVE \$
August	\$	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$
Sept.	\$	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$
October	\$	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$
Nov.	\$	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$
Dec.	\$	\$	\$	\$	\$	*** SEE ABOVE \$	*** SEE ABOVE \$

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5. Please provide evidence which demonstrates that the decline in sales tax receipts has occurred under similar operational conditions, other than operating as a smoke-free facility. Attach additional sheets of paper if necessary. Please note if any of the following conditions occurred at your facility during the time period for which sales receipts are submitted. Any "yes" responses should be explained below.

Changes in hours of operation	Yes _____	No _____
Changes in menu	Yes _____	No _____
Changes in targeted patrons	Yes _____	No _____
New competing business nearby	Yes _____	No _____
Construction near establishment	Yes _____	No _____
Other factors	Yes _____	No _____

Explanation: _____

6. Please describe all efforts that have been made to operate the facility as a smoke-free environment in full compliance with the amended Clean Indoor Air Act. Attach additional sheets of paper if necessary.

7. Plan to minimize adverse effects of waiver

Under New York State’s amended Clean Indoor Air Act, 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 ensure that the waiver is consistent with the general purpose of the Act. Consideration must be given to all of the following actions:

- Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
- Separate smoking/non-smoking areas, physically separated, utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers, operated under negative pressure and in compliance with all applicable codes.
- Maintenance of smoking/non-smoking area signs.
- Efforts to eliminate employee exposure to second hand smoke.

Provide details of your plan. Attach a diagram of the facility and detailed information concerning equipment that is proposed as part of this effort. Include room capacities and number of employees. Attach additional sheets of paper if necessary.

8. Please describe and attach any additional information that the Department should consider in deciding whether or not to grant the waiver to the facility that you are seeking.

NIAGARA COUNTY DEPARTMENT OF HEALTH
CLEAN INDOOR AIR ACT WAIVER APPLICATION

Attachment A-2

**“Undue Financial Hardship Due to
Capital Expenditures Prior to the Law”**

1. Please describe the capital improvement project that was initiated prior to the effective date of the amended Clean Indoor Air Act (July 24, 2003), and how it was designed to provide a smoke-free environment at the facility. Explain why the operator is unable to recover the costs associated with the capital improvement project. Attach additional sheets of paper if necessary.

2. Attach cost receipts for the capital improvement project.
3. Describe the effectiveness of the improvements and attach any documentation (where applicable) that supports the effectiveness of the capital improvement project in providing a smoke-free environment.

4. Provide a detailed plan for minimizing the adverse effects of the waiver.

Under New York State’s amended Clean Indoor Air Act, 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 ensure that the waiver is consistent with the general purpose of the Act. Consideration must be given to all of the following actions:

- Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
- Separate smoking/non-smoking areas, physically separated, utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers, operated under negative pressure and in compliance with all applicable codes.
- Maintenance of smoking/non-smoking area signs.
- Efforts to eliminate employee exposure to second hand smoke.

Provide details of your plan. Attach a diagram of the facility and detailed information concerning equipment that is proposed as part of this effort. Include room capacities and number of employees. Attach additional sheets of paper if necessary.

5. Please describe and attach any additional information that the Department should consider in deciding whether or not to grant the waiver to the facility that you are seeking.

**NIAGARA COUNTY DEPARTMENT OF HEALTH
CLEAN INDOOR AIR ACT WAIVER APPLICATION**

Attachment A-3

**“Undue Financial Hardship Due to
Other Exceptional Circumstances Resulting
in Adverse Economic Impact(s) on the Facility”**

1. Please describe the financial hardship experienced by the operator due to exceptional circumstances other than loss of revenue and capital expenditures prior to the law which are the result of implementation of the amended Clean Indoor Air Act. Attach additional sheets of paper if necessary.

2. Attach cost receipts and any other documentation for exceptional circumstances other than loss of revenue and capital expenditures prior to the law resulting in adverse economic impact(s) on the facility.

3. Provide a detailed plan for minimizing the adverse effects of the waiver.

Under New York State’s amended Clean Indoor Air Act, 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 ensure that the waiver is consistent with the general purpose of the Act. Consideration must be given to all of the following actions:

- Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
- Separate smoking/non-smoking areas, physically separated, utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers, operated under negative pressure and in compliance with all applicable codes.
- Maintenance of smoking/non-smoking area signs.
- Efforts to eliminate employee exposure to second hand smoke.

Provide details of your plan. Attach a diagram of the facility and detailed information concerning equipment that is proposed as part of this effort. Include room capacities and number of employees. Attach additional sheets of paper if necessary.

4. Please describe and attach any additional information that the Department should consider in deciding whether or not to grant the waiver to the facility that you are seeking.

**NIAGARA COUNTY DEPARTMENT OF HEALTH
CLEAN INDOOR AIR ACT WAIVER APPLICATION**

Attachment B

**“Safety or Security Factors Exist
That Make Compliance Unreasonable”**

1. Detail 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. Attach any documentation regarding the safety or security concerns that make compliance with the law unreasonable.

2. Please describe any efforts made to operate the facility safely or securely as a smoke-free environment since the Clean Indoor Air Act took effect.

3. Provide a detailed plan for minimizing the adverse effects of the waiver.

Under New York State’s amended Clean Indoor Air Act, 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 ensure that the waiver is consistent with the general purpose of the Act. Consideration must be given to all of the following actions:

- Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
- Separate smoking/non-smoking areas, physically separated, utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers, operated under negative pressure and in compliance with all applicable codes.
- Maintenance of smoking/non-smoking area signs.
- Efforts to eliminate employee exposure to second hand smoke.

Provide details of your plan. Attach a diagram of the facility and detailed information concerning equipment that is proposed as part of this effort. Include room capacities and number of employees. Attach additional sheets of paper if necessary.

4. Please describe and attach any additional information that the Department should consider in deciding whether or not to grant the waiver to the facility that you are seeking.

**NIAGARA COUNTY DEPARTMENT OF HEALTH
CLEAN INDOOR AIR ACT WAIVER APPLICATION**

Attachment C

“Other Factors Exist That Make Compliance Unreasonable”

1. Describe in detail those factors that make compliance with the amended Clean Indoor Air Act unreasonable. Please attach any available documentation that supports those factors.

2. Please describe any efforts made to operate the facility as a smoke-free environment since the Clean Indoor Air Act took effect:

3. Provide a detailed plan for minimizing the adverse effects of the waiver.

Under New York State’s amended Clean Indoor Air Act, 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 ensure that the waiver is consistent with the general purpose of the Act. Consideration must be given to all of the following actions:

- Smoking areas located away from the general traffic patterns of travel to enter the establishment and visit the restrooms.
- Separate smoking/non-smoking areas, physically separated, utilizing special mechanical ventilation systems, located in such a manner to control second hand smoke exposure to non-smokers, operated under negative pressure and in compliance with all applicable codes.
- Maintenance of smoking/non-smoking area signs.
- Efforts to eliminate employee exposure to second-hand smoke.

Provide details of your plan. Attach a diagram of the facility and detailed information concerning equipment that is proposed as part of this effort. Include room capacities and number of employees. Attach additional sheets of paper if necessary.

4. Please describe and attach any additional information that the Department should consider in deciding whether or not to grant the waiver to the facility that you are seeking.

ADDITIONAL INFORMATION FOR "Attachment _____, Number _____"

Lined area for additional information.