

**LOCAL LAW 5 OF 1995**

Int. No. 232-A

By the Speaker (Council Member Vallone) and Council Members Williams, Michels, Watkins, Malave-Dilan, Freed, Albanese, Duane, Fisher, Henry, Linares, McCabe, Powell IV, the Public Advocate (Mr. Green), Council Members Rivera, Robles, Warden, White, Cruz and Fusco; also Council Members Clarke, DeMarco, DiBrienza, Eldridge, Fields, Foster, Harrison, Lasher, Leffler, Povman, Robinson, Wooten and Pinkett

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to smoking.

Be it enacted by the Council as follows:

**Section 1. Declaration of legislative findings and intent.**

According to the United States Environmental Protection Agency (the "EPA"), the health risks attributable to exposure to environmental tobacco smoke ("ETS") (also known as second-hand smoke, passive smoke or involuntary smoke) are well established. Further, the EPA has found that ETS is responsible for the lung cancer deaths of approximately 3,000 nonsmokers in the United States each year, and is a deadly carcinogen which belongs in the category of Group A (known human) carcinogens. Studies conducted by the EPA also conclude that exposure to ETS causes other significant health problems in adults, including coughing, phlegm production, chest discomfort and reduced lung function. In addition, studies conducted by other entities have concluded that ETS aggravates the condition of people with heart disease, and some studies have linked involuntary smoking with heart disease.

Moreover, the findings of the EPA indicate that exposure to ETS can pose substantial health risks to children, as it is causally associated with, among other things, increases in the prevalence of childhood respiratory illnesses, increases in the prevalence of fluid in the middle ear of children, and a statistically significant reduction in the lung function of children. The EPA's findings also indicate that ETS results in additional episodes and increased severity of asthma in children who suffer from this disease, and is a risk factor for new cases of asthma in children who have not previously displayed asthmatic symptoms.

The EPA reports that twenty-six percent of the population of the United States, or about 50 million Americans, are smokers. As the Council finds that virtually all Americans, including all citizens of New York City, are likely to be exposed to ETS by virtue of its widespread presence in public places and in the workplace, and that exposure to ETS presents a substantial health risk to nonsmokers, it is the Council's intention to strengthen existing local laws which limit the areas in which smoking is permissible. The Council is therefore placing further restrictions on smoking in public places and in the workplace, including placing restrictions which, in certain cases, limit smoking to separately ventilated rooms. Further, the Council is prohibiting smoking in particular places frequented by children, such as child day care centers, children's institutions and

playgrounds. It is the Council's intention that these additional restrictions will help protect children and nonsmoking adults from the health hazards presented by exposure to ETS.

2. Section 17-501 of the administrative code of the city of New York, as added by local law number 2 for the year 1988, is amended to read as follows:

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

3. Section 17-502 of such code, as added by local law number 2 for the year 1988, is amended to read as follows:

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

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

a. "Auditorium" means the part of a building where an audience sits but does not include any corridors, hallways or lobbies adjacent thereto.

b. "Bar" means an [area] enclosed room or a business establishment open to the public which is devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages.

[Although a bar may be contained within a larger restaurant] For the purposes of this chapter, the term "bar": (i) shall not include [the dining area of such restaurant, even when the dining area is directly adjacent to or surrounds the bar area] 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 patrons 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 which is devoted to the selling and serving of alcoholic beverages for consumption by patrons 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.

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

d. "Child day care center" means (i) any public, private or parochial child care center, school-age child care program, day nursery school, kindergarten, play school, or other similar school or service, (ii) any child care arrangement licensed by the city, (iii) any facility that provides child care services as defined in section four hundred ten-p of the New York state social services law and (iv) any child day care center as defined in section three hundred ninety of the New York state social services law. Such definition applies whether or not care is given for compensation and whether or not the child day care center is located in a private residence.

e. "Children's institution" means (i) any public, private or parochial congregate institution, group residence, group home or other place where, for compensation or otherwise, seven or more children under twenty-one years of age are received for day and night care apart from their parents or guardians, (ii) youth centers or facilities for detention as defined in sections five hundred twenty-seven-A and five hundred two of the New York state executive law, (iii) group homes for children as defined in section three hundred seventy-one of the New York state social services law, (iv) public institutions for children as defined in section three hundred seventy-one of the New York state social services law and (v) residential treatment facilities for children and youth as defined in section 1.03 of the New York state mental hygiene law.

f. ["Common work area" means:

1. Any enclosed area on the premises of a place of employment where two or more employees are assigned to sit or otherwise be present in the performance of their duties, and where such employees share common work spaces, equipment or facilities such that each employee is aware of or readily able to observe the activities of others taking place in that work area.
2. Any enclosed area on the premises of a place of employment which is occupied by a single employee, but which area is frequented by other employees and/or members of the general public during the normal course of business.]

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

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

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

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

[i.] j. "Enclosed [area] room" means [all space] a room which is completely enclosed on all sides by solid floor-to-ceiling walls, windows or solid floor-to-ceiling partitions, [irrespective of the size of such area and of any doorway, stairway or passageway providing a means of] and which complies with all applicable fire code requirements. Any such windows in such room shall remain closed unless open to the exterior and one or more doors, provided however, that such

doors shall remain closed except to the extent necessary to permit ingress and egress to such [area] room.

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

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

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

m. "Place of employment" means any indoor area or portion thereof under control of an employer which employees normally frequent during the course of employment and which is not generally accessible to the public, including, but not limited to, private offices, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias, employee gymnasiums, auditoriums, libraries, storage rooms, file rooms, mailrooms, employee medical facilities, rooms or areas containing photocopying or other office equipment used in common by employees, elevators, stairways and hallways. A private residence is not a "place of employment" within the meaning of this subdivision [unless], except that areas in a private residence where a child day care center or health care facility is operated [therein or unless it is a] during the times when employees are working in such child day care center or health care facility areas and areas in a private residence which constitute common [area] areas of a multiple dwelling [which contains] containing ten or more dwelling units, are "places of employment" within the meaning of this subdivision.

n. "Playground" means an outdoor area open to the public where children play, which contains play equipment such as a sliding board, swing, jungle gym, sandbox, or see-saw, or which is designated as a play area.

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

[o.] p. "Public place" means any area to which the public is 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, [unless] except that areas in a private residence where a child day care center or health care facility is operated [therein or unless it is a] during the times of operation and areas in a private residence which constitute common [area] areas of a multiple dwelling [which contains] 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 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.

[p.] r. "Restaurant" means any coffee shop, cafeteria, luncheonette, sandwich stand, diner, short order cafe, 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 guesthouse, which gives or offers for sale food or beverages to the public, guests, or patrons, whether food [is] or beverages are customarily consumed on or off the premises, but not an establishment whose [primary] sole purpose is to serve food or beverages to employees of a common employer or to students of a common educational institution.

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.

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

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

u. "Retail tobacco store" means a retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than fifty percent of the total annual gross sales.

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

w. "Separate smoking room" means an enclosed room in which smoking is permitted. 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 any seating area) by an exhaust fan rather than being

recirculated inside, and is negatively pressurized to prevent backstreaming 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.

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

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

[v.] z. "Sports arena and recreational area" means any sports pavilion, stadium, racetrack, [gymnasium, health spa,] boxing arena, [swimming pool,] roller or ice skating rink, bowling [alley] 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 [events] 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.

[w.] aa. "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. "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.

4. Section 17-503 of such code, as added by local law number 2 for the year 1988, and as amended by local law number 83 for the year 1992, is 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 [contiguous] separate smoking rooms designated as waiting areas [designated for smoking], so long as the aggregate of all such [areas] rooms do not constitute more than [fifty] 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.

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

3. Public restrooms.

4. Retail stores (other than retail tobacco stores) [and certain restaurants pursuant to] ;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[] which are designed and arranged to accommodate more than one hundred fifty persons, or which employ more than fifteen persons at the same location. Smoking may be permitted in retail stores which are designed and arranged to accommodate one hundred fifty or fewer persons, and which employ fifteen or fewer persons, provided: (A) That smoking is not otherwise prohibited by any other law or regulation; and (B) That the proprietor of such establishment posts signs at the entrance and at appropriate locations within the premises, indicating that smoking is permitted therein. A proprietor of a retail store not otherwise subject to the smoking restrictions of this section may voluntarily choose to prohibit smoking in his or her establishment in accordance with the provisions pertaining to retail stores arranged to accommodate more than one hundred fifty persons, or which employ more than fifteen persons, by filing a notice with the department in a manner and form prescribed by rule or regulation of the department. Upon proper filing of such notice, all provisions of this chapter shall take effect with respect to said establishment.

Nothing in this paragraph shall be construed to prohibit such proprietors who do not undertake such filing, from restricting smoking in their retail stores provided, however, that the proprietor shall post a sign at the entrance indicating that smoking is permitted therein, and further, that the proprietor shall not state or otherwise represent to the public that any of the provisions of this chapter are in effect with respect to said establishment].

5. Restaurants with an indoor seating capacity of more than [fifty] 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 [part] area of the restaurant which constitutes a restaurant bar as defined in subdivision [b] 5 of section 17-502[, and in a contiguous area designated for smoking, so long as such area contains no more than fifty percent of the indoor seating capacity of the restaurant] 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.

[A proprietor or other designated employee may, in his or her discretion, exceed the fifty percent limit for smoking, by no more than ten percent of the indoor seating capacity, in a situation where a party of six or more persons requests to be seated, at a time when the only available seats are located, in whole or in part, in the nonsmoking section. A proprietor shall only accommodate such party when the available seating is in an area contiguous to the designated smoking area of the restaurant. Every restaurant with a seating capacity of more than fifty patrons permitting smoking therein in accordance with the provisions of this paragraph, shall post signs indicating that nonsmoking sections are available, in addition to any other signs as required by subdivision a of section 17-506. When an employee responsible for seating arrangements is on duty each patron, prior to being seated, shall be asked his or her preference regarding seat location in a smoking or nonsmoking section. Smoking may be permitted in restaurants with an indoor seating capacity of fifty patrons or fewer, provided: (A) That smoking is not otherwise prohibited by any other law or regulation; (B) That the proprietor of such establishment, in accordance with rules and regulations promulgated by the commissioner, certifies the indoor seating capacity of the restaurant; and (C) That the proprietor of such establishment posts signs at the entrance and at appropriate locations within the premises, indicating that smoking is permitted therein. An owner of a restaurant with an indoor seating capacity of fifty patrons or fewer, who is not otherwise subject to the smoking restrictions of this section, may voluntarily choose to prohibit smoking in his or her establishment in accordance with the provisions pertaining to restaurants with an indoor seating capacity of more than fifty patrons, by filing a notice with the department in a manner and form prescribed by rule or regulation of the department. Upon proper filing of such notice, all provisions of this law shall take effect with respect to said establishment. Nothing in this paragraph shall be construed to prohibit proprietors who do not undertake such filing, from restricting smoking in their restaurants; provided, however, that the proprietor shall post a sign at the entrance indicating that smoking is permitted therein, and further, that the proprietor shall not state or otherwise represent to the public that any of the provisions of this chapter are in effect with respect to said establishment.]

6. Business establishments [employing more than fifteen employees] (other than bars, billiard parlors, restaurants, catering halls, retail stores, tobacco businesses and retail tobacco stores, and

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

7. Libraries, museums and galleries.

8. Motion picture theaters, concert halls, [auditoriums and], 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 [drama], musical recital, dance, lecture or other similar [performance] performances (other than bars), except [when] that smoking [is] may be part of a theatrical production; provided, however, that smoking may be permitted in [a contiguous area designated for] separate smoking rooms which constitute lounges, so long as [such area contains no more than fifty] the aggregate of all such lounges does not exceed twenty-five percent of [any area commonly called a lobby] 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.

9. Auditoriums.

10. Convention halls; provided, that smoking may be permitted: (A) In [a contiguous area designated for smoking] separate smoking rooms which constitute lounges, so long as the aggregate of all such [area constitutes no more than] lounges does not exceed twenty-five percent of the [seating capacity or] total square footage of [floor] lounge space open to the public[, whichever is greater,] for a particular event taking place within the convention hall[; (B) In a contiguous area designated for smoking, so long as such smoking area constitutes no more than fifty percent of any area commonly called a lobby; and (C) At conventions of private groups where the persons participating in the convention are individually identified by the sponsor or organizer of the convention, or determined by law], 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.

[10.] 11. Sports arenas and recreational areas; provided[:

(A) That] that smoking may be permitted in [a contiguous area designated for smoking] separate smoking rooms which constitute lounges, so long as the aggregate of all such [area constitutes no more than fifty] lounges does not exceed twenty-five percent of [any area commonly called a lobby] 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; [and

(B) That] provided, further,that with respect to bowling [alleys] establishments, smoking is [prohibited in the bowler settee area (the area occupied by bowlers while keeping score and actually bowling), but may be] also permitted in a [contiguous] 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 [area] and the perimeter of such smoking area is located at least six feet from the perimeter of the bowler settee area.

12. Gymnasiums, health clubs and enclosed areas containing a swimming pool.

[11.] 13. Places of meeting or public assembly during such time as a meeting open to the public is being conducted for educational, religious, recreational, or political purposes, but not including

meetings conducted in private residences, unless such meetings are conducted in an area in a private residence where a child day care center or health care facility is operated [therein] during the times of operation or [unless such meeting is conducted] in an area which constitutes a common area of a multiple dwelling [which contains] containing ten or more dwelling units.

[12]. 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 [section] paragraph shall not prohibit smoking in [areas designated for smoking in restaurants and dining areas and in offices which are not ordinarily used for care and treatment of patients as long as] separate smoking rooms for employees permitted pursuant to section 17-504 which (A) receive prior written approval [is received] from the fire commissioner pursuant to section 27-4276 of the code and (B) [smoking in such restaurants and dining areas is not otherwise prohibited pursuant to paragraph five of this subdivision, and smoking in offices which] are not ordinarily used for care and treatment of patients [is not otherwise prohibited pursuant to section 17-504]. In addition, this section shall not prohibit smoking in [patient] enclosed rooms designated as smoking lounges [designated for smoking,] for patients or for patients and visitors provided that [(A)] prior written approval is received from the fire commissioner pursuant to section 27-4276 of the code [and (B) such lounges shall not constitute more than fifty percent of the total lounge space available].

[13. All pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level. This paragraph shall apply to all enclosed areas of such schools notwithstanding any inconsistent provisions of section 17-504 or 17-505 of this chapter which permit smoking in certain work areas of places of employment.

14.] 15. All schools other than [those covered in paragraph thirteen of this subdivision] 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) [Areas designated for] Separate smoking [in employee lunchrooms, cafeterias and lounges,] rooms for employees pursuant to [paragraph four of] the requirements set forth in subdivision [b] a of section 17-504, provided that prior written approval is received from the fire commissioner; and

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

16. Children's institutions.

17. Zoos.

[15.] 18. Elevators.

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

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.

2. Outdoor seating or viewing areas of open-air motion picture presentations or open-air concert, stage, dance, lecture or recital presentations or performances or other similar open-air presentations or performances, when seating or standing room is assigned by issuance of tickets.

3. Outdoor seating or viewing areas of sports arenas and recreational areas, when seating or standing room is assigned by issuance of tickets.

4. Outdoor areas of all children's institutions.

5. Playgrounds.

d. Smoking is prohibited in all indoor and outdoor areas of the following public places at all times:

1. All public and private pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level, and any vehicles owned, operated or leased by such schools which are used to transport such students or the personnel of such schools.

2. All child day care centers; provided, however, that with respect to child day care centers operated in private residences, this paragraph shall apply only to those areas of such private residences where the child day care centers are operated during the times of operation or during the time employees are working in such child day care centers.

5. Section 17-504 of such code, as added by local law number 2 for the year 1988, is amended to read as follows:

**17-504 Regulation of smoking in places of employment.** a. [It shall be the responsibility of employers who employ more than fifteen employees to provide, to the extent reasonably

practicable, smoke-free work areas for nonsmoking employees who sit or otherwise occupy common work areas] Smoking is prohibited in those indoor areas of places of employment to which the general public does not generally have access[. Nothing in]; provided, however, that this section shall [be construed to apply to business establishments and non-profit entities employing fifteen or fewer employees] 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 section shall not prohibit smoking in any area where smoking is not regulated pursuant to section 17-505.

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

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.

[b.] e. [Within ninety days after the effective date of this chapter] By November 1, 1995, every employer [employing more than fifteen employees and having employees occupying common work areas] subject to the provisions of this chapter shall adopt, implement, make known [and], maintain and update to reflect any changes, a written smoking policy which shall contain at minimum, the following requirements:

[1. That an employee may designate his or her work area as a nonsmoking area, which area must be, to the extent reasonably practicable in the employer's discretion, no less than eight feet from

an area where smoking is permitted, and shall post such designation with an appropriate sign or signs, to be provided by the employer. If, due to the proximity of persons smoking, size of the work area, poor ventilation or other factors, such designation does not sufficiently reduce the effects of smoke, the employer shall make additional reasonable accommodations by rearranging employee work areas, expanding the size of the smoke-free work area or implementing other measures reasonably designed to minimize or eliminate the effects of smoke on nonsmoking employees.

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

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

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

[5.] 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 [given due consideration] accorded priority.

[6. Protection] 3. 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 [the written smoking policy pursuant to this] such

subdivision[. Such adverse personnel action includes, but is not limited to, dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, compensation or other benefit, failure to hire, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the effected employee. The employer shall establish]; 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 [section] chapter with respect to the place of employment.

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

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

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

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

[g.] i. This section shall not be construed to permit smoking in any [enclosed] 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 [nevertheless] 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.

[h.] j. Nothing in this section shall be construed to impair, diminish, or otherwise affect any collectively bargained procedure or remedy available to an employee, existing as of [the date this local law is enacted] February 1, 1995, with respect to disputes arising under the employer's smoking policy or with respect to the establishment of a procedure for redress of any adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this [section] chapter with respect to the place of employment. Upon expiration of any such collectively bargained procedure or remedy, the provisions of this section shall take effect.

6. Section 17-505 of such code, as added by local law number 2 for the year 1988, is amended to read as follows:

**17-505 Areas where smoking is not regulated by this chapter.** 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:

a. Bars, including any bar [within a restaurant, so long as the serving of food both adjacent to, and surrounding the bar area, is only incidental to the consumption of alcoholic beverages] located in a hotel or motel, but not including a restaurant bar located in a hotel or motel.

b. Private residences, except [when] any area of a private residence where a child day care center or health care facility is operated [therein] (i) during the times of operation or (ii) during the times when employees are working in such child day care center or health care facility areas; provided, however, that a common area of a multiple dwelling [which contains] containing ten or more dwelling units shall be subject to smoking restrictions [when it is a place of employment or a public place].

c. Hotel and motel rooms occupied by, or available for, occupancy by guests.

d. [Retail stores which are designed and arranged to accommodate one hundred fifty or fewer persons and which employ fifteen or fewer persons, except as provided in paragraph four of subdivision a of section 17-503] Hotel and motel lobbies.

e. Tobacco businesses.

f. Private automobiles.

g. [Private, enclosed offices] Retail tobacco stores.

h. Enclosed areas or rooms in restaurants, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities during the time these enclosed areas or rooms are being used exclusively for private functions [,such that the seating arrangements are under the control of the sponsor or organizer of the function and not the person who owns, operates or manages such facility].

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

j. Billiard parlors.

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.

l. Limousines under private hire by any person.

7. Section 17-506 of such code, as added by local law number 2 for the year 1988, is amended to read as follows:

**17-506 Posting of signs; prohibition of ashtrays.** a. Except as may otherwise be provided by rules [and regulations] promulgated by the commissioner, "Smoking" or "No Smoking" signs, or the international symbols indicating the same, and any other signs necessary to comply with the provisions of this chapter shall be prominently and conspicuously posted [at all major entrances to, and appropriate locations within, each enclosed area] where smoking is either prohibited, permitted or otherwise regulated by this chapter, by the owner, operator, manager or other person having control of such area. The size, style and location of such signs shall be determined in accordance with rules [and regulations] promulgated by the commissioner, but in promulgating such rules [and regulations], the commissioner shall take into consideration the concerns of the various types of establishments regulated herein with respect to the style and design of such signs.

b. In addition to the posting of signs as provided in subdivision a, every [motion picture theater] owner, manager or operator of a theater 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 smoking is prohibited and permitted within the premises.

c. The owner, operator or manager of a hotel or motel that chooses to develop and implement a smoking policy for rooms rented to guests shall post a notice at the reception area of the establishment as to the availability, upon request, of smoke-free rooms.

d. Ashtrays are prohibited in all smoke-free areas covered by this chapter, except ashtrays offered for sale.

8. Section 17-507 as added by local law number 2 for the year 1988, is amended by relettering subdivision d as subdivision f, and by amending subdivision c and by adding new subdivisions d and e to read as follows:

c. [The owner, manager, operator or other person having control of] 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 in restricted areas that they are in violation of [the] 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 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.

d. Where an owner or building manager of a public place where smoking is prohibited or restricted pursuant to section 17-503 is not the operator of such public place but has an agent on duty in such place, the owner or building manager shall designate such agent to inform individuals smoking in restricted common indoor areas (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.

e. Where an owner or building manager of a building in which a place of employment is located where smoking is prohibited or restricted pursuant to section 17-504 is not the operator or employer of such place of employment but has an agent on duty in such place, the owner or building manager shall designate such agent to inform individuals smoking in restricted common indoor areas (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. Such owner or building manager shall also mail a notice to tenants operating such place of employment, informing such tenants of their obligations under this chapter with respect to such restricted common indoor areas.

A copy of the mailed notice shall be provided to the department upon request.

9. Subdivisions a, b, c and e of section 17-508 of such code, as added by local law number 2 for the year 1988, are 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 is prohibited or restricted pursuant to section 17-503, or the designated agent thereof, to [fail to comply with any limitation on the size of an area] (i) provide a room designated for smoking [pursuant to subdivision a of section 17-503; to], including, but

not limited, to a separate smoking 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 [and paragraphs four and five of subdivision a of section 17-503]; (iii) fail to remove ashtrays as required by subdivision d of section 17-506; or [to] (iv) fail to make a good faith effort to comply with [subdivision] subdivisions c,d and e of section 17-507. In actions brought for violations of this subdivision, [it shall be an affirmative defense] 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.

b. It shall be unlawful for an employer whose place of employment is subject to regulation under section 17-504 to fail to comply with the provisions of that section, including, but not limited to, those provisions requiring the adoption, implementation, dissemination and maintenance of a

written smoking policy which conforms to the requirements of subdivision [b] e of section 17-504, or to fail to make a good faith effort to comply with subdivision c of section 17-507. In actions brought for violations of this subdivision, it shall be an affirmative defense that the employer (i) has made good faith efforts to insure that employees comply with the provisions of such written smoking policy and (ii) has complied with all applicable provisions of this chapter.

c. It shall be unlawful for any person who owns, manages or operates a restaurant in which smoking is [restricted to designated areas] 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 [set forth therein] 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.

e. Every person who violates subdivisions a, b or c of this section shall, for a first violation thereof, be liable for a civil penalty of not [more] less than one hundred dollars nor more than two hundred dollars; for a second violation, both of which were committed within a period of twelve months, be liable for a civil penalty of not [more] less than two hundred dollars nor more than four hundred dollars and for a third or subsequent violation, all of which were committed within a period of twelve months, be liable for a civil penalty of not [more] less than five hundred dollars nor more than one thousand dollars. Every person who violates subdivision d of this section shall be liable for a civil penalty of [up to fifty] one hundred dollars for each violation.

10. Subdivision a of section 17-509 of such code, as added by local law number 2 for the year 1988, is 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 solid floor-to-ceiling partition separating a restaurant bar from the indoor dining area of a restaurant.

11. Section 17-512 of such code, as added by local law number 2 for the year 1988, is amended by relettering subdivisions b and c as subdivisions d and e, respectively, and by adding new subdivisions b and c to read as follows:

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 policy which completely prohibits smoking on the premises of such establishment at all times.

c. 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 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.

12. Section 17-513 of such code, as added by local law number 2 for the year 1988, is amended to read as follows:

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

b. The commissioner of the department of buildings in conjunction with the commissioner of the department of environmental protection, the commissioner of the fire department and the commissioner shall study methods of and, if deemed appropriate, develop recommendations with respect to preventing, to the greatest extent practicable, second-hand smoke from drifting or recirculating from restaurant bars to indoor smoke-free areas of restaurants. The study and any recommendations of such commissioners shall include, but not be limited to, the advisability of requiring restaurant bars to construct or implement any of the following:

1. Separate smoking rooms.

2. Enclosed rooms.

3. Ventilation systems.

4. Separation of restaurant bar from indoor smoke-free areas by means of a partition.

5. Spatial separation of restaurant bar from indoor smoke-free areas by a specific distance.

In determining the advisability of requiring that certain protections from second-hand smoke be provided in restaurant bars, the commissioners shall consider any applicable standards or recommendations of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, any applicable standards or recommendations of the United States environmental protection agency and the occupational safety and health administration of the United States

department of labor with respect to indoor air quality relating to second-hand smoke, the impact on public health of exposure to second-hand smoke and any other factors which such commissioners deem appropriate. Such commissioners shall report to the council by January 1, 1996 regarding the results of the study required pursuant to this subdivision and any recommendations.

13. Chapter 5 of title 17 of the code is amended by adding a new section 17-514, to follow section 17-513, to read as follows:

**17-514 Effective dates for separate smoking rooms. a.**

Any person explicitly permitted to provide a separate smoking room pursuant to paragraphs 1, 8, 10, 11, 14 and 15 of subdivision a of section 17-503 and pursuant to section 17-504 who in good faith considers the construction of such a room, shall have one hundred fifty days from the effective date of this local law to apply for any permits necessary to perform construction. During the period of time from the effective date of the local law which added this section until the expiration of such one hundred fifty-day period, no provision of this local law, except for the provisions of this section, shall apply to such person, but all provisions of local law number 2 for the year 1988, as amended by local law number 83 for the year 1992, shall continue to apply to such person.

b. If a person permitted to provide a separate smoking room pursuant to this chapter applies for any permits necessary to perform construction prior to the expiration of the one hundred fifty-day period set forth in subdivision a of this section, no provision of this local law, except for the provisions of this section, shall apply to any such person, but all provisions of local law number 2 for the year 1988, as amended by local law number 83 for the year 1992, shall continue to apply to such person until the earlier of (i) the completion of any physical alteration of premises necessary to provide a separate smoking room or (ii) one hundred eighty days after the issuance of the final permits necessary to perform construction.

c. If a person permitted to provide a separate smoking room pursuant to this chapter fails to apply for any permits necessary to perform construction prior to the expiration of the one hundred fifty-day period set forth in subdivision a of this section, all provisions of this local law shall apply to such person upon expiration of such one hundred fifty-day period.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, in no event shall any provision of this local law take effect later than April 1, 1996.

14. This local law shall take effect ninety days after its enactment. Actions necessary to prepare for the

implementation of this local law may be taken prior to its effective date.

Read and referred to Health.

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