



Legislation Details (With Text)

File #: Int 0172-2002 **Version:** * **Name:** Amending the Smoke-Free Air Act of 1995
Type: Introduction **Status:** Filed
In control: Committee on Health
On agenda: 4/24/2002
Enactment date: **Enactment #:**
Title: 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 to prohibit smoking in restaurants, regardless of seating capacity, in private offices when more than its occupant is present, and in city owned vehicles.
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Indexes:

Attachments:

Date	Ver.	Action By	Action	Result
4/24/2002	*	City Council	Introduced by Council	
4/24/2002	*	City Council	Referred to Comm by Council	
12/31/2003	*	City Council	Filed (End of Session)	

Int. No. 172

By Council Members Oddo, Brewer, DeBlasio, Felder, Gennaro, Jackson, Koppell, Martinez, Monserrate, Recchia, Reyna and Sears

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 to prohibit smoking in restaurants, regardless of seating capacity, in private offices when more than its occupant is present, and in city owned vehicles.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. 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 in restaurants with seating capacities of less than thirty-five patrons. The Council now finds that smoking in such small restaurants should be prohibited because the dangers from second-hand smoke are just as prevalent, if not more prevalent, in small and confined spaces. In addition, in order to further minimize the harm that

second-hand smoke can cause, the Council finds that smoking should be more restricted in offices, so that only the regular occupant of a private, enclosed office is permitted to smoke therein, and that smoking should be prohibited in all city cars.

§ 2. Paragraph 5 of subdivision a of section 17-503 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)] regardless of seating capacity; 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.

§ 3. Paragraph 1 of subdivision c of section 17-503 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 and "Smoking" signs, or the international symbol indicating the same as set forth in subdivision a of section 17-506 and in any rules promulgated by the commissioner, shall be prominently and conspicuously posted, as appropriate, in the "no smoking" and "smoking" portions of the outdoor area of the restaurant.

§ 4. Paragraphs b and c of section 17-504 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] any person other than the person who regularly occupies the office is present, and (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)] 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.

§ 5. Subdivision (i) of section 17-505 of the administrative code of the city of New York is hereby deleted and subdivisions (j), (k) and (l) of such section 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 .]

[j.] i. Billiard parlors.

[k.] j. 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.

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

§ 6. Subdivision c of section 17-508 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 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.]

§ 7. Subdivision a of section 17-513 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.

§ 8. Effective date. This local law shall become effective one hundred eighty days after its enactment into law.