

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 1988**

No. 2

Introduced by the Vice Chairman (Council Member Vallone), Council Members Michels, Lisa, Greitzer, Messinger and Friedlander; also Council Members Alter, Harrison, Maloney, Povman, Crispino, Wooten, Robles, Clark, Spigner, Leffler, Eisland, Dryfoos, Horwitz, Gerges and Pinkett.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to the regulation of smoking in enclosed public places.**

Be it enacted by the Council as follows:

Section one. Legislative findings. The City Council hereby finds that the regulation and control of smoking in enclosed public places is a matter of vital concern, affecting the public health, safety and welfare of all New Yorkers. There is increasing scientific evidence that passive exposure to cigarette smoke (second-hand smoke) is linked to a variety of negative health consequences in humans, including lung cancer, bronchitis, pneumonia, acute respiratory disease, cardiovascular disease, decreased pulmonary function, and low birth weight in children born to smokers. Such health consequences have been documented by the U.S. Surgeon General and the National Academy of Sciences and virtually every major health organization that has studied the effects of second-hand smoke. With respect to the adverse health effects of second-hand smoke, the Surgeon General has concluded that: "[t]he scientific case against involuntary smoking as a health risk is more than sufficient to justify appropriate remedial action."

Many jurisdictions around the country have already taken such action, as it is estimated that about 150 cities and 40 states have enacted legislation or regulations which in some way place restrictions on smoking in public places.

Given the current state of scientific evidence on the adverse health effects of second-hand smoke, the Council, in enacting this chapter, seeks to accomplish two goals: (1) to protect the public health and welfare by prohibiting smoking in certain public places except in designated smoking areas and by regulating smoking in the workplace; and (2) to strike a reasonable balance between persons who smoke and the right of nonsmokers to breathe smoke-free air.

§2. Title 17 of the administrative code of the city of New York is hereby amended by adding thereto a new Chapter 5, to follow Chapter 4, to read as follows:

Chapter 5

CLEAN INDOOR AIR ACT

**§17-501 Short title.** *This chapter shall be known and may be cited as the "Clean Indoor Air Act."*

**§17-502 Definitions.** *As used in this chapter, the following terms shall be defined as follows:*

a. "Area of public accommodation" means any room in an enclosed public place to which the public is invited or permitted, and which is designed or arranged to accommodate more than ten members of the public at the same time.

b. "Bar" means an area which is devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food, if served at all, is only incidental to the consumption of such beverages. Although a bar may be contained within a larger restaurant, the term "bar" shall not include the dining area of such restaurant, even when the dining area is directly adjacent to or surrounds the bar area.

c. "Business establishment" means any sole proprietorship, partnership, association, joint venture, corporation or other entity formed for profit-making purposes, including professional corporations and other entities where legal, medical, dental, engineering, architectural, financial, counseling, and other professional or consumer services are provided.

d. "Commissioner" means the commissioner of the New York City department of health.

e. "Department" means the New York City department of health.

f. "Common work area" means:

1. Any enclosed area on the premises of a place of employment where two or more employees are assigned to sit or otherwise be present in the performance of their duties, and where such employees share common work spaces, equipment or facilities such that each employee is aware of or readily able to observe the activities of others taking place in that work area.

2. Any enclosed area on the premises of a place of employment which is occupied by a single employee, but which area is frequented by other employees and/or members of the general public during the normal course of business.

g. "Employee" means any person who is employed by any employer in return for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services to such employer for no monetary compensation.

h. "Employer" means any person, partnership, association, corporation or non-profit entity which employs one or more persons, including agencies of the city of New York, as defined in section 1-112 of the administrative code, and the council of the city of New York.

i. "Enclosed area" means all space which is enclosed on all sides by solid walls, windows or floor-to-ceiling partitions, irrespective of the size of such area and of any doorway, stairway or passageway providing a means of ingress and egress to such area.

j. "Limousine" means a for-hire vehicle required to be licensed by the taxi and limousine commission, designed to carry fewer than nine passengers, excluding the driver, which is dispatched from a garage, maintains a minimum of \$500,000/\$1,000,000 liability insurance coverage and in which passengers are charged fees calculated on the basis of garage to garage service.

k. "Motion picture theater" means a motion picture theater required to be licensed by the department of consumer affairs pursuant to section 20-203 of the code.

l. "Non-profit entity" means any corporation, unincorporated association or other association or other entity created for charitable, philanthropic, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organizations and not to secure private financial gain. A public agency is not a "non-profit entity" within the meaning of this subdivision.

m. "Place of employment" means any indoor area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" within the meaning of this subdivision unless a child care or health care facility is operated therein or unless it is a common area of a multiple dwelling which contains ten or more dwelling units.

n. "Private function" means weddings, parties, testimonial dinners and other similar gatherings in which the seating arrangements are under the control of the organizer or sponsor of the event and not the person who owns, manages, operates or otherwise controls the use of the place in which the function is held.

o. "Public place" means any area to which the public is invited or permitted, including, but not limited to, banks, educational facilities, health care facilities, shopping malls, property owned, occupied or operated by the city of New York or an agency thereof, public transportation facilities, reception areas, restaurants, retail stores, theaters, sports arenas and waiting rooms. A private residence is not a "public place" within the meaning of this subdivision, unless a child care or health care facility is operated therein or unless it is a common area of a multiple dwelling which contains ten or more dwelling units.

p. "Restaurant" means any coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain, and any other commercial eating establishment, or part of any organization, club, boarding-house, or guesthouse, which gives or offers for sale food to the public, guests, or patrons, whether food is customarily consumed on or off the premises, but not an establishment whose primary purpose is to serve food to employees of a common employer or to students of a common educational institution.

q. "Retail store" means any place which in the regular course of business sells goods directly to the public.

r. "Second-hand smoke" is that smoke to which people are involuntarily exposed, either through a smoker exhaling smoke from a tobacco product, or through the lighting or burning of any tobacco product.

s. "Service line" or "waiting area" means a queue, line or other formation of persons, whether seated or standing, in which one or more persons are waiting for, providing or receiving, service of any kind, whether or not such service involves an exchange of consideration.

t. "Smoke-free work area" means an area within a place of employment where smoking is not permitted.

u. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or any form of lighted object or device which contains tobacco.

v. "Sports arena" means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller and ice skating rink, bowling alley and other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports, cultural or similar events.

w. "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale, manufacture, or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

#### **§17-503 Prohibition of smoking in public places.**

a. Smoking is prohibited in all enclosed areas within public places during the times in which the public is invited or permitted, except as otherwise restricted in accordance with the provisions below. Such public places include, but are not limited to, the following:

1. Public transportation facilities, including, but not limited to, ticketing, boarding and waiting areas of public transit depots; provided, however, that this section shall not prohibit smoking in contiguous waiting areas designated for smoking, so long as such areas do not constitute more than fifty percent of the total waiting area in the public transit depot.

2. Public means of mass transportation, including, but not limited to, subway cars and all underground areas of a subway station, buses, vans, taxicabs and all for-hire vehicles required to be licensed or franchised by the city of New York; provided that this prohibition shall not apply to limousines.

3. Public restrooms.

4. Retail stores (other than retail tobacco stores and certain restaurants pursuant to paragraph five of this subdivision) which are designed and arranged to accommodate more than one hundred fifty persons, or which employ more than fifteen persons at the same location. Smoking may be permitted in retail stores which are designed and arranged to accommodate one hundred fifty or fewer persons, and which employ fifteen or fewer persons, provided: (A) That smoking is not otherwise prohibited by any other law or regulation; and (B) That the proprietor of such establishment posts signs at the entrance and at appropriate locations within the premises, indicating that smoking is permitted therein. A proprietor of a retail store not otherwise subject to the smoking restrictions of this section may voluntarily choose to prohibit smoking in his or her establishment in accordance with the provisions pertaining to retail stores arranged to accommodate more than one hundred fifty persons, or which employ more than fifteen persons, by filing a notice with the department in a manner and form prescribed by rule or regulation of the department. Upon proper filing of such notice, all provisions of this chapter shall take effect with respect to said establishment. Nothing in this paragraph shall be construed to prohibit such proprietors who do not undertake such filing, from restricting smoking in their retail stores provided, however, that the proprietor shall post a sign at the entrance indicating that smoking is permitted therein, and further, that the proprietor shall not state or otherwise represent to the public that any of the provisions of this chapter are in effect with respect to said establishment.

5. Restaurants with an indoor seating capacity of more than fifty patrons; provided, however, that smoking may be permitted in any part of the restaurant which constitutes a bar as defined in subdivision b of section 17-502, and in a contiguous area designated for smoking, so long as such area contains no more than fifty percent of the indoor seating capacity of the restaurant. A proprietor or other designated employee may, in his or her discretion, exceed the fifty percent limit for smoking, by no more than ten percent of the indoor seating capacity, in a situation where a party of six or more persons requests to be seated, at a time when the only available seats are located, in whole or in part, in the nonsmoking section. A proprietor shall only accommodate such party when the available seating is in an area contiguous to the designated smoking area of the restaurant. Every restaurant with a seating capacity of more than fifty patrons permitting smoking therein in accordance with the provisions of this paragraph, shall post signs indicating that nonsmoking sections are available, in addition to any other signs as required by subdivision a of section 17-506. When an employee responsible for seating arrangements is on duty each patron, prior to being seated, shall be asked his or her preference regarding seat location in a smoking or nonsmoking section. Smoking may be permitted in restaurants with an indoor seating capacity of fifty patrons or fewer, provided: (A) That smoking is not otherwise prohibited by any other law or regulation; (B) That the proprietor of such establishment, in accordance with rules and regulations promulgated by the commissioner, certifies the indoor seating capacity of the restaurant; and (C) That the proprietor of such establishment posts signs at the entrance and at appropriate locations within the premises, indicating that smoking is permitted therein. An owner of a restaurant with an indoor seating capacity of fifty patrons or fewer, who is not otherwise subject to the smoking restrictions of this section, may voluntarily choose to prohibit smoking in his or her establishment in accordance with the provisions pertaining to restaurants with an indoor seating capacity of more than fifty patrons, by

filing a notice with the department in a manner and form prescribed by rule or regulation of the department. Upon proper filing of such notice, all provisions of this law shall take effect with respect to said establishment. Nothing in this paragraph shall be construed to prohibit proprietors who do not undertake such filing, from restricting smoking in their restaurants; provided, however, that the proprietor shall post a sign at the entrance indicating that smoking is permitted therein, and further, that the proprietor shall not state or otherwise represent to the public that any of the provisions of this chapter are in effect with respect to said establishment.

6. Business establishments employing more than fifteen employees (other than restaurants, retail stores, and except as otherwise provided in this subdivision) including banks, hotels, motels, offices where professional or consumer services are rendered and non-profit entities, including religious institutions; provided: (A) In business establishments and non-profit entities employing fifteen or fewer employees at one location, smoking may be permitted in contiguous areas designated for smoking, provided that it shall be the responsibility of employers, to the extent reasonably practicable, to provide smoke-free work areas for nonsmoking employees who sit or otherwise occupy common work areas in places of employment and to give notice to employees of the location of such smoke-free work areas; (B) That the smoking prohibition, within establishments or entities employing more than fifteen employees, applies only to those areas of public accommodation and not to private areas to which the general public does not have access; and (C) That with respect to hotels and motels, smoking may be permitted in a contiguous area designated for smoking, so long as such area, to the extent reasonably practicable, is not within a twenty-foot radius of that part of what is commonly referred to as the front desk or registration desk to which the public has access, and so long as such smoking area does not constitute more than fifty percent of any area commonly called a lobby.

7. Libraries, museums and galleries.

8. Motion picture theaters, concert halls, auditoriums and buildings primarily used for, or designed for the primary purpose of, exhibiting movies, stage drama, musical recital, dance, lecture or other similar performance, except when smoking is part of a theatrical production; provided, however, that smoking may be permitted in a contiguous area designated for smoking, so long as such area contains no more than fifty percent of any area commonly called a lobby.

9. Convention halls; provided, that smoking may be permitted: (A) In a contiguous area designated for smoking, so long as such area constitutes no more than twenty-five percent of the seating capacity or floor space open to the public, whichever is greater, for a particular event taking place within the convention hall; (B) In a contiguous area designated for smoking, so long as such smoking area constitutes no more than fifty percent of any area commonly called a lobby; and (C) At conventions of private groups where the persons participating in the convention are individually identified by the sponsor or organizer of the convention, or determined by law.

10. Sports arenas; provided:

(A) That smoking may be permitted in a contiguous area designated for smoking, so long as such area constitutes no more than fifty percent of any area commonly called a lobby; and

(B) That with respect to bowling alleys, smoking is prohibited in the bowler settee area (the area occupied by bowlers while keeping score and actually bowling), but may be permitted in a contiguous designated area of the concourse (the area directly behind the bowler settee area), so long as such smoking area does not constitute more than fifty percent of the floor space of the concourse area.

11. 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 a child or health care facility is operated therein or unless such meeting is conducted in a common area of a multiple dwelling which contains ten or more dwelling units.

12. Health care facilities including, but not limited to, hospitals, clinics, physical therapy facilities, convalescent homes, and homes for the aged; provided, however, that this section shall not prohibit smoking in areas designated for smoking in restaurants and dining areas and in offices which are not ordinarily used for care and treatment of patients as long as (A) prior written approval is received from the fire commissioner pursuant to section 27-4276 of the code and (B) smoking in such restaurants and dining areas is not otherwise prohibited pursuant to paragraph five of this subdivision, and smoking in offices which are not ordinarily used for care and treatment of patients is not otherwise prohibited pursuant to section 17-504. In addition, this section shall not prohibit smoking in patient lounges designated for smoking, provided that (A) prior written approval is received from the fire commissioner pursuant to section 27-4276 of the code and (B) such lounges shall not constitute more than fifty percent of the total lounge space available.

13. All pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level; provided, however, that this section shall not prohibit smoking in areas designated for smoking in employee dining areas, lounges, or administrative offices, so long as (A) prior written approval is received from the fire commissioner, and (B) smoking in such areas is not otherwise prohibited pursuant to section 17-504.

14. All schools other than those covered in paragraph thirteen of this subdivision including, but not limited to, community colleges, technical training establishments, specialty schools, colleges and universities; provided, however, that this section shall not prohibit smoking in:

(A) Areas designated for smoking in employee lunchrooms, cafeterias and lounges, pursuant to paragraph four of subdivision b of section 17-504, provided that prior written approval is received from the fire commissioner; and

(B) Areas designated for smoking in student dining areas or lounges which shall constitute not more than fifty percent of the seating capacity or floor space, whichever is greater, of such student dining areas or lounges, provided that prior written approval is received from the fire commissioner.

15. Elevators.

b. Smoking is prohibited on any service line, waiting area, or portion thereof, in an enclosed area within a public place during the times in which the public is invited or permitted, notwithstanding the fact that the service line, waiting area, or portion thereof, is in an area otherwise designated for smoking pursuant to subdivision a of this section, except for that which is provided for in paragraph one. This subdivision shall not be construed to prohibit smoking in any area where smoking is not prohibited pursuant to section 17-505.

**§17-504 Regulation of smoking in places of employment.**

a. It shall be the responsibility of employers who employ more than fifteen employees to provide, to the extent reasonably practicable, smoke-free work areas for nonsmoking employees who sit or otherwise occupy common work areas in places of employment. Nothing in this section shall be construed to apply to business establishments and non-profit entities employing fifteen or fewer employees.

b. Within ninety days after the effective date of this chapter, every employer employing more than fifteen employees and having employees occupying common work areas shall adopt, implement, make known and maintain a written smoking policy which shall contain at minimum, the following requirements:

1. That an employee may designate his or her work area as a nonsmoking area, which area must be, to the extent reasonably practicable in the employer's discretion, no less than eight feet from an area where smoking is permitted, and shall post such designation with an appropriate sign or signs, to be provided by the employer. If, due to the proximity of persons smoking, size of the work area, poor ventilation or other factors, such designation does not sufficiently reduce the effects of smoke, the employer shall make additional reasonable accommodations by rearranging employee work areas, expanding the size of the smoke-free work area or implementing other measures reasonably designed to minimize or eliminate the effects of smoke on nonsmoking employees.

2. That smoking may be permitted in private, enclosed offices, and in enclosed areas occupied exclusively by employees who each request, or do not object, that such areas be designated for smoking, even though such enclosed areas may be visited in the normal course of business by other persons or employees.

3. Prohibition of smoking in auditoriums, classrooms, elevators, hallways, restrooms, employee medical facilities, and rooms or areas containing photocopying or other office equipment used in common by employees. Smoking is prohibited in conference rooms and meeting rooms unless each and every person present in the room consents to permit smoking therein.

4. The designation of nonsmoking areas in cafeterias, lunchrooms and employee lounges, which areas shall constitute at least fifty percent of the seating capacity or floor space of said areas, whichever is greater.

5. The establishment of a procedure to resolve disputes arising under the smoking policy in which the health concerns of the employee desiring a smoke-free area shall be given due consideration.

6. Protection from retaliatory adverse personnel action to all employees or applicants for employment who exercise, or attempt to exercise, any rights granted under the written smoking policy pursuant to this subdivision. Such adverse personnel action includes, but is not limited to, dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, compensation or other benefit, failure to hire, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected employee. The employer shall establish a procedure to provide for the adequate redress of any such adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this section.

c. An employer may designate a separate enclosed room or rooms within a place of employment solely for use by smokers.

d. Employers shall prominently post the smoking policy in the workplace, and shall, within three weeks of its adoption, disseminate the policy to all employees, and to new employees when hired.

e. Employers shall supply a written copy of the smoking policy upon request to any employee or prospective employee.

f. A copy of the smoking policy shall be provided to the department, the department of buildings, the department of consumer affairs, the department of environmental protection, the fire department and the department of sanitation upon request.

g. This section shall not be construed to permit smoking in any enclosed area in which smoking is prohibited pursuant to section 17-503. Where a place of employment is also a public place where smoking is prohibited pursuant to section 17-503, the employer shall nevertheless be required to adhere to the provisions of this section with respect to the private areas to which the general public does not have access.

*h. Nothing in this section shall be construed to impair, diminish, or otherwise affect any collectively bargained procedure or remedy available to an employee, existing as of the date this local law is enacted, with respect to disputes arising under the employer's smoking policy or with respect to the establishment of a procedure for redress of any adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this section. Upon expiration of any such collectively bargained procedure or remedy, the provisions of this section shall take effect.*

**§17-505 Areas where smoking is not regulated.**

*The following areas shall not be subject to the smoking restrictions of this chapter:*

- a. Bars, including any bar within a restaurant, so long as the serving of food both adjacent to, and surrounding the bar area, is only incidental to the consumption of alcoholic beverages.*
- b. Private residences, except when a child care or health care facility is operated therein; provided, however, that a common area of a multiple dwelling which contains ten or more units shall be subject to smoking restrictions when it is a place of employment or a public place.*
- c. Hotel and motel rooms occupied by, or available for, occupancy by guests.*
- d. Retail stores which are designed and arranged to accommodate one hundred fifty or fewer persons and which employ fifteen or fewer persons, except as provided in paragraph four of subdivision a of section 17-503.*
- e. Tobacco businesses.*
- f. Private automobiles.*
- g. Private, enclosed offices.*
- h. Enclosed areas in restaurants, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities during the time these enclosed areas or rooms are being used exclusively for private functions, such that the seating arrangements are under the control of the sponsor or organizer of the function and not the person who owns, operates or manages such facility.*
- i. Restaurants with an indoor seating capacity of fifty patrons or fewer, except as provided in paragraph five of subdivision a of section 17-503.*

**§17-506 Posting of signs.**

*a. Except as may otherwise be provided by rules and regulations promulgated by the commissioner, "Smoking" or "No Smoking" signs, or the international symbols indicating the same, and any other signs necessary to comply with the provisions of this chapter shall be prominently and conspicuously posted at all major entrances to, and appropriate locations within, each enclosed area where smoking is either prohibited, permitted or otherwise regulated by this chapter, by the owner, operator, manager or other person having control of such area. The size, style and location of such signs shall be determined in accordance with rules and regulations promulgated by the commissioner, but in promulgating such rules and regulations, the commissioner shall take into consideration the concerns of the various types of establishments regulated herein with respect to the style and design of such signs.*

*b. In addition to the posting of signs as provided in subdivision a, every motion picture theater owner, manager or operator shall show upon the screen for at least five seconds prior to the showing of each feature motion picture, information indicating the areas where smoking is prohibited and permitted within the premises.*

**§17-507 Enforcement.**

*a. The department shall enforce the provisions of this chapter. In addition, designated enforcement employees of the department of buildings, the department of consumer affairs, the department*



of environmental protection, the fire department and the department of sanitation shall have the power to enforce the provisions of this chapter.

b. Any person who desires to register a complaint under this chapter may do so with the department.

c. The owner, manager, operator or other person having control of a public place or place of employment, shall inform, or shall designate an agent who shall be responsible for informing, individuals smoking in restricted areas that they are in violation of the law.

d. The department shall seek to obtain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.

**§17-508 Violations and penalties.**

a. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of premises in which smoking is prohibited pursuant to section 17-503, or the designated agent thereof, to fail to comply with any limitation on the size of an area designated for smoking pursuant to subdivision a of section 17-503; to fail to post the signs required by section 17-506 and paragraphs four and five of subdivision a of section 17-503; or to fail to make a good faith effort to comply with subdivision c of section 17-507. In actions brought for violations of this subdivision, it shall be an affirmative defense 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.

b. It shall be unlawful for an employer whose place of employment is subject to regulation under section 17-504 to fail to comply with the provisions of that section, including, but not limited to, those provisions requiring the adoption, implementation, dissemination and maintenance of a written smoking policy which conforms to the requirements of subdivision b of section 17-504, or to fail to make a good faith effort to comply with subdivision c of section 17-507. In actions brought for violations of this subdivision, it shall be an affirmative defense that the employer has made good faith efforts to insure that employees comply with the provisions of such written smoking policy.

c. It shall be unlawful for any person who owns, manages or operates a restaurant in which smoking is restricted to designated areas pursuant to paragraph five of subdivision a of section 17-503, to fail to make good faith efforts to insure that employees responsible for seating arrangements substantially comply with the requirements set forth therein.

d. It shall be unlawful for any person to smoke in any area where smoking is prohibited under section 17-503 and section 17-504.

e. Every person who violates subdivisions a, b or c of this section shall, for a first violation thereof, be liable for a civil penalty of not more than one hundred dollars; for a second violation, both of which were committed within a period of twelve months, be liable for a civil penalty of not more than two hundred dollars; and for a third or subsequent violation, all of which were committed within a period of twelve months, be liable for a civil penalty of not more than five hundred dollars. Every person who violates subdivision d of this section shall be liable for a civil penalty of up to fifty dollars for each violation.

f. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision e of this section shall be commenced by the service of a notice of violation which shall be returnable

to the administrative tribunal established by the board of health. The board of health's administrative tribunal shall have the power to impose the civil penalties prescribed by subdivision e of this section.

g. Whenever a notice of violation of subdivision a, b or c of this section is served by a person with power to enforce the provisions of this chapter pursuant to subdivision a of section 17-507, such notice shall, where applicable, include an order which requires the respondent to correct the condition constituting the violation and to file a certification with the department that the condition has been corrected. Such order shall require that the condition be corrected within ten days from the date that the order is issued and that certification of the correction of the condition be filed with the department in a manner and form and within such further period of time to be determined in accordance with rules and regulations promulgated by the commissioner.

h. If the administrative tribunal established by the board of health finds, upon good cause shown, that the respondent cannot correct the violation specified in subdivision g of this section, it may postpone the period for compliance with such order upon such terms and conditions and for such period of time as shall be appropriate under the circumstances.

i. In any proceeding before the administrative tribunal established by the board of health, if the tribunal finds that the department or other agency issuing the notice of violation has failed to prove the violation charged, it shall notify the department or other agency issuing the notice of violation, and the order requiring the respondent to correct the condition constituting the violation shall be deemed to be revoked.

j. The penalties provided by this section shall be in addition to any other penalty imposed by any other provision of law or regulation thereunder.

#### **§17-509 Waiver.**

a. The commissioner or his or her designee may grant a waiver from the application of a specific provision of this chapter; provided that prior to the granting of any such waiver, the applicant for waiver shall clearly establish that compliance with a specific provision of this chapter would cause the applicant undue financial hardship or that other factors exist which would render strict compliance unreasonable.

b. Every waiver granted shall be subject to such conditions or restrictions as may be necessary in order to minimize the adverse effects of such waiver upon persons subject to involuntary exposure to second-hand smoke and to insure that such waiver is in harmony with the general purpose and intent of this chapter.

c. Waivers granted pursuant to this section shall be valid for a period of not more than twenty-four months and may be renewed upon application to the commissioner or appropriate person or agency. Applications for renewal shall be reviewed in the same manner as provided for applications for waiver.

**§17-510 Public education.** The department shall engage in a continuing program to explain and clarify the provisions and purposes of this chapter and shall provide assistance to those persons who seek to comply, and to those who want to stop smoking.

**§17-511 Governmental agency cooperation.** The department shall seek to encourage state and federal governmental and educational agencies having facilities within the city of New York, but not subject to the provisions of this chapter, to establish local operating procedures which substantially conform to the requirements of this chapter.

#### **§17-512 General provisions.**

a. Nothing in this chapter shall be construed to permit smoking where it is otherwise prohibited by law or regulation.

*b. Nothing in this chapter shall be construed to preclude owners, operators, managers, employers or other persons having control of any establishment covered by this act from prohibiting smoking in such establishment to a greater extent than is provided by this chapter, in accordance with applicable law.*

*c. Nothing in this chapter shall be construed to allow owners, operators, managers, employers or other persons having control of any establishment covered by this act to be subject to any legal proceeding or action to enforce this chapter in any court by any party, other than the city of New York or its designated agencies, based on such owners', operators', managers', employers' or other persons' alleged manner or method of compliance with the provisions of this chapter or his or her alleged failure to comply with the same.*

**§17-513 Regulations.** *The commissioner shall promulgate rules and regulations in accordance with the provisions contained in this chapter, and such other rules and regulations as may be necessary for the purpose of implementing and carrying out the provisions of this chapter.*

**§17-514 Report.** *Not later than twelve months after the effective date of this local law, and each year thereafter, the department shall submit a report to the mayor and the council concerning the administration and enforcement of this local law.*

**§3.** *This local law shall take effect ninety days after its enactment. Actions necessary to prepare for the implementation of this local law may be taken prior to its effective date.*

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 December 23, 1987, and approved by the Mayor on January 7, 1988.

CARLOS CUEVAS, City Clerk, Clerk of Council.

**CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27**

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 2 of 1988, Council Int. No. 915-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 23, 1987: 30 for, 1 against, 1 not voting.

Was approved by the Mayor on January 7, 1988.

Was returned to the City Clerk on January 7, 1988.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.