

By Council Member Torres

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 new subdivisions tt, uu and vv 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, with respect to a class A multiple dwelling, the “owner” as such term is defined in the housing maintenance code.

§ 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 for such multiple dwelling.

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 courtyards, rooftops, balconies and patios.

3. The smoking policy shall apply to lawful occupants of such building, including invitees of such occupants.

4. The smoking policy shall only apply to a lawful occupant of a dwelling unit in such building who commences occupancy of such a unit, or renews an agreement governing occupancy of such a unit, on or after the date that such policy is adopted. If such policy undergoes a material change, such change shall only apply to a lawful occupant of a dwelling unit in such building who commences occupancy of such a unit, or renews an agreement governing occupancy of such a unit, on or after the date that such change is adopted, unless otherwise provided in the agreement governing occupancy of such unit.

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 lawful occupants thereof.

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

3. For a dwelling unit owned as a condominium or held by a shareholder of a cooperative apartment corporation under a proprietary lease, the owner of record of such dwelling unit or such shareholder, as appropriate, shall incorporate the building's smoking policy into any subsequent agreement to rent or purchase the dwelling unit or shares in the cooperative apartment corporation relating to the dwelling unit.

4. For dwelling units owned as a condominium, the board of managers of such condominium shall incorporate the building's smoking policy into the condominium bylaws or rules.

5. A lawful occupant of a dwelling unit who is renting or leasing such dwelling unit to another person shall incorporate the building's smoking policy into the agreement governing such rental or lease.

6. 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 lawful occupants thereof.

c. Notification of a material change to smoking policy. The owner of a class A multiple dwelling shall provide notification in writing to all lawful occupants thereof of 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 one of subdivision b of this section, or the annual disclosure required by paragraph three 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 adoption of such policy or 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 the lawful occupant of a dwelling unit who rents or leases such unit to another person to fail to disclose a smoking policy as required by paragraph five of subdivision b of section 17-506.1.

§ 4. Subdivisions e, f, h 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 subdivisions h and 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 person 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, failed to provide notification of adoption of such policy or a material change to such policy, or failed 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], except that (i) 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] office of administrative trials and hearings [and the environmental control board] shall have the power to impose the civil penalties prescribed by subdivision e of this section.

h. If the [administrative tribunal established by the board of health or the environmental control board] office of administrative trials and hearings finds, upon good cause shown, that the respondent cannot correct the violation specified in subdivision g of this section, it may postpone the period for compliance with such order upon such terms and conditions and for such period of time as shall be appropriate under the circumstances.

i. In any proceeding before the [administrative tribunal established by the board of health] office of administrative trials and hearings [or the environmental control board], if the tribunal 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.

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