



Legislation Text

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Int. No. 256-A

By the Speaker (Council Member Miller), Council Members Quinn, Oddo, Brewer, DeBlasio, Felder, Foster, Gerson, Koppell, Martinez, Perkins, Sears, Serrano, Stewart, Vann, Comrie, Lopez, Reyna, Vallone, Jr., Baez, Diaz, Provenzano, Recchia, Jr., Yassky, Davis, Gennaro and Liu (by request of the Mayor).

A Local Law to amend the administrative code of the city of New York, in relation to the prohibition of smoking in public places and places of employment

Be it enacted by the Council as follows:

Section 1. Subdivisions a, b, k, p, q, r, t, w, z, and aa of section 17-502 of the administrative code of the city of New York, subdivisions a and q as added and subdivision b as amended by local law number 5 for the year 1995, subdivision k as amended by local law number 30 for the year 1995, subdivisions r and z as amended and relettered by local law number 5 for the year 1995, subdivisions p, t and aa as relettered by local law number 5 for the year 1995, are amended to read as follows:

- a. "Auditorium" means the part of the building where an audience sits [but does not include] including any corridors, hallways or lobbies adjacent thereto.
- b. "Bar" means [an enclosed room or] a business establishment or any portion of a non-profit entity, [open to the public] which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons, or members on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages. For the purposes of this chapter, the term "bar":
 - (i) shall [not] include a restaurant bar; (ii) shall include any area located in a hotel or motel [(other than a restaurant bar)], which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons, or members on the premises and in which the serving of food, if at all, is only incidental to the sale or consumption of alcoholic beverages; and (iii) shall include a cabaret as defined in section 20-359

of the code which is required to be licensed by the department of consumer affairs pursuant to section 20-360 of the code and in which the serving of food, if at all, is only incidental to the sale or consumption of alcoholic beverages. For the purposes of this subdivision, (i) service of food shall be considered incidental to the sale or consumption of alcoholic beverages if the food service generates less than forty percent of total annual gross sales and (ii) any [enclosed room or] business establishment [open to the public] or any portion of a non-profit entity which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons, or members on the premises that generates forty percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a restaurant.

k. "Motion picture theater" means any public hall or room in which motion pictures are displayed, including any corridors, hallways or lobbies adjacent thereto. For purposes of this subdivision, "motion picture" means a display on a screen or other device, of pictures or objects in motion or rapidly changing scenery, whether or not such display shall be accompanied by a lecture, recitation or music.

p. "Public place" means any area to which [the public is] 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.

q. "Residential health care facility" means (i) a facility providing therein nursing or other care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board service [and], (ii) an inpatient psychiatric facility which provides individuals with active treatment under the direction of a

physician, and (iii) a residential facility providing health related service.

r. "Restaurant" means any coffee shop, cafeteria, luncheonette, sandwich stand, diner, short order café, fast food establishment, soda fountain, and any other [commercial] eating or beverage establishment (other than a bar), including a restaurant located in a hotel or motel, or part of any organization, club, boardinghouse or guest house, which gives or offers for sale food or beverages to the public, guests, members, or patrons, whether food or beverages are customarily consumed on or off the premises, but not an establishment whose sole purpose is to serve food or beverages to employees of a common employer or to students of a common educational institution.

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

w. "Separate smoking room" means an enclosed room [in which smoking is permitted] the exclusive purpose of which is for smoking. No business transactions, including, but not limited to, the sale, including by vending machines, and/or service of food, beverages, or any other product, and/or collection of any payments, shall be conducted in such room.

Such room shall (i) be [clearly designated] completely enclosed on all sides by solid floor-to-ceiling walls; (ii) comply with all applicable fire and building code requirements, and have a sprinkler system for fire safety (which may be part of a sprinkler system of the premises in which the room is located); and (iii) have a separate ventilation system whereby the air from such enclosed room is immediately exhausted to an outdoor area (exclusive of any seating area) by an exhaust fan rather than being recirculated inside, and [is negatively pressurized to prevent back streaming of second-hand smoke into smoke-free areas] which is compliant with the additional specifications set forth in this subdivision; (iv) be clearly designated as a separate smoking room wherein no services are offered. 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 constitute the sole indoor waiting area of the premises. Any doors in such room shall be self-closing, and shall

remain closed except to the extent necessary to permit ingress and egress to such room. Such room shall not exceed twenty-five percent of the aggregate square footage of the premises, including non-smoking lounges and shall not in any event exceed three hundred fifty square feet. In calculating the square footage of the premises pursuant to this subdivision, all spaces, whether or not occupied by furniture or any counter, including public dining areas, beverage service areas, the separate smoking room, and lounges shall be included; provided however, that 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. No employee shall be permitted to enter such room for the purposes of conducting any business transaction, including but not limited to the sale or service of food, beverages, or any other product, provided, however, that an employee shall be allowed into such room to provide busing or other cleaning services when no smoking has occurred for fifteen minutes prior to the employee entering the room and no customers are present. Such room shall have a ventilation system in which the ventilation rate is at least sixty cubic feet per minute per occupant based on a maximum occupancy of seven individuals per one hundred feet of floor space, and the negative air pressure is at a rate such that when measured by a device approved by the department of health and mental hygiene, the pressure differential is at least three hundredths of an inch of water column relative to the air pressure in the adjacent room in which smoking is not permitted. Such ventilation system shall discharge air from the separate smoking room at least twenty-five feet away from operable windows, doors, air conditioning, and any other heating, ventilation and air conditioning intakes.

z. "Sports arena and recreational area" means any sports pavilion, stadium, race track, boxing arena, roller and ice skating rink, billiard parlor, 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. "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale[,] or manufacture[, or promotion] of tobacco, tobacco products and accessories [either] at wholesale [or retail], and in which the sale[,] or manufacture [or promotion] of other products is merely incidental, and in which smoking on the premises is essential to the entity for the testing or product development of such tobacco or tobacco products.

§2. Subdivisions j, o, and v of section 17-502 of the administrative code of the city of New York are REPEALED.

§3. Section 17-502 of the administrative code of the city of New York is amended by adding new subdivisions cc, dd, ee, ff, gg, hh, ii, jj, kk, and ll to read as follows:

cc. "Day treatment program" means a facility which is (i) licensed by the state department of health or the office of alcoholism and substance abuse services, the office of mental health, or the office of mental retardation and developmental disabilities within the state department of mental hygiene to provide treatment to aid in the rehabilitation or recovery of its patients based on a structured environment requiring patient participation for no less than three hours each day; or (ii) which is authorized by the state commissioner of health to conduct a program pursuant to section 80.135 of title ten of the New York code of rules and regulations.

dd. "Health related service" means service in a facility which provides or offers lodging, board and physical care including, but not limited to, the recording of health information, dietary supervision and supervised hygienic services incident to such service.

ee. "Member" means, for purposes of subdivision ff of this section, a person who (i) satisfies the requirements for membership in a membership association, and (ii) affirmatively accepts an invitation from such membership association to become a member.

ff. "Membership association" means a not-for-profit entity which has been created or organized for

a charitable, philanthropic, educational, political, social or other similar purpose and which is registered with the department of health and mental hygiene in accordance with the rules of the department. In determining whether such an entity is a "membership association," the department of health and mental hygiene shall consider, but need not be limited to, the following factors:

- (i) whether it has by-laws or a similar governing instrument and whether such by-laws or similar governing instrument expressly provides for members;
- (ii) whether it has established permanent and identifiable membership selection criteria, the purpose of which is to screen potential members on a basis related to its charitable, philanthropic, educational, political, social or other similar purpose;
- (iii) whether it conducts elections to select its governing structure and/or body;
- (iv) whether the premises within which it is located are controlled by its membership;
- (v) whether it is operated solely for the benefit and pleasure of its membership;
- (vi) whether it expressly acknowledges the acceptance of members, such as by sending a membership card or by the inclusion of a member on a membership roster.

Such registration shall remain in effect for two years and shall be renewable based upon the factors described in this subdivision and the rules of the department.

gg. "Owner operated bar" means a bar in which all duties with respect to preparing food and drink, cleaning, dishwashing and racking glasses, serving, maintaining inventory, stocking shelves and providing of security for such a bar are performed at all times only by individuals who are principal owners of such bar as defined in this section and which is registered with the department of health and mental hygiene in accordance with the rules of the department; provided, however, that individuals other than the principal owners may perform cleaning functions at times when the bar is not open to the public, guests, members or patrons.

hh. "Principal owner" shall mean an individual who holds a twenty-five percent or greater ownership interest in a bar and is a state liquor authority licensee for such bar, or an individual who holds a

twenty-five percent or greater ownership interest in a partnership, joint venture, corporation or limited liability corporation, which is the sole owner of a bar and the state liquor authority licensee for such bar; provided, however, that an owner operated bar shall have no more than three principal owners.

ii. "Tobacco product" means any substance which contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco.

jj. "Tobacco bar" is a bar that, in the calendar year ending December 31, 2001, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the department of health and mental hygiene in accordance with the rules of such agency. Such registration shall remain in effect for one year and shall be renewable only if: (i) in the preceding calendar year, the previously registered tobacco bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors; and (ii) the tobacco bar has not expanded its size or changed its location from its size or location as of December 31, 2001.

kk. "Negative air pressure" shall mean the air exhausted to the outdoors from a room is at a greater volume than the volume of air supplied into the room.

ll. "Ventilation rate" shall mean the rate at which air is supplied into a room.

§4. The opening unnumbered paragraph of subdivision a of section 17-503, paragraphs 1, 4, 5, 6, 8, 10, 11, 14 and 15 of subdivision a of section 17-503 of the administrative code of the city of New York, paragraphs 1, 4, 5, 6, and 8 as amended and paragraphs 10, 11, 14 and 15 as amended and renumbered by local law number 5 for the year 1995, are amended to read as follows:

§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 separate smoking rooms designated as waiting areas, so long as the aggregate of all such rooms do not constitute more than twenty-five percent of the total waiting area in the public transit depot and such rooms do not contain the sole source of (i) vending machines, (ii) beverage or food service or (iii) place of payment for services].

4. Retail stores (other than retail tobacco stores)[; provided, however, that any enclosed room in a retail store which is devoted to the sale of food or beverage for on-premises consumption shall be governed by the provisions of paragraph five of this subdivision].

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].

6. Business establishments (other than [bars, billiard parlors, restaurants, catering halls, retail stores, tobacco businesses and] retail tobacco stores[, and except as otherwise provided in this subdivision]) including, but not limited to, banks and other financial institutions, catering halls, offices where trade or vocational activity occurs or professional or consumer services are rendered and non-profit entities, including religious institutions; provided[: that the smoking prohibition (A) applies only to public places and not to private areas to which the general public does not generally have access; and (B) does not apply to hotel and motel lobbies] however, that this paragraph shall not apply to membership associations.

8. Motion picture theaters, concert halls, buildings or areas or rooms in buildings [(other than auditoriums)] primarily used for or designed for the primary purpose of exhibiting movies or presenting performances, including, but not limited to, stage, musical recital, dance, lecture or other similar performances [(other than bars)], except that smoking may be part of a theatrical production[; provided, however, that smoking may be permitted in separate smoking rooms which constitute lounges, so long as the aggregate of all such lounges does not exceed twenty-five percent of the total square footage of lounge space of such establishments open to the public and such lounges do not contain the sole source of (i) vending machines, (ii) beverage or food service or (iii) place of payment for services. Smoking may also be permitted in separate

smoking rooms which are located in the viewing area of such establishments, so long as the aggregate seating capacity of all such rooms does not exceed twenty-five percent of the total seating capacity of the viewing area of such establishment].

10. Convention halls[; provided, that smoking may be permitted: (A) In separate smoking rooms which constitute lounges, so long as the aggregate of all such lounges does not exceed twenty-five percent of the total square footage of lounge space open to the public for a particular event taking place within the convention hall, and such lounges do not contain the sole source of (i) vending machines, (ii) beverage or food service, or (iii) place of payment for services; (B) In separate smoking rooms which are located in the viewing area of the convention hall, so long as the aggregate square footage of all such rooms does not exceed twenty-five percent of the total viewing area of such convention hall; (C) In any enclosed area of the concourse (the indoor area located behind the seating or viewing area which is used for access to and from the seating or viewing area, excluding any ramps used for ingress and egress), so long as the aggregate of all such enclosed concourse areas does not exceed twenty-five percent of the total square footage of the concourse open to the public; and (D) In an enclosed room devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises].

11. Sports arenas and recreational areas[; provided that smoking may be permitted in separate smoking rooms which constitute lounges, so long as the aggregate of all such lounges does not exceed twenty-five percent of the total square footage of the lounge space of such sports arenas and recreational areas open to the public and such lounges do not contain the sole source of (i) vending machines, (ii) beverage or food service or (iii) place of payment for services. Smoking may also be permitted in: (A) separate smoking rooms which are located in the viewing area of such sports arena and recreational areas, so long as the aggregate seating capacity of all such rooms does not exceed twenty-five percent of the total seating capacity of such sports arena and recreational areas; (B) enclosed rooms devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises; (C) private box seats in enclosed rooms or separate

viewing suites which constitute enclosed rooms; (D) in any enclosed area of the concourse (the indoor area located behind the seating or viewing area which is used for access to and from the seating or viewing area excluding any ramps used for ingress and egress), so long as the aggregate of all such enclosed areas of the concourse does not exceed twenty-five percent of the total square footage of the concourse open to the public; and (E) any unenclosed concourse area (the unenclosed area which is at least partially opened to the outside of the sports arena or recreational area, is located behind the seating area and which is used for access to and from the seating or viewing area, excluding any ramps used for ingress and egress), so long as any smoking area located in an unenclosed concourse shall be located at least twenty-five feet from any seating or viewing area, restroom, public telephone, beverage or food service area, concession stand, automatic teller machine, or any service line or waiting area; provided, further, that with respect to bowling establishments, smoking is also permitted in a designated area of the concourse (the area directly behind the bowler settee area which is the area occupied by bowlers while keeping score or actually bowling), so long as such smoking area does not constitute more than fifty percent of the floor space of the concourse and the perimeter of such smoking area is located at least six feet from the perimeter of the bowler settee area].

14. Health care facilities including, but not limited to, hospitals, clinics, psychiatric facilities, residential health care facilities, physical therapy facilities, convalescent homes, and homes for the aged; provided however, that this paragraph shall not prohibit smoking by patients in separate [smoking rooms for employees permitted pursuant to section 17-504 which (A) receive prior written approval from the fire commissioner pursuant to section 27-4276 of the code and (B) are not ordinarily used for care and treatment of patients. In addition, this section shall not prohibit smoking in] enclosed rooms of residential health care facilities or facilities where day treatment programs are provided, which are designated as smoking rooms for patients [or for patients and visitors] of such facilities or programs, provided, however, that prior written approval is received from the fire commissioner pursuant to section 27-4276 of the code.

15. All schools other than public and private pre-primary, primary, and secondary schools providing

instruction for students at or below the twelfth-grade level, 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) Separate smoking rooms for employees pursuant to the requirements set forth in subdivision a of section 17-504, provided that prior written approval is received from the fire commissioner; and

(B) Separate smoking rooms in student dining areas or lounges the aggregate of which shall constitute not more than twenty-five percent of the seating capacity or floor space of such student dining areas or lounges, provided that prior written approval is received from the fire commissioner and such rooms do not contain the sole source of (i) vending machines, (ii) beverage or food service or (iii) place of payment for services].

§5. Subdivision a of section 17-503 of the administrative code of the city of New York is amended by adding paragraphs 19, 20, 21 and 22 to read as follows:

19. Public areas where bingo is played.

20. Bars; provided however, that smoking shall be permitted in:

(a) tobacco bars; (b) owner operated bars; and (c) separate smoking rooms in bars, provided, however, that the owner or operator of such bar shall have filed a copy of the architectural or engineering plan for such room with the department of health and mental hygiene.

21. Tobacco businesses, except that smoking shall be permitted in areas within a tobacco business designated by such business for the purpose of testing or development of tobacco or tobacco products; provided, however, that such areas must all be located on no more than two floors of the building where such business is located.

22. Membership associations; provided however, that smoking shall only be allowed in membership associations in which all of the duties with respect to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial

work, and the security services of the membership association are performed by members of such membership association who do not receive compensation of any kind from the membership association or any other entity for the performance of such duties.

§6. The opening unnumbered paragraph and paragraph 1 of subdivision c of section 17-503 of the administrative code of the city of New York, as added by local law number 5 for the year 1995, are 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 with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous outdoor area designated for smoking so long as such area: (i) constitutes no more than twenty-five percent of the outdoor seating capacity of such restaurant; (ii) is at least three feet away from the outdoor area of such restaurant not designated for smoking; and (iii) is clearly designated with written signage as a smoking area.

§7. Subdivisions a, c, d, e, and i, of section 17-504 of the administrative code of the city of New York, subdivision a as amended, subdivisions c and d as added, subdivisions e, and i as amended and relettered by local law number 5 for the year 1995, are amended to read as follows:

a. Smoking is prohibited in those indoor areas of places of employment to which the general public does not generally have access[; provided however, that this section shall not prohibit an employer (other than a public or private pre-primary, primary and secondary school providing instruction for students at or below the twelfth-grade level and a child day care center) from providing a single separate smoking room on each floor occupied in whole or in part by such place of employment, so long as (i) such room does not exceed 300 square feet and (ii) no employee is required to pass through or use such room for work-related activities. Such room shall not contain any office equipment, other than telephone equipment, or be the sole source of (i) vending machines, (ii) beverage or food services, (iii) place of payment for services or (iv) kitchen facilities]. [In

addition, this] This section shall not prohibit smoking in any area where smoking is not regulated pursuant to section 17-505.

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 vehicles owned by the city of New York.

d. No employer shall take any retaliatory adverse personnel action against any employee or applicant for employment on the basis of such person's exercise, or attempt to exercise, his or her rights under this chapter with respect to the place of employment[, which includes the right to refuse to enter a separate smoking room while anyone is smoking in such room]. 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 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 chapter with respect to the place of employment.

e. By November 1, 1995, every employer subject to the provisions of this chapter shall adopt, implement, make known, maintain and update to reflect any changes, a written smoking policy which shall contain at minimum, the following requirements:

1. The prohibition of smoking except in accordance with the provisions of this chapter and any rules promulgated pursuant thereto, and a description of the smoking restrictions adopted or implemented.

[2. 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 accorded priority.]

[3] 2. As set forth in subdivision d of this section, the (A) protection from retaliatory adverse personnel action with respect to all employees or applicants for employment who exercise, or attempt to exercise, any

rights granted under such subdivision; and (B) the establishment of 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 chapter with respect to the place of employment.

i. This section shall not be construed to permit smoking in any area in which smoking is prohibited or restricted pursuant to section 17-503. Where a place of employment is also a public place where smoking is prohibited or restricted pursuant to section 17-503, [the employer shall be required to adhere to the provisions of this section with respect to the private areas to which the general public does not generally have access] and is not exempt from regulation under section 17-505, smoking shall be prohibited.

§8. Subdivision b of section 17-504 of the administrative code of the city of New York is REPEALED.

§9. Subdivisions a, d, e, i, j, k and l of section 17-505 of the administrative code of the city of New York are REPEALED.

§10. Subdivision h of section 17-505 of the administrative code of the city of New York, as amended by local law 5 for the year 1995, is amended to read as follows:

h. Enclosed [areas or] rooms in restaurants, bars, 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 where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose, provided that the operator of such function shall have provided notice to the department of health and mental hygiene in a form satisfactory to such department at least two weeks before such a function begins, and such notice has identified the dates on which such function shall occur. No such facility may permit smoking under this subdivision for more than five days in any calendar year.

§11. Subdivision b of section 17-506 of the administrative code of the city of New York, as amended by local law number 5 for the year 1995, is amended to read as follows:

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

§12. Subdivisions a, e, and g of section 17-508 of the administrative code of the city of New York, subdivisions a and e as amended by local law number 5 for the year 1995, and subdivision g as added by local law number 2 for the year 1998, are amended, subdivision j of such section is relettered as subdivision k and a new subdivision j is added 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 is prohibited or restricted pursuant to [section 17-503] this chapter, or the designated agent thereof, to (i) provide a room designated for smoking including, but not limited to, a separate smoking room 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 [or a place of employment] is located is not the operator or employer of such public place [or place of employment]) 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 in any area where smoking

is 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 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 in any area where smoking is 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 in any restricted common indoor area where smoking is 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 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 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 in any restricted common indoor area where smoking is prohibited pursuant to section 17-503 was not informed by the respondent that such person smoking is in violation of this local law because the respondent did not have a designated agent on duty when such person was smoking and that the respondent has, where applicable, mailed the notice required pursuant to subdivision e of section 17-507.

e. Every person who violates subdivisions a[,] or b [or c] of this section shall, for a first violation thereof, be liable for a civil penalty of not less than [one] two hundred dollars nor more than [two] four 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 less than [two] five hundred dollars nor more than [four hundred] one thousand 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 less than [five hundred] one thousand dollars nor more than [one thousand] two thousand dollars. Every person who violates subdivision d of this section shall be liable for a civil penalty of one hundred dollars for each violation.

g. Whenever a notice of violation of subdivision a[,] or 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 within such further period of time to be determined in accordance with rules and regulations promulgated by the commissioner.

j. When the owner or operator of a bar has been found to be in violation of subparagraph c of paragraph twenty of subdivision a of section 17-503 on two or more occasions on the basis of one or more employees being in a separate smoking room at times not permitted under this chapter, the tribunal shall revoke the right of such owner or operator to maintain a separate smoking room in such bar.

§13. Subdivision c of section 17-508 of the administrative code of the city of New York is REPEALED.

§14. Section 17-509 of the administrative code of the city of New York is REPEALED.

§15. Section 17-513.1 is REPEALED.

§16. Chapter five of title seventeen of the administrative code of the city of New York is amended to add a new section 17-513.1 to read as follows:

§ 17-513.1 Effective dates for membership associations, owner operated bars and tobacco bars. a. Any entity who in good faith believes itself to be a membership association shall have one hundred eighty days from the effective date of the local law that added this section to apply to the department of health and mental hygiene for registration as a membership association. During the period of time from the effective date of the local law which added this section until the expiration of one hundred eighty days, no provision of the local law that added this section, except for the provisions of this section, shall apply to such entity, but all provisions of local law 5 for the year 1995 shall continue to apply to such entity.

b. Any entity who in good faith believes itself to be an owner operated bar shall have one hundred eighty days from the effective date of the local law that added this section to apply to the department of health and mental hygiene for registration as an owner operated bar. During the period of time from the effective date of the local law which added this section until the expiration of one hundred eighty days, no provision of the local law that added this section, except for the provisions of this section, shall apply to such entity, but all provisions of local law 5 for the year 1995 shall continue to apply to such entity.

c. Any entity who in good faith believes itself to be a tobacco bar shall have one hundred eighty days from the effective date of the local law that added this section to apply to the department of health and mental hygiene for registration as a tobacco bar. During the period of time from the effective date of the local law which added this section until the expiration of one hundred eighty days, no provision of the local law that added this section, except for the provisions of this section, shall apply to such entity, but all provisions of local law 5 for the year 1995 shall continue to apply to such entity.

§17. Chapter five of title seventeen of the administrative code of the city of New York is amended by adding section 17-513.2 to read as follows:

§17-513.2. Construction.

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is prohibited or otherwise restricted by other applicable laws, rules or regulations.

§18. Section 27-4273 of the administrative code of the city of New York is amended to read as follows:

§27-4273 Smoking prohibited in theatres, opera houses, portions of buildings being used for theatrical or operatic purposes, theatres displaying motion pictures. It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette, pipe or match or use any spark, flame or fireproducing device which has not been authorized for use by the commissioner in any theatre, opera house, portion of a building being used for theatrical or operatic purposes and in which building stage scenery and machinery is being used in connection with such theatrical or operatic purposes or theatre displaying motion pictures. [The rooms and locations designated as follows shall be exempt from this prohibition:

a. Lobbies, designated smoking and restrooms in theatres, opera houses, portions of buildings being used for theatrical or operatic purposes and in which buildings stage scenery and machinery is being used in connection with such theatrical or operatic purposes, or theatres displaying motion pictures.

b. Loges, boxes, mezzanines or balconies in theatres (for the purpose hereof the raised seating rows, levels, tiers or portions of those theatres erected in what is known as the stadium form of theatre or structures, shall be deemed a balcony or mezzanine), provided that any floor covering beneath the seating area is flameproofed, and provided further that in such locations where seats are fixed in position suitable containers or receptacles of metal or other noncombustible material are affixed to seats in accessible locations, and where seats are not fixed in positions such containers or receptacles shall be provided and be placed in accessible positions for use, such containers or receptacles to be used for the deposit of lighted cigars, cigarettes, pipes and matches and the discarded parts and ashes thereof.

c. A designated section with a number of seats not in excess of one-third the total number in the orchestra section of any theatre or portion of a building used for theatrical or operatic purposes or theatre displaying motion pictures which has no loges, boxes, mezzanine or balcony, provided that any floor covering beneath the seating area is flameproofed, and provided further that in such locations where seats are in fixed

position, suitable containers or receptacles of metal or other noncombustible material are affixed to seats in accessible locations, and where seats are not fixed in position such containers or receptacles shall be provided and be placed in accessible positions for use, such containers or receptacles to be used for the deposit of lighted cigars, cigarettes, pipes and matches, and the discarded parts and ashes thereof.

d. The designation of any section for smoking as provided in subdivision c hereof shall be made with the approval of the fire commissioner and commissioner of buildings.]

§19. Section 27-4274 of the administrative code of the city of New York is amended to read as follows:

§ 27-4274 Smoking prohibited in retail stores. It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette, pipe or match or use any spark, flame or fire-producing device which has not been authorized for use by the commissioner in any [existing or newly created] retail store [which is designed and arranged to accommodate more than three hundred persons, or in which more than twenty-five persons are employed. Designated smoking and rest rooms, restaurants, executive offices and beauty parlors in such retail stores shall be exempted from this prohibition. Any person who shall violate, or refuse, or neglect to comply with any provision of this section shall, upon conviction thereof, be punished by a fine of not less than ten dollars and not more than one hundred dollars, or by imprisonment not exceeding thirty days, or by both.] This prohibition shall not apply to retail tobacco stores where smoking is permitted as provided by chapter 5 of title 17 of the code.

§20. Section 27-4276 of the administrative code of the city of New York is amended to read as follows:

§27-4276. Smoking prohibited in hospitals, sanatoria, nursing homes, convalescent homes, homes for the aged or for chronic patients or portions of buildings being used for such purposes. It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette, pipe or match or use any spark, flame or fire-producing device which has not been authorized for use by the commissioner in any hospital, sanatorium,

nursing home, convalescent home, home for the aged or for chronic patients, or any portion of a building being used for such purpose. Designated smoking [and rest] rooms[, recreation rooms, hospital dining rooms, restaurants, administrative offices and other similar areas in such buildings] as permitted by section 17-503 of the administrative code shall be exempted from this prohibition. The designation of any such rooms or other areas for smoking shall be made only with the approval of the commissioner. Any person who shall violate, or refuse, or neglect to comply with any provision of this section shall be guilty of an offense and shall, upon conviction thereof, be punished by a fine of not more than fifty dollars, or by imprisonment not exceeding thirty days, or both; and any such person shall, also, for each offense, be subject to the payment of a penalty in the sum of two hundred fifty dollars; to be recovered in a civil action brought in the name of the commissioner.

§21. a. Before the ninetieth day after this local law shall have become a law, every employer shall make any changes necessary in their written smoking policies to bring them into compliance with the requirements of chapter 5 of title 17 of the administrative code of the city of New York as amended by this local law.

b. Nothing in this law shall be construed to impair, diminish or otherwise affect any collectively bargained procedure or remedy available to an employee, existing prior to the effective date of this local law, 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 chapter 5 of title 17 of the administrative code with respect to the place of employment.

§22. If any provision of this local law, including but not limited to the provisions relating to tobacco bars and owner operated bars is ruled invalid, the remainder of the local law shall remain in force and effect. It is the intent of the Council that if any exemption from the prohibition of smoking is determined to be invalid, the remainder of the law shall be enforced as if that exemption had not been enacted, and smoking shall be prohibited in any place where the exemption previously applied.

§23. Notwithstanding any provision of this local law, it is the intent of the Council not to prohibit the owner of any establishment regulated under this local law, or any family member of such owner, from smoking on the premises at times when such establishment is not open for business.

§24. Subparagraph c of paragraph 20 of subdivision a of section 17-503 of the administrative code of the city of New York, as added by section 5 of this local law, is REPEALED.

§25. Effective date. This local law shall take effect on the ninetieth day after it shall have become a law, except that:

(a) the department of health and mental hygiene may promulgate rules prior to such date necessary to carry out the provisions of this local law; and

(b) sections twenty-one and twenty-two shall take effect immediately

(c) section 24 shall take effect on January 2, 2006.

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