



## Legislation Text

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Int. No. 1068-A

By Council Members Johnson, Palma, Rodriguez, Gentile, Van Bramer, Garodnick and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the use of smokeless tobacco at sports arenas and recreational areas that issue tickets

Be it enacted by the Council as follows:

Section 1. Section 17-502 of the administrative code of the city of New York is amended by adding a new subdivision ss to read as follows:

ss. "Smokeless tobacco" means any tobacco product that is intended for any oral or nasal use other than smoking. Examples of smokeless tobacco include but are not limited to snuff, chewing tobacco, dipping tobacco, dissolvable tobacco products and snus.

§ 2. Chapter 5 of title 17 of the administrative code of the city of New York is amended by adding a new section 17-503.1 to read as follows:

§ 17-503.1 Prohibition of using smokeless tobacco at sports arenas and recreational areas that issue tickets. Using smokeless tobacco is prohibited at all times at sports arenas and recreational areas if seating or standing room is assigned by issuance of tickets for any event held at such arenas and areas.

§ 3. Subdivision a of section 17-506 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

a. Except as may otherwise be provided by rules promulgated by the commissioner, "Smoking" or "No Smoking" signs[,] or the international symbols indicating the same, "Electronic Cigarette Use Permitted" or "Electronic Cigarette Use Prohibited" signs, [and] "No Tobacco Use Permitted" or "Use of Tobacco Products Prohibited" signs, or any other signs necessary to comply with the provisions of this chapter, as applicable,

shall be prominently and conspicuously posted where smoking, [and] using electronic cigarettes, [are] or using smokeless tobacco 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 promulgated by the commissioner, but in promulgating such rules, 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.

§ 4. Subdivision c of section 17-507 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

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

§ 5. Section 17-507 of the administrative code of the city of New York is amended by adding a new subdivision d-1 to read as follows:

d-1. Where an owner or building manager of a sports arena or recreational area where using smokeless tobacco is prohibited pursuant to section 17-503.1 is not the operator of such arena or area but has an agent on duty in such arena or area, the owner or building manager shall designate such agent to inform individuals using smokeless tobacco (i) where such agent is on duty and (ii) during the times when such agent is on duty, that such individuals are in violation of this local law.

§ 6. Subdivision a of section 17-508 of the administrative code of the city of New York, as amended by

local law number 152 for the year 2013, is amended to read as follows:

a. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of premises in which smoking, [and] using electronic cigarettes, [are] or using smokeless tobacco is prohibited or restricted pursuant to this chapter, or the designated agent thereof, to (i) provide a room designated for smoking, or using electronic cigarettes, including, but not limited to, a separate smoking room, room for using electronic cigarettes or an enclosed room, which fails to comply with the provisions of this chapter; provided, however, that the obligations of an owner or building manager of a building (where such owner or building manager of a building in which a public place is located is not the operator or employer of such public place) with respect to such a room shall be limited to work authorized by any permits necessary to perform construction obtained by the owner or his or her agent; (ii) fail to post the signs required by section 17-506; (iii) fail to remove ashtrays as required by subdivision d of section 17-506; or (iv) fail to make a good faith effort to comply with subdivisions c, d [and], d-1, and e of section 17-507. In actions brought for violations of this subdivision, the following shall be affirmative defenses: (i) that during the relevant time period actual control of the premises was not exercised by the respondent or a person under the control of the respondent, but rather by a lessee, sublessee or any other person; provided, however, that after receiving the notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that he or she has not exercised actual control during the relevant time period; (ii) that a person smoking, [or] using an electronic cigarette, or using smokeless tobacco in any area where [smoking, and using electronic cigarettes, are] such activity is prohibited pursuant to section 17-503 or section 17-503.1 was informed by a person who owns, manages, operates or otherwise controls the use of such premises, or the designated agent thereof, that such person smoking, [or] using an electronic cigarette, or using smokeless tobacco is in violation of this local law and that such person who owns, manages, operates or otherwise controls the use of such premises has complied with all applicable provisions of this chapter during the relevant time period; provided, however, that after receiving notice of violation, the respondent submits to

the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that respondent informed the person smoking, [or] using an electronic cigarette, or using smokeless tobacco in any area where [smoking, and using electronic cigarettes, are] such activity is prohibited pursuant to section 17-503 or section 17-503.1 that such person was in violation of this local law and that respondent has complied with all applicable provisions of this chapter during the relevant time period; or (iii) that a person smoking, or using an electronic cigarette, in any restricted common indoor area where smoking, and using electronic cigarettes, are prohibited pursuant to section 17-503 was not informed by the owner or building manager of the premises (where such owner or building manager of a building in which a public place or a place of employment is located is not the operator or employer of such public place or place of employment) or by the operator of a multiple dwelling containing ten or more dwelling units that such person smoking, or using an electronic cigarette, is in violation of this local law because such owner, building manager or operator did not have a designated agent on duty when such person was smoking, or using an electronic cigarette, and that such owner or building manager has, where applicable, complied with the mailing of a notice required pursuant to subdivision e of section 17-507; provided, however, that after receiving notice of violation, the respondent submits to the department within five business days, by certified mail, a sworn affidavit and other such proof as may be necessary, indicating that a person smoking, or using an electronic cigarette, in any restricted common indoor area where smoking, and using electronic cigarettes, are prohibited pursuant to section 17-503 was not informed by the respondent that such person smoking, or using an electronic cigarette, is in violation of this local law because the respondent did not have a designated agent on duty when such person was smoking, or using an electronic cigarette, and that the respondent has, where applicable, mailed the notice required pursuant to subdivision e of section 17-507.

§ 7. Subdivision d of section 17-508 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

d. It shall be unlawful for any person to smoke, [or] use an electronic cigarette, or use smokeless

tobacco in any area where [smoking, and using electronic cigarettes, are] such activity is prohibited under section 17-503 [and], section 17-503.1 or section 17-504.

§ 8. Section 17-510 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

§ 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, [or] using electronic cigarettes, or using smokeless tobacco.

§ 9. Subdivisions a, b and d of section 17-512 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, are amended to read as follows:

a. Nothing in this chapter shall be construed to permit smoking, [or] using electronic cigarettes, or using smokeless tobacco where [it] such activity is otherwise prohibited by law or regulation.

b. Nothing in this chapter shall be construed to prohibit owners, operators, managers, employers or other persons having control of any establishment subject to this chapter from adopting a smoke-free [and], electronic cigarette-free, or tobacco-free policy which completely prohibits smoking, [and] using electronic cigarettes, or using smokeless tobacco on the premises of such establishment at all times.

d. 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, [and] using electronic cigarettes, or using smokeless tobacco in such establishment to a greater extent than is provided by this chapter, in accordance with applicable law.

§ 10. Section 17-513.2 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

§ 17-513.2 Construction. The provisions of this chapter shall not be interpreted or construed to permit smoking, [or] using electronic cigarettes, or using smokeless tobacco where [it] such activity is prohibited or otherwise restricted by other applicable laws, rules or regulations.

§ 11. This local law takes effect immediately, except that section three of this local law takes effect 120 days after it becomes law. The department of health and mental hygiene shall take such actions as necessary for the timely implementation of this local law, including the promulgation of rules.

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