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Sponsors: Helen D. Foster, Charles Barron

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Int. No. 190

By Council Members Foster and Barron

A Local Law to amend the administrative code of the city of New York, in relation to amending the Smoke-Free Air Act of 1995.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings.

In 1995, the New York City Council found that second-hand smoke causes certain significant health problems, and enacted the Smoke-Free Air Act, which banned smoking in numerous places throughout the city. One area in which smoking is permitted under the Act is a “restaurant bar”, which must comply with certain seating and size requirements. The Council now finds that smoking in such “restaurant bars” should be prohibited because “restaurant bars” have become de facto waiting areas for smokers, many restaurant patrons must pass through “restaurant bars” in order to access the restaurant dining area, and the smoke from “restaurant bars” drifts into the restaurant dining area. In addition, the Council finds that smoking should be further restricted in offices so that only the regular occupant of a private, enclosed office is permitted to smoke therein, and the Council also finds that smoking should be prohibited in all city cars. As further detailed herein, the Council also establishes a temporary Second-Hand Smoke Air Quality Task Force.

§ 2. Section 17-502 (s) of the administrative code of the city of New York is hereby amended as follows and a new subdivision (w) is added and subdivisions (w) through (bb) are relettered to read as follows:

As used in this chapter, the following terms shall be defined as follows:

s. “Restaurant bar” means a contiguous area (i) in a restaurant, (ii) containing a counter and (iii) which is primarily 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 sale or consumption of alcoholic beverages in such restaurant bar. A separate smoking lounge, as defined in subdivision w, is not considered a restaurant bar.

w. “Separate smoking lounge” means an enclosed room whose primary purpose is for smoking in a restaurant and in which only beverage service may be offered and in which food service is not allowed. Such room shall be completely enclosed on all sides by solid floor-to-ceiling walls, windows or solid floor-to-ceiling partitions, be clearly designated and comply with all applicable fire code requirements. Any such windows in such room shall remain closed unless open to the exterior and any doors in such room shall remain closed except to the extent necessary to permit ingress and egress to such room. Such doors shall also be self-closing. Such room may contain furniture and telephone equipment. Such room shall not contain the sole means of ingress and egress to restrooms or any other smoke-free area and shall not be the sole indoor patron waiting area of such restaurant. Such room shall not exceed twenty-five percent of the aggregate square footage of the areas of a restaurant offering public dining, beverage service and lounges (whether a separate smoking lounge or other lounges).

[w] x. “Separate smoking room” means an enclosed room [in which smoking is permitted] whose primary purpose is for smoking, as provided in paragraphs 1, 8, 10, 11, 14 and 15 of subdivision a of section 17-503 and as provided in section 17-504. Such room shall (i) be clearly designated, (ii) comply with all applicable fire code requirements and (iii) have a separate ventilation system whereby the air from such enclosed room is immediately exhausted to an outdoor area (exclusive of a seating area) by an exhaust fan rather than being recirculated inside, and is negatively pressurized to prevent back streaming of second-hand smoke into smoke-free areas. Such room may contain furniture and telephone equipment. Such room shall not contain the sole means of ingress and egress to restrooms or any other smoke-free area.

[x] y. “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 service of any kind, whether or not such service involves an exchange of consideration.

[y] z. “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or any form of lighted object or device which contains tobacco.

[z] aa. “Sports arena and recreational area” means any sports pavilion, stadium, race track, boxing arena, roller and ice skating rink, bowling establishment and other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic or recreational competition or activity or witness sports, cultural, recreational or similar activities. Playgrounds, zoos, gymnasiums, health clubs, billiard parlors, enclosed areas containing a swimming pool and areas where bingo is played are not

“sports arenas and recreational areas” within the meaning of this subdivision.

[aa] bb. “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.

[bb] cc. “Zoo” means any indoor area open to the public for the purpose of viewing animals. An aquarium is a “zoo” within the meaning of this subdivision.

§ 3. Section 17-503 (a) (5) of the administrative code of the city of New York is hereby amended to read as follows:

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:

5. [Restaurants with an indoor seating capacity of more than thirty-five patrons (the determination of which excludes any seating at tables in a restaurant bar at which only beverage service is offered and seating at any counter in a restaurant bar serviced by a bartender); provided, however, that smoking may be permitted in (i) any enclosed room designated as a smoking lounge in which only beverage service is offered and (ii) any area of the restaurant which constitutes a restaurant bar as defined in subdivision s of section 17-502 when the following conditions are met: (A) the perimeter of such restaurant bar is located at least six feet from the perimeter of any indoor dining area of such restaurant (not including the seating area located within the restaurant bar) or such restaurant bar is separated by a solid floor-to-ceiling partition from any indoor dining area (not including the seating area located within the restaurant bar); (B) the smoking lounge and restaurant bar do not individually or in the aggregate exceed twenty-five percent of the aggregate square footage of the areas of such restaurant offering public dining, beverage service and lounges (whether smoking or other lounges); (C) seating at tables in such restaurant bar at which food service is offered (excluding seating at any counter in a restaurant bar serviced by a bartender) shall be limited to: (i) no more than fifteen percent of up to and including one hundred seats at tables in such restaurant at which food service is offered (excluding seating at any counter in a restaurant bar serviced by a bartender) and (ii) no more than ten percent of any seats in excess of one hundred seats at tables in such restaurant at which food service is offered (excluding seating at any counter in a restaurant bar serviced by a bartender); and (D) the smoking lounge and restaurant bar are not the sole indoor patron waiting areas of such restaurant. In calculating the square footage of the areas of such restaurant offering public dining, beverage service and lounges (whether smoking or other lounges) pursuant to this subdivision, all spaces (whether or not occupied by furniture or any counter) in such public dining areas, beverage service areas and lounges shall be included; provided, however, that rooms used exclusively for private functions, service areas (including areas behind any counter) and other areas to which the general public does not generally have access (such as storage rooms, kitchens, offices and cloakrooms), restrooms, telephone areas and waiting areas (other than waiting areas located in any lounges) shall not be included.]

All interior areas of restaurants, including the restaurant bar and public dining areas; provided, however, that smoking may be permitted in (i) a single separate smoking lounge whose primary purpose is for smoking and in which only beverage service may be offered and in which food service is not allowed when the following conditions are met: (A) the single separate smoking lounge does not exceed twenty-five percent of the aggregate square footage of the areas of such restaurant offering public dining, beverage service and lounges (whether a separate smoking lounge or other lounges); (B) the single separate smoking lounge is not the sole indoor patron waiting area of such restaurant; (C) the single separate smoking lounge is completely enclosed on all sides by solid floor-to-ceiling walls, windows or solid floor-to-ceiling partitions, clearly designated and complies with all applicable fire code requirements. Any such windows in such separate smoking lounge shall remain closed unless opened to the exterior and any doors in such separate smoking lounge shall remain closed except to the extent necessary to permit ingress and egress to such separate smoking lounge. The door or doors in the separate smoking lounge shall be self-closing. In calculating the square footage of the areas of such restaurant offering public dining, beverage service and lounges (whether a single separate smoking lounge or other lounges) pursuant to this subdivision, all spaces (whether or not occupied by furniture or any counter) in such public dining areas, beverage service areas and lounges shall be included; provided, however, that rooms used exclusively for private functions, service areas (including areas behind any counter) and other areas to which the general public does not generally have access (such as storage rooms, kitchens, offices and cloakrooms), restrooms, telephone areas and waiting areas (other than waiting areas located in any lounges) shall not be included.

§ 4. Section 17-503 (c) (1) of the administrative code of the city of New York is hereby amended to read as follows:

c. Smoking is prohibited in the following outdoor areas of public places during the times in which the public is invited or permitted, except as otherwise restricted in accordance with the provisions below:

1. Outdoor dining areas of restaurants; provided, however, that smoking may be permitted in a contiguous outdoor area designated for smoking so long as such area constitutes no more than twenty-five percent of the outdoor seating capacity of such restaurant. The restaurant is required to inquire of patrons who wish to dine in the outdoor area of the restaurant whether they wish to be seated in the smoking or no smoking section of the outdoor area of the restaurant. “No smoking” signs, or the international symbol indicating the same, shall be prominently and conspicuously posted in the “no smoking” portion of the outdoor area of the restaurant. “Smoking” signs, or the international symbol indicating the same, shall be prominently and conspicuously posted in the “smoking” portion of the outdoor area of the restaurant.

§ 5. Section 17-504 (b) and (c) of the administrative code of the city of New York are hereby amended to read as follows:

b. Smoking may be permitted in any private, enclosed office which is usually occupied by no more than [three] one individual[s]; provided, however, that: (i) smoking is prohibited in any such office whenever [more than three people are present] any

person other than the person who regularly occupies the office is present, [(ii) when more than one person is present in such office, smoking is permitted only when at least one of the persons present is the usual occupant of such office, and when each and every person present in such office consents to permit smoking therein] and [(iii)] (ii) the door to any such office shall be completely closed while smoking is occurring and for a reasonable period of time thereafter in order to minimize or eliminate the drift of second-hand smoke from such office into smoke-free areas.

c. Smoking is prohibited in company vehicles occupied by more than one person unless the occupants of such vehicle agree that smoking may be permitted. Smoking is prohibited in all City owned vehicles at all times.

§ 6. Section 17-505 (i) of the administrative code of the city of New York is hereby deleted and subdivisions (j), (k) and (l) are relettered to read as follows:

The following areas shall not be subject to the smoking restrictions of this chapter; provided however, that nothing in this section shall be construed to permit smoking where smoking is otherwise prohibited or restricted by any other law or rule:

[i. Restaurants with an indoor seating capacity of thirty-five patrons or fewer, pursuant to paragraph five of subdivision a of section 17-503.]

i. [j.] Billiard parlors.

j. [k.] Public areas where bingo is held; provided, however, that this subdivision shall not apply to any bingo games held in child day care centers and in public and private pre-primary, primary and secondary schools providing instruction for students at or below the twelfth-grade level.

k. [l.] Limousines under private hire by any person.

§ 7. Section 17-508 (c) of the administrative code of the city of New York is hereby amended to read as follows:

c. It shall be unlawful for any person who owns, manages or operates a restaurant in which smoking is regulated pursuant to paragraph five of subdivision a of section 17-503, to fail to: (i) make good faith efforts to insure that employees responsible for seating arrangements substantially comply with the seating requirements with respect to [a restaurant bar pursuant to paragraph five of subdivision a of section 17-503 or] a designated outdoor area pursuant to paragraph one of subdivision c of section 17-503 and (ii) comply with the provisions of paragraph five of subdivision a of section 17-503 including, but not limited to, the calculation of aggregate square footage in the determination of the size of any [restaurant bar and] separate smoking lounge, [the limitation on the number of seats permitted for dining in the restaurant bar, or the installation of a solid floor-to-ceiling partition or the imposition of a six-foot distance separating a restaurant bar from the indoor dining area of a restaurant.] The obligations of an owner of a building with respect to construction or installation of a floor-to-ceiling partition shall be limited to work authorized by any permits necessary to perform such work obtained by the owner. [In addition, it shall be unlawful for any person who owns, manages or operates a

restaurant for which an exemption is asserted pursuant to subdivision i of section 17-505 to fail to comply with the provisions of paragraph five of subdivision a of section 17-503 with respect to the calculation of indoor seating capacity in the assertion of an exemption.]

§ 8. Section 17-509 (a) of the administrative code of the city of New York is hereby amended to read as follows:

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. No waiver shall be granted for any reason relating to the construction or installation of (i) a separate smoking room, (ii) an enclosed room where smoking is permitted or (iii) a separate smoking lounge [solid floor-to-ceiling partition separating a restaurant bar from the indoor dining area of a restaurant.]

§ 9. Section 17-512 (c) of the administrative code of the city of New York is hereby amended to read as follows:

Nothing in this chapter shall be construed to require owners, operators, managers, employers or other persons having control of any establishment subject to this chapter to choose to construct a separate smoking room, an enclosed room where smoking is permitted or a separate smoking lounge [a solid floor-to-ceiling partition separating a restaurant bar from the indoor dining area of a restaurant] as the means of complying with this chapter.

§ 10. Section 17-513 (a) of the administrative code of the city of New York is hereby amended to read as follows:

a. The commissioner shall promulgate rules in accordance with the provisions contained in this chapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this chapter, including any amendments to this chapter.

§ 11. Chapter 5 of title 17 of the administrative code of the city of New York is hereby amended to add a new section 17-513.2 to read as follows:

§17-513.2 Second-Hand Smoke Air Quality Task Force. a. In 1995, the New York City Council found that second-hand smoke causes certain significant health problems, and enacted the Smoke-Free Air Act, which banned smoking in numerous places throughout the City. The Smoke-Free Air Act was landmark legislation designed to protect the health of City residents. New findings regarding second-hand smoke and its effects have been made since the 1995 Smoke-Free Air Act was enacted, and new technology has been developed for dealing with second-hand smoke. In its ongoing commitment to protect the health of New York City residents, the Council believes it is important to assess these new developments. In order to more fully assess and determine to what extent the Smoke-Free Air Act needs to be amended, the Council finds it appropriate to create a temporary task force to address these issues. The purpose of the task force is to report to the Council on findings regarding the adverse impact of second-hand smoke since

enactment of the Smoke-Free Air Act and to report to the Council on new and emerging technologies designed to ventilate and clean smoke-filled rooms and to filtrate and purge smoke and associated carcinogens. In light of its findings on the effects of second-hand smoke and the state of new and emerging technologies of ventilation, cleaning and filtration, the task force is to make recommendations to the Council for appropriate legislative action, if necessary, in light of its findings.

b. There is hereby established a temporary Second-Hand Smoke Air Quality Task Force to advise the Council on findings regarding the adverse impact of second-hand smoke since enactment of the Smoke-Free Air Act and to report to the Council on new and emerging technologies designed to ventilate and clean smoke-filled rooms and to filtrate and purge smoke and associated carcinogens. Such task force shall be comprised of at least nine members (but no more than fifteen members), one of whom shall be the Commissioner of the Department of Health or his designee. The speaker of the city council shall nominate all other members, including the chair of the task force. With respect to the other members of the task force, the following shall apply: (i) at least one member of the task force must be a scientific expert knowledgeable about second-hand smoke, its effects and the effects of associated carcinogens as well as with the technologies designed to ventilate, filtrate and purge such smoke and associated carcinogens; (ii) one member of the task force must be an engineer who is an expert in air ventilation systems; (iii) one member of the task force must be a representative of either the hotel industry, restaurant industry, bar industry, or nightclub/entertainment industry; (iv) one member of the task force must represent a public health association; (v) one member of the task force must be a representative of the employees of hotels, bars, restaurants and nightclubs; and (vi) one member of the task force must be a representative of organized labor from the buildings trade. Members of the task force shall not be compensated for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties. No member of the task force shall be disqualified from holding any public office or employment nor shall he forfeit any such office or employment.

c. The task force shall submit a report containing its findings of fact, assessment and recommendations to the City Council by December 31, 2001, and the task force shall be terminated upon issuance of the report. Such report shall include the assessment of the task force regarding its findings on the adverse impact of second-hand smoke since enactment of the Smoke-Free Air Act and its assessment of new and emerging technologies designed to ventilate and clean smoke-filled rooms and to filtrate and purge smoke and associated carcinogens. Such report shall also include the recommendations of the task force to the Council for appropriate legislative action, if any. The report of the task force shall include, but not be limited to, the feasibility of installing ventilation or filtration systems in restaurants, bars and other public places, including whether the technology is reliable in ventilating and filtrating second-hand smoke and associated carcinogens, the cost of such a system and the economic impact on bars, restaurants and nightclubs.

d. In order to assist in its findings, the task force may invite as it deems necessary the participation of any entity. The task force shall also hold one public hearing at which public testimony will be taken prior to issuance of its report. In addition, the task

force may contract with any city or private entity for the provision of such services as the task force determines to be necessary and shall take such other actions not inconsistent with the purposes of this section as shall enable the task force to carry out its function.

§ 12. This local law shall become effective 180 days after its enactment into law, except that Section 17-513. 2 shall become effective immediately.

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