

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2017**

No. 147

Introduced by Council Members Torres, Salamanca, Gentile, Kallos, Barron and Maisel.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to disclosure of smoking policies for class A multiple dwellings

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 six new subdivisions tt, uu, vv, ww, xx, and yy to read as follows:

tt. "Class A multiple dwelling" means a class A multiple dwelling as such term is defined in paragraph eight of subdivision a of section 27-2004.

uu. "Smoking policy" means a written declaration that states in a clear and conspicuous fashion where smoking is permitted or prohibited on the premises of a class A multiple dwelling.

vv. "Owner of a class A multiple dwelling" means the following:

(i) In the case of a building with one or more rental dwelling units, other than rental dwelling units in a condominium or a cooperative apartment corporation, the owner of record.

(ii) In the case of a condominium, including a rental dwelling unit in a condominium, the board of managers.

(iii) In the case of a cooperative apartment corporation, including a rental dwelling unit in a cooperative apartment corporation, the board of directors.

ww. "Condominium unit owner" means the person or persons owning a dwelling unit in a condominium building.

xx. "Tenant" means a tenant, tenant-shareholder of a cooperative apartment corporation, condominium unit owner, subtenant, lessee, sublessee or other person entitled to the possession or to the use or occupancy of a dwelling unit, when the term "tenant" is used in reference to a dwelling unit in a class A multiple dwelling.

yy. "Tenant-shareholder" means the person who owns stock of a cooperative apartment corporation.

§ 2. Title 17 of the administrative code of the city of New York is amended by adding a new section 17-506.1 to read as follows:

§ 17-506.1 *Obligation of owners of class A multiple dwellings to adopt and disclose a smoking policy.* a. *Adoption of smoking policy.* 1. *The owner of a class A multiple dwelling shall adopt a smoking policy.*

2. *The smoking policy shall address all indoor locations of the class A multiple dwelling, including common areas and dwelling units, and all outdoor areas of the premises, including common courtyards, rooftops, balconies, and patios, and any outdoor areas connected to dwelling units.*

3. *The smoking policy shall apply to tenants, including invitees of tenants, and any other person on the premises.*

4. *The smoking policy or any material changes thereto shall not be binding on a tenant renting or leasing a dwelling unit during the term of the lease, sublease, or other rental agreement in effect*

at the time of the adoption of such smoking policy or of any material changes thereto, unless otherwise provided in such lease, sublease, or other rental agreement.

5. The smoking policy or any material changes thereto shall not be binding on any tenant in occupancy of a rent controlled or rent stabilized dwelling unit prior to the adoption of the initial smoking policy required by this section or on any family member who succeeds to the rights of such tenant, as required by subdivision 4 of section 14 of the public housing law.

b. Disclosure of smoking policy. 1. Upon adoption of a smoking policy, the owner of a class A multiple dwelling shall provide a copy of the building's smoking policy to all tenants or post, in a prominent location within such dwelling, a copy of the building's smoking policy.

2. Except as provided in paragraph 3 of this subdivision, the owner of a class A multiple dwelling shall incorporate the building's smoking policy into any agreement to rent or lease a dwelling unit in such building.

3. In a condominium or cooperative apartment corporation, the condominium unit owner or tenant-shareholder of a cooperative apartment corporation shall incorporate the building's smoking policy into any agreement to rent or purchase the dwelling unit or shares in the cooperative apartment corporation.

4. In a condominium, the board of managers shall incorporate the building's smoking policy into the condominium bylaws or rules.

5. In a cooperative apartment corporation, the board of directors shall incorporate the building's smoking policy into the bylaws or rules of the cooperative apartment corporation.

6. A tenant who is renting or leasing a dwelling unit shall incorporate the building's smoking policy into any agreement to rent or lease the dwelling unit to a subtenant or sublessee.

7. Annual disclosure of the smoking policy. On an annual basis, the owner of a class A multiple dwelling shall provide a copy of the building's smoking policy to all tenants or post, in a prominent location within such dwelling, a copy of the building's smoking policy.

c. Notification of a material change to smoking policy. The owner of a class A multiple dwelling shall provide notification in writing to all tenants of any material change to the smoking policy or post, in a prominent location within such dwelling, any material change to the smoking policy.

d. Document retention. The owner of a class A multiple dwelling shall make available for inspection by the department copies of the following:

1. the disclosure required by paragraph 1 of subdivision b of this section, or the annual disclosure required by paragraph 7 of subdivision b of this section, for the current year; and

2. each notification of a material change made within the past year pursuant to subdivision c of this section.

§ 3. Section 17-508 of the administrative code of the city of New York is amended by adding new subdivisions d-1 and d-2 to read as follows:

d-1. It shall be unlawful for any owner of a class A multiple dwelling to fail to:

1. adopt a smoking policy as required by subdivision a of section 17-506.1;

2. disclose such policy as required by subdivision b of such section;

3. provide notification of a material change to such policy as required by subdivision c of such section; or

4. make available copies of such policy as required by subdivision d of such section.

d-2. It shall be unlawful for any tenant-shareholder, condominium unit owner, or tenant who rents or leases a dwelling unit to another person to fail to disclose a smoking policy as required by paragraph 3 or 6 of subdivision b of section 17-506.1.

§ 4. Subdivisions e, f, and i of section 17-508 of the administrative code of the city of New York, subdivisions e and f as amended by local law number 152 for the year 2013, and subdivision i as amended by local law number 11 for the year 2011, are amended to read as follows:

e. Every person who violates subdivisions a or b of this section shall, for a first violation thereof, be liable for a civil penalty of not less than two hundred dollars nor more than 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 five hundred dollars nor more than 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 one thousand dollars nor more than 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, except that every person who violates subdivision d of this section by smoking, or using an electronic cigarette, in a pedestrian plaza as prohibited by paragraph seven of subdivision c of section 17-503 or in a park or other property under the jurisdiction of the department of parks and recreation as prohibited by paragraph three of subdivision d of section 17-503 shall be liable for a civil penalty of fifty dollars for each violation. *Every owner of a class A multiple dwelling who violates subdivision d-1 of this section, and every tenant-shareholder, condominium unit owner and tenant who violates subdivision d-2 of this section, shall be liable for a civil penalty of one hundred dollars for each violation, provided that a violation of paragraph two, three or four of subdivision d-1 shall be considered a single violation*

regardless of whether such owner failed to disclose a smoking policy, to provide notification of adoption of such policy or a material change to such policy, or to make available copies of such policy to more than one person.

f. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision e of this section shall be commenced by the service of a notice of violation which shall be returnable to the [administrative tribunal established by the board of health] *office of administrative trials and hearings, acting pursuant to section 558 and subdivision 2 of section 1048 of the charter*, except that a proceeding to recover a civil penalty authorized pursuant to subdivision e for violation of subdivision d by smoking, or using an electronic cigarette, in a pedestrian plaza or in a park or other property under the jurisdiction of the department of parks and recreation, as prohibited by paragraph seven of subdivision c and by paragraph three of subdivision d of section 17-503 respectively, shall be commenced by the service of a notice of violation which shall be returnable to the environmental control board. The [board of health's administrative tribunal and the environmental control board] office of administrative trials and hearings, acting pursuant to section 558 and subdivision 2 of section 1048 of the charter, or acting pursuant to section 1049-a of the charter, shall have the power to impose the civil penalties prescribed by subdivision e of this section.

i. In any proceeding before the [administrative tribunal established by the board of health or the environmental control board,] *office of administrative trials and hearings, acting pursuant to subdivision g of this section*, if [the tribunal] *such office* finds that the department or other agency issuing the notice of violation has failed to prove the violation charged, it shall notify the

department or other agency issuing the notice of violation, and the order requiring the respondent to correct the condition constituting the violation shall be deemed to be revoked.

§ 5. Section 17-513.2 of the administrative code of the city of New York, as amended by local law number 42 for the year 2016, is amended to read as follows:

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

b. Class A multiple dwelling smoking policy requirement. The civil penalty provided in subdivision e of section 17-508 shall be the sole remedy for violation of subdivision d-1 or d-2 of such section.

§ 6. This local law takes effect 365 days after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on August 9, 2017 and approved by the Mayor on August 28, 2017.

ALISA FUENTES, Acting City Clerk, Acting Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 147 of 2017, Council Int. No. 1585-A of 2017) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.