

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2017**

No. 141

Introduced by Council Members Vacca, Barron, Constantinides, Gentile, Johnson, Kallos, Koo, Richards, Rodriguez, Vallone, Cohen and Maisel.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to prohibiting smoking and the use of electronic cigarettes in the common areas of all multiple dwellings

Be it enacted by the Council as follows:

Section 1. Subdivisions m and p of section 17-502 of the administrative code of the city of New York, subdivision m as amended by local law number 5 for the year 1995, subdivision p as amended by local law number 47 for the year 2002, are amended to read as follows:

m. "Place of employment" means any indoor area or portion thereof under the control of an employer which employees normally frequent during the course of employment and which is not generally accessible to the public, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, employee gymnasiums, auditoriums, libraries, storage rooms, file rooms, mailrooms, employee medical facilities, rooms or areas containing photocopying or other office equipment used in common by employees, elevators, stairways and hallways. A private residence is not a "place of employment" within the meaning of this subdivision, except that areas in a private residence where a child day care center or health care facility is operated during the times when employees are working in such child day care center or health care facility areas and areas in a private residence which constitute

common areas of a multiple dwelling [containing ten or more dwelling units,] are "places of employment" within the meaning of this subdivision.

p. "Public place" means any area to which individuals other than employees are invited or permitted, including, but not limited to, banks, educational facilities, health care facilities, child day care centers, children's institutions, shopping malls, property owned, occupied or operated by the city of New York or an agency thereof, public transportation facilities, reception areas, restaurants, catering halls, retail stores, theaters, sports arenas and recreational areas and waiting rooms. A private residence is not a "public place" within the meaning of this subdivision, except that areas in a private residence where a child day care center or health care facility is operated during the times of operation and areas in a private residence which constitute common areas of a multiple dwelling [containing ten or more dwelling units,] are "public places" within the meaning of this subdivision.

§ 2. Paragraph 13 of subdivision a of section 17-503 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

13. Places of meeting or public assembly during such time as a meeting open to the public is being conducted for educational, religious, recreational, or political purposes, but not including meetings conducted in private residences, unless such meetings are conducted in an area in a private residence where a child day care center or health care facility is operated during the times of operation or in an area which constitutes a common area of a multiple dwelling [containing ten or more dwelling units].

§ 3. Subdivision b of section 17-505 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

b. Private residences, except any area of a private residence where a child day care center or health care facility is operated (i) during the times of operation or (ii) during the times when employees are working in such child day care center or health care facility areas; provided, however, that a common area of a multiple dwelling [containing ten or more dwelling units] shall be subject to smoking and electronic cigarette *use* restrictions.

§ 4. Subdivision c of section 17-507 of the administrative code of the city of New York, as amended by local law number 42 for the year 2016, is amended to read as follows:

c. With respect to a public place or place of employment, the operator or employer shall inform, or shall designate an agent who shall be responsible for informing, individuals smoking, or using electronic cigarettes, in restricted areas that they are in violation of this local law; provided, however, that the obligations under this subdivision with respect to an operator of a multiple dwelling [containing ten or more dwelling units] shall be limited to (i) those multiple dwellings where an agent is on duty and (ii) designating such agent to be responsible for informing individuals smoking, or using electronic cigarettes, in restricted common indoor areas where such agent is on duty, during the times such agent is on duty, that such individuals are in violation of this local law.

§ 5. Subdivision a of section 17-508 of the administrative code of the city of New York, as amended by local law number 42 for the year 2016, is amended to read as follows:

a. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of premises in which smoking, and using electronic cigarettes, are prohibited or restricted pursuant to this chapter, or the designated agent thereof, to (i) provide a room designated for smoking, or using electronic cigarettes, including, but not limited to, a separate smoking room,

room for using electronic cigarettes or an enclosed room, which fails to comply with the provisions of this chapter; provided, however, that the obligations of an owner or building manager of a building (where such owner or building manager of a building in which a public place is located is not the operator or employer of such public place) with respect to such a room shall be limited to work authorized by any permits necessary to perform construction obtained by the owner or his or her agent; (ii) fail to post the signs required by section 17-506; (iii) fail to remove ashtrays as required by subdivision d of section 17-506; or (iv) fail to make a good faith effort to comply with subdivisions c, d and e of section 17-507. In actions brought for violations of this subdivision, the following shall be affirmative defenses: (i) that during the relevant time period actual control of the premises was not exercised by the respondent or a person under the control of the respondent, but rather by a lessee, sublessee or any other person; provided, however, that after receiving the notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that he or she has not exercised actual control during the relevant time period; (ii) that a person smoking, or using an electronic cigarette, in any area where smoking, and using electronic cigarettes, are prohibited pursuant to section 17-503 was informed by a person who owns, manages, operates or otherwise controls the use of such premises, or the designated agent thereof, that such person smoking, or using an electronic cigarette, is in violation of this local law and that such person who owns, manages, operates or otherwise controls the use of such premises has complied with all applicable provisions of this chapter during the relevant time period; provided, however, that after receiving notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that

respondent informed the person smoking, or using an electronic cigarette, in any area where smoking, and using electronic cigarettes, are prohibited pursuant to section 17-503 that such person was in violation of this local law and that respondent has complied with all applicable provisions of this chapter during the relevant time period; or (iii) that a person smoking, or using an electronic cigarette, in any restricted common indoor area where smoking, and using electronic cigarettes, are prohibited pursuant to section 17-503 was not informed by the owner or building manager of the premises (where such owner or building manager of a building in which a public place or a place of employment is located is not the operator or employer of such public place or place of employment) or by the operator of a multiple dwelling [containing ten or more dwelling units] that such person smoking, or using an electronic cigarette, is in violation of this local law because such owner, building manager or operator did not have a designated agent on duty when such person was smoking, or using an electronic cigarette, and that such owner or building manager has, where applicable, complied with the mailing of a notice required pursuant to subdivision e of section 17-507; provided, however, that after receiving notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that a person smoking, or using an electronic cigarette, in any restricted common indoor area where smoking, and using electronic cigarettes, are prohibited pursuant to section 17-503 was not informed by the respondent that such person smoking, or using an electronic cigarette, is in violation of this local law because the respondent did not have a designated agent on duty when such person was smoking, or using an electronic cigarette, and that the respondent has, where applicable, mailed the notice required pursuant to subdivision e of section 17-507.

§ 6. This local law takes effect 180 days after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on August 9, 2017 and approved by the Mayor on August 28, 2017.

ALISA FUENTES, Acting City Clerk, Acting Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 141 of 2017, Council Int. No. 484-A of 2014) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.