



CHAPTER

31



the **HABITAT** group

No Smoking Law

No Smoking Law

WHO IS AFFECTED

All owners of residential buildings with one or more apartments.

WHAT LAW REQUIRES

City and state laws prohibit smoking in the common areas of a residential building, including entranceways, lobbies, hallways, mailrooms, meeting rooms, laundry rooms, and elevators. Owners must post no smoking signs in all common areas. Owners must also provide a smoke-free work area for all nonsmoking employees. And owners may not operate cigarette vending machines in their buildings.

While the law does not prohibit smoking in private dwelling units, second-hand smoke coming from a neighbor's apartment may give rise to tenant claims of breach of the implied warranty of habitability, constructive nuisance, negligence, discrimination, infliction of emotional distress, or other injuries.

For example, *see* *Ewen v. MacCherone*, 32 Misc.3d 12 (App. T. 1 Dept. 2011); *Upper East Lease Assocs. LLC v. Cannon*, 30 Misc.3d 1213(A) (Dist. Ct. Nassau Co. 2011), *aff'd* 37 Misc.3d 136(A)(A.T. 9th & 10th 2013); *Reinhard v. Connaught Tower Corp.*, 2011 NY Slip Op 33101(U) (Sup. Ct. NY 2016), *rev'd* 150 AD3d 431 (1st Dept. 2017), *lv app dismissed* 30 NY3d 1040 (2017) (lower court's 100 percent maintenance abatement to co-op shareholder for cigarette smoke infiltration revoked on appeal where court found insufficient proof that cigarette odor rendered plaintiff's

unit uninhabitable, breached proprietary lease, or caused constructive eviction); and *Poyck v. Bryant*, 13 Misc.3d 699 (Civ. Ct. NY 2006).

The U.S. Dept. of Housing and Urban Development (HUD) now prohibits the use of cigarettes, cigars, and pipes in all public housing units and common areas, as well as any outdoor areas up to 25 feet from public housing and administrative office buildings. The HUD ban does not apply to e-cigarettes, snuff, and chewing tobacco. The HUD ban on smoking products must be included in public housing tenants' leases. Tenants will not be evicted for a single instance of smoking but could face eviction after several smoking violations.

Effective June 29, 2009, smoking is not permitted on any floor of a building where asbestos abatement activities are taking place.

Effective Sept. 5, 2012, NYS law prohibits smoking within 100 feet of elementary or secondary schools. The law doesn't apply to residences that may be within that distance from a school.

Local Law 152 of 2013 amended NYC's Smoke-Free Air Act to prohibit use, effective April 29, 2014, of electronic cigarettes in all locations where smoking is currently prohibited. The law has withstood a court challenge [*NYC C.L.A.S.H. v. City of New York*, 48 Misc.3d 661, 14 NYS3d 616 (Sup. Ct. NY 2015)], *aff'd as modified* 147 A.D.3d 97 (1st Dept. 2017)].

Effective Nov. 18, 2018, smoking restrictions imposed by the NYS Public Health Law also are

expanded to include “vaping,” e-cigarettes, and electronic cigarettes.

Local Law 147 of 2017 amended NYC’s Smoke-Free Air Act to require owners of Class A multiple dwellings to adopt and disclose building smoking policies by Aug. 28, 2018. The smoking policy must explain where smoking is permitted in a building, if at all. The policy must address all indoor and outdoor locations of the building, including common areas, dwelling units, common courtyards, rooftops, balconies, patios, and outdoor areas connected to dwelling units.

Intensified concern about the effects of second-hand smoke in residential buildings was reflected in case law after the COVID-19 pandemic surfaced in early 2020. In one case, an owner sued two tenants, asking the court to declare the rights of the parties where one tenant complained that smoke permeated her apartment from her neighbor’s unit below. While acknowledging that the owner had grounds to sue, the court would not issue a preliminary injunction against a rent-stabilized tenant who was permitted to smoke in her unit under the terms of her long-term lease. *See J&P Realty, LLC v. Schevill*, Index No. 651811/2020, LVT#s 30789, 30804 (Sup. Ct. NY Co. 2020).

In another case, the owner failed to prove that a tenant had violated a settlement agreement to ensure that secondhand smoke didn’t emanate from his apartment. *See Agras Realty, LLC v. Susi*, 2020 NY Slip Op 50626(U), LVT #30827 (App. T. 2 Dept. 2020).

HOW TO COMPLY

Prohibiting smoking in the building. To comply with this part of the law, owners must designate someone on the premises to tell smokers when they are violating the law. Generally, this means telling the doorman or super to ask people to stop smoking if they are seen smoking in the building’s common areas.

What signs to post. To comply with this part of the law, owners must post Dept. of Health and Mental Hygiene (DOHMH)-approved no smoking signs in their buildings. DOHMH has approved two types of signs, but an owner can post a sign that uses “other similar wording.” Here are DOHMH-approved choices:

► **The international no smoking symbol:** This is a picture of a lit cigarette enclosed in a circle. A red line intersects the circle diagonally from the top left to the bottom right.

► **A sign with the words NO SMOKING, NO ELECTRONIC CIGARETTE USE or NO SMOKING OR ELECTRONIC CIGARETTE USE:** The words on the sign must be printed in capital letters. The letters must be at least one-half inch in height and color-contrasted so that the information is clearly visible and easy to read.

Where to post signs. The signs must be posted in all common areas of the building. A common area is any place in the building that is accessible to all tenants, such as entranceways, lobbies, hallways, laundry rooms, meeting rooms, and stairways. When a common area is being used for a private function, however, smoking may be permitted.

The signs must be posted at a height and in a location easily seen by a person in the building. The signs must not be obscured in any way. An owner must post an adequate number of signs to make sure that it is clear that a certain area must be smoke-free.

Although sign placement will vary from building to building, here are some general guidelines:

► **Entranceways and lobbies.** Post a no smoking sign in such a way that people will see it immediately upon entering the building. Post the signs at the approximate eye level of the average adult.

► **Hallways.** Post no smoking signs at hallway entrances in places where people will see them before they walk very far with a lit cigarette. For example, post one at the top of stairway landings and on walls directly opposite elevator doors.

► **Laundry rooms.** Post a no smoking sign above the washers and dryers or next to the change machine—or in any other place where tenants are sure to see it.

► **Meeting rooms.** Post a no smoking sign next to the entrance door or light switch or in another conspicuous place.

► **Elevators.** Post a no smoking sign in every elevator and at its entrance. For details, see CHAPTER 11: ELEVATORS and CHAPTER 41 : SIGN POSTING.

No cigarette machines in buildings. City law bars cigarette machines in any public place except

taverns. Under the law, apartment building common areas are considered public places.

It is easy to get hit with a cigarette machine violation, since several city agencies can enforce the law. City inspectors from the departments of Buildings, Consumer Affairs, Environmental Protection, Health and Mental Hygiene, Sanitation, and the Fire Department are all authorized to issue violations.

No ashtrays in smoke-free areas. City law prohibits ashtrays in all smoke-free areas, except ashtrays offered for sale.

Smoke-free workplace. State and city law require building owners to develop and implement a written policy that guarantees a smoke-free workplace for all employees. A building workplace is an area generally restricted for use by the owner and the owner's employees.

This policy must be prominently posted and given to all employees and to new employees when hired. The policy should contain the following information:

1. The areas where smoking is prohibited and permitted;
2. A statement indicating that nonsmoking employees will be provided with smoke-free work areas;
3. A procedure to resolve disputes that might arise under the policy; and
4. A statement prohibiting retaliation against any employee who raises a concern about smoking in the workplace.

Adoption and disclosure of smoking policy. By Aug. 28, 2018, owners of class "A" multiple dwellings must adopt and disclose to tenants a smoking policy. The policy need not prohibit smoking beyond what is prohibited by law.

Adoption of a smoking policy:

1. Requires application to tenants, guests, and other persons at the building;
2. Cannot be applied, when adopted, to tenants during a lease term unless otherwise provided in the lease; and
3. Cannot in any event be applied to rent-controlled or rent-stabilized tenants in occupancy before the smoking policy is adopted or to any of their successor tenants.

Disclosure of a smoking policy:

1. Requires providing copies to all tenants or posting a copy in a prominent location in the building on an annual basis, as well as providing notification or posting of any material change in the smoking policy;
2. Requires incorporating the smoking policy into lease agreements, as well as agreements to rent or purchase cooperative or condominium apartments;
3. Requires tenants to incorporate the smoking policy into any sublease agreements; and
4. Retaining for inspection by DOHMH copies of the building's smoking policy, disclosure notice, and notice of material changes made within the past year.

Smoking in apartments. The law does not prohibit smoking in private dwelling units, except to the extent that an apartment may be used as a child day care center or health care facility. To minimize potential liability for breach of warranty of liability, constructive eviction, discrimination, or other injuries claimed by tenants who complain about smoking by neighboring tenants, owners should document—where possible—their investigation of the complaints. If second-hand smoke is coming from a neighboring apartment, owners should explore whether it is feasible to contain the condition or to otherwise accommodate the complaining tenant.

DEADLINE

Owners have a continuing obligation to post no smoking signs in their buildings' common areas and inside and near elevators. Owners also have a continuing obligation to post the smoke-free workplace policy for building employees.

The ban on electronic cigarette use in all locations where smoking is currently prohibited became effective on April 29, 2014. The requirement for "NO SMOKING" signs to include "NO ELECTRONIC CIGARETTE USE" provisions became effective on Oct. 26, 2014.

PENALTY FOR FAILURE TO COMPLY

An owner who does not comply with the no smoking sign requirements could be fined up to \$200 for the first offense. A second violation within

12 months could cost as much as \$400; a third, or subsequent, violation within that same 12-month period carries a maximum fine of \$1,000.

Individuals caught smoking in a no smoking area will be subject to a maximum fine of \$50 for each violation, no matter how many times they're caught.

An owner who does not comply with the law barring cigarette vending machines could be fined up to \$300 for the first offense. A second violation could cost up to \$500, and a third violation could cost \$1,000.

An owner who fails to comply with the smoking policy provision rules is liable for a \$100 penalty per violation. Failing to have the documentation of the smoking policy during inspections or upon request also will result in fines of \$100 per violation, with \$50 penalties handed down to individuals smoking or using electronic cigarettes as prohibited by law. Steeper penalties of up to \$2,000 per infraction could be handed down for related violations tied to designated smoking room regulations or employer practices.

FORMS REQUIRED

DOHMH provides a sample Policy on Smoking for Residential Building:

- ❖ *Online: www1.nyc.gov/assets/doh/downloads/pdf/smoke/smoking-sample-policy-residential.pdf*

FOR FURTHER INFORMATION

Owners with questions about how to comply with the no smoking law should contact DOHMH's Complaints and Information Unit (see APPENDIX A: TELEPHONE DIRECTORY).

See also DOHMH's website, Smoking and Tobacco Control Laws:

- ❖ *Online: www1.nyc.gov/site/doh/business/food-operators/smoking-legislation.page*

For general information on smoke-free multi-unit housing:

- ❖ *Online: www.smokefreehousingny.org*

For HUD guidance on implementing smoke-free policies, see "Change is in the Air"

- ❖ *Online: www.hud.gov/sites/documents/smokefreeguidesummary.pdf*

TEXT OF LAW

The following laws apply: 24 CFR §§965.651, 965.653, 965.655; NYS Public Health Law, Article 13-E, §§1399-o, 1399-o-1, and 1399-r; NYC Administrative Code, §§17-177, 17-502 through 17-507; Rules of the City of New York (RCNY), Title 24, Dept. of Health, §§10-11 through 10-13; Rules of the City of New York (RCNY), Title 24, Health Code, Title IV, §181.17.

24 CFR §965.651: Applicability

This subpart applies to public housing units, except for dwelling units in a mixed-finance project. Public housing is defined as low-income housing, and all necessary appurtenances (e.g., community facilities, public housing offices, day care centers, and laundry rooms) thereto, assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under §8 of the 1937 Act.

24 CFR §965.653: Smoke-free public housing

- (a) In general. PHAs must design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as in outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”) in which public housing is located.
- (b) Designated smoking areas. PHAs may limit smoking to designated smoking areas on the grounds of the public housing or administrative office buildings in order to accommodate residents who smoke. These areas must be outside of any restricted areas, as defined in paragraph (a) of this section, and may include partially enclosed structures. Alternatively, PHAs may choose to create additional smoke-free areas outside the restricted areas or to make their entire grounds smoke-free.
- (c) Prohibited tobacco products. A PHA’s smoke-free policy must, at a minimum, ban the use of all prohibited tobacco products. Prohibited tobacco products are defined as:
 - (1) Items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes.
 - (2) To the extent not covered by paragraph (c)(1) of this section, waterpipes (hookahs).

24 CFR §965.655: Implementation

- (a) Amendments. PHAs are required to implement the requirements of this subpart by amending each of the following:
 - (1) All applicable PHA plans, according to the provisions in 24 CFR part 903.
 - (2) Tenant leases, according to the provisions of 24 CFR 966.4.
- (b) Deadline. All PHAs must be in full compliance, with effective policy amendments, by July 30, 2018.

NYS Public Health Law §1399-o: Smoking and vaping restrictions [Effective Nov. 18, 2018]

1. Smoking and vaping shall not be permitted and no person shall smoke or vape in the following indoor areas:
 - a. places of employment;
 - b. bars;
 - c. food service establishments, except as provided in subdivision six of section thirteen hundred ninety-nine-q of this article;
 - d. enclosed indoor areas open to the public containing a swimming pool;
 - e. public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines;
 - f. ticketing, boarding and waiting areas in public transportation terminals;
 - g. youth centers and facilities for detention as defined in sections five hundred twenty-seven-a and five hundred three of the executive law;
 - h. any facility that provides child care services as defined in section four hundred ten-p of the social services law, provided, however, that rooms in such a facility that is a private home shall be regulated by this paragraph as follows:
 - (i) when such private home is not required to be licensed or registered for such services by the office of children and family services, rooms in such home are excluded from the prohibition of this paragraph during periods when children

- receiving such services are not present; and
- (ii) when such private home is required to be licensed or registered for such services by the office of children and family services, rooms in such home are included within the prohibition of this paragraph, regardless of whether or not children receiving such services are present.
- i. child day care centers as defined in section three hundred ninety of the social services law and child day care centers licensed by the city of New York;
 - j. group homes for children as defined in section three hundred seventy-one of the social services law;
 - k. public institutions for children as defined in section three hundred seventy-one of the social services law;
 - l. residential treatment facilities for children and youth as defined in §1.03 of the mental hygiene law;
 - m. all public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities and other educational and vocational institutions, except that these restrictions shall not apply in any off-campus residential unit occupied by a person who is not enrolled as an undergraduate student in such college, university or other educational or vocational institution;
 - n. general hospitals and residential health care facilities as defined in article twenty-eight of this chapter, and other health care facilities licensed by the state in which persons reside; provided, however, that the provisions of this subdivision shall not prohibit smoking and vaping by patients in separate enclosed rooms of residential health care facilities, adult care facilities established or certified under title two of article seven of the social services law, community mental health residences established under §41.44 of the mental hygiene law, or facilities where day treatment programs are provided, which are designated as smoking and vaping rooms for patients of such facilities or programs;
 - o. commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;
 - p. indoor arenas;
 - q. zoos; and
 - r. bingo facilities.
2. Smoking and vaping shall not be permitted and no person shall smoke or vape in the following outdoor areas:
 - a. ticketing, boarding or platform areas of railroad stations operated by the metropolitan transportation authority or its subsidiaries.
 - b. on the grounds of general hospitals and residential health care facilities as defined in article twenty-eight of this chapter, within fifteen feet of a building entrance or exit or within fifteen feet of the entrance to or exit from the grounds of any such general hospital or residential health care facility. This subdivision shall not prohibit smoking and vaping by a patient or a visitor or guest of a patient of a residential health care facility in a separate area on the grounds designated as a smoking and vaping area by the residential health care facility, provided such designated smoking and vaping area is not within thirty feet of any building structure (other than a non-residential structure wholly contained within the designated smoking and vaping area), including any overhang, canopy, awning, entrance, exit, window, intake or exhaust.
 3. Smoking and vaping shall not be permitted and no person shall smoke or vape within one hundred feet of the entrances, exits or outdoor areas of any public or private elementary or secondary schools; provided, however, that the provisions of this subdivision shall not apply to smoking or vaping in a residence, or within the real property boundary lines of such residential real property. The provisions of section thirteen hundred ninety-nine-p of this article shall not apply to this subdivision.
 4. Smoking and vaping shall not be permitted and no person shall smoke or vape within one hundred feet of the entrances, exits or outdoor areas of any after-school program licensed or registered pursuant to section three hundred ninety of the social services law; provided, however, that the provisions of this subdivision shall only apply on those days and during those hours in which such after-school programs are operational; and provided, further, that the provisions of this subdivision shall not apply to smoking or vaping in a residence, or within the real property boundary lines of such residential real property.
 5.
 - a. Use of an electronic cigarette or e-cigarette shall not be permitted on school grounds, as defined in subdivision six of section thirteen hundred ninety-nine-n of this article.
 - b. “Electronic cigarette” or “e-cigarette” shall have the same meaning as in subdivision thirteen of section thirteen hundred ninety-nine-aa of this chapter.

NYS Public Health Law §1399-o-1: Smoking and vaping restrictions; certain outdoor areas

[Effective Nov. 22, 2017]

1. Smoking and vaping shall not be permitted and no person shall smoke or vape during the hours between sunrise and sunset, when one or more persons under the age of twelve are present at any playground. For the purposes of this section, the term “playground” means an improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures. Playgrounds or playground equipment constructed upon one, two and three-family residential real property are exempt from the requirements of this section. This section shall not apply to any playground located within the city of New York.
2. No police officer, peace officer, regulatory officer or law enforcement official may arrest, ticket, stop or question any person based solely or in part on an alleged violation of subdivision one of this section, nor may an alleged violation of subdivision one of this section support probable cause to conduct any search or limited search of any person or his or her immediate surroundings.

NYS Public Health Law, §1399-q: Smoking restrictions inapplicable

This article shall not apply to:

1. Private homes, private residences and private automobiles;

NYS Public Health Law, §1399-r: General provisions

1. Nothing in this article shall be construed to deny the owner, operator or manager of a place covered by this article the right to designate the entire place, or any part thereof, as a nonsmoking and nonvaping area.
2. The provisions of this article shall apply to the legislative, executive and judicial branches of state government and any political subdivision of the state.
3. Smoking and vaping may not be permitted where prohibited by any other law, rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.

Admin. Code, §17-177: Prohibition on the distribution of tobacco products through vending machines

- b. Distribution of tobacco products through vending machines prohibited. No person shall permit the distribution of a tobacco product through the operation of a vending machine in a public place. This prohibition shall not apply to the distribution of tobacco products in a tavern.

* * *

- f. Violation and Penalties. (1) Any person found to be in violation of this section shall be liable for a civil penalty of not more than three hundred dollars for the first violation; not more than five hundred dollars for the second violation; and not more than one thousand dollars for the third and all subsequent violations...

Admin Code, §17-502: Definitions

- 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.

* * *

- m. “Place of employment” means any indoor area or portion thereof under the 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 area 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, except that areas in a private residence where a child day care center or health care facility is operated 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 areas of a multiple dwelling are “places of employment” within the meaning of this subdivision.

* * *

- p. "Public place" means any area to which individuals other than employees are 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, except that areas in a private residence where a child day care center or health care facility is operated during the times of operation and areas in a private residence which constitute common areas of a multiple dwelling are "public places" within the meaning of this subdivision.
- qq. "Electronic cigarette" means a battery-operated device that heats a liquid, gel, herb, or other substance and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette.
- tt. "Class A multiple dwelling" means a class A multiple dwelling as such term is defined in paragraph eight of subdivision a of §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.

Admin. Code, §17-503: Prohibition of smoking and use of electronic cigarettes

- a. Smoking, and using electronic cigarettes, are prohibited in all enclosed areas within public spaces except as otherwise restricted in accordance with the provisions below. Such public places include, but are not limited to, the following:

* * *

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 during the times of operation or in an area which constitutes a common area of a multiple dwelling.

* * *

- d. Smoking, and using electronic cigarettes, are prohibited in all indoor and outdoor areas of the following public places at all times:

* * *

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.

Admin. Code, §17-504: Regulation of smoking in places of employment

- a. Smoking is prohibited in those indoor areas of places of employment to which the general public does not generally have access. This section shall not prohibit smoking in any area where smoking is not regulated pursuant to §17-505.

* * *

- 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. 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.

- 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.

- h. A copy of the smoking and electronic cigarette use policy shall be provided to the department, the department of buildings, the department of consumer and worker protection, the department of environmental protection, the fire department and the department of sanitation upon request.

Admin. Code, §17-505: Areas where smoking, and using electronic cigarettes, are not regulated by this chapter

[Amended LL 2017/141, 8/28/17, eff. 2/24/18]

- b. Private residences, except any area of a private residence where a child day care center or health care facility is operated (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 shall be subject to smoking and electronic cigarette use restrictions.

Admin. Code, §17-506: Posting of signs; prohibition of ashtrays

- 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, and any other signs necessary to comply with the provisions of this chapter shall be prominently and conspicuously posted 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 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.

- d. Ashtrays are prohibited in all smoke-free areas covered by this chapter except (i) ashtrays offered for sale or (ii) ashtrays placed immediately adjacent to hotel and motel elevators and immediately

adjacent to public entrances to hotels and motels, provided that such ashtrays are positioned so that second-hand smoke emanating from such ashtrays will not ordinarily activate smoke detectors and provided further that "No Smoking" signs as set forth in subdivision a of this section and in any rules promulgated by the commissioner shall be posted immediately adjacent to such ashtrays.

Admin. Code, §17-506.1 Obligation of owners of class A multiple dwellings to adopt and disclose a smoking policy

[Added LL 2017/147, 8/28/17, eff. 8/28/18]

- 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.
- 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 §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 §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.

24 RCNY, Dept. of Health, §10-11: Ashtrays

- (a) Ashtrays offered for sale. Ashtrays shall not be used or provided for use in any smoke-free area. Ash trays which are offered for sale in a smoke-free area other than a retail store shall be kept within a display case or in an area visible but not otherwise accessible to a customer (such as a shelf behind a cash register).

Admin. Code, §17-507: Enforcement

[Amended LL 2017/141, 8/28/17, eff. 2/24/18]

- 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, 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 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

24 RCNY, Dept. of Health, §10-12: Signs

- (a) "NO SMOKING" and "NO ELECTRONIC CIGARETTE USE" signs or "NO SMOKING OR ELECTRONIC CIGARETTE USE" signs indicating that smoking, and using electronic cigarettes, are prohibited shall be conspicuously posted so that they are clearly visible in lobbies and other appropriate locations of buildings and structures where smoking, and using electronic cigarettes, are prohibited by the Act and these rules.
- (b) "SMOKING PERMITTED" or "ELECTRONIC CIGARETTE USE PERMITTED" signs or "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall be posted outside the entrances to and within enclosed

rooms for smoking and electronic cigarette use. Such signs shall also be posted within tobacco and electronic cigarette promotion public events, as defined in the Act and these rules. "SMOKING PERMITTED" signs must also be posted within registered tobacco bars and registered membership associations, as defined in the Act and these rules.

(c) All signs required to be posted pursuant to the Act shall conform to the following specifications:

(i) Lettering and symbols shall be at least one-half (1/2) inch in height and shall be color contrasted so that all information is clear, conspicuous, and easily readable.

(ii) The size of lettering or symbols on "SMOKING PERMITTED" and "ELECTRONIC CIGARETTE USE PERMITTED" and "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall not exceed the size of lettering or symbols on "NO SMOKING" and "NO ELECTRONIC CIGARETTE USE" and "NO SMOKING OR USING ELECTRONIC CIGARETTES" signs in the same establishment.

(iii) Signs shall be printed on durable material.

(iv) Wording and symbols listed below are Department-approved. However, except for the Warning set forth in subparagraph (c) (iv)(D) of this section, other similar wording may be used.

(A) No smoking signs:

- (1) International symbol or
- (2) "NO SMOKING"

(B) Smoking permitted sign, including the warning in subparagraph (D) of this paragraph:

- (1) "SMOKING PERMITTED IN THIS ROOM" or
- (2) "SMOKING PERMITTED"

(C) No smoking except in enclosed [or separate smoking] room for smoking sign, to be posted within establishments where smoking is permitted by the Act and these rules: "NO SMOKING EXCEPT IN ENCLOSED ROOM"

(D) All "SMOKING PERMITTED" and "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED" signs shall include the following warning: "WARNING: TOBACCO SMOKE CAUSES CANCER, HEART DISEASE, AND LUNG DISEASE, AND CAN HARM YOUR BABY."

(E) No electronic cigarette use signs: "NO ELECTRONIC CIGARETTE USE"

(F) Electronic cigarette use permitted sign:

(1) "ELECTRONIC CIGARETTE USE PERMITTED IN THIS ROOM" or

(2) "ELECTRONIC CIGARETTE USE PERMITTED" or

(G) No using electronic cigarettes except in enclosed room for electronic cigarette use sign, to be posted within establishments where electronic cigarette use is permitted by the Act and these rules: "NO ELECTRONIC CIGARETTE USE EXCEPT IN ENCLOSED ROOM"

(H) No smoking and electronic cigarette use signs: "NO SMOKING OR ELECTRONIC CIGARETTE USE"

(I) Smoking and electronic cigarette use permitted signs, including the warning in subparagraph (D) of this paragraph:

(1) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED IN THIS ROOM" or

(2) "SMOKING AND ELECTRONIC CIGARETTE USE PERMITTED"

(J) No smoking and using electronic cigarettes except in enclosed room for smoking and electronic cigarette use sign, to be posted within establishments where smoking and electronic cigarette use is permitted by the Act and these rules:

"NO SMOKING OR USING ELECTRONIC CIGARETTES EXCEPT IN ENCLOSED ROOM"

(d) Signs shall not be required to be posted in areas not regulated by the Act or these rules.

24 RCNY, Dept. of Health, §10-13: Enforcement

(a) Every owner, operator, employer, manager, or other person in control of a building, public place, or place of employment, or on-site agent shall comply with the applicable information and notification provisions of §17-507 of the Act.

(b) Every employer shall establish and/or update a written smoking policy that conforms with the Act and these rules. Every employer must establish and/or update a written electronic cigarette use policy that conforms with the Act and these rules.

(c) Any certification of correction required pursuant to §17-508(g) of the Act shall be filed with the Department within twenty (20) days of the date the order to correct was issued.

(i) The certification shall include the name and address of the premises and the docket num-

- ber of the notice of violation and attach a copy of the order to correct and the Department's inspection report; shall be typed or clearly printed in ink; shall list and state for each violation that such violation has been corrected and briefly describe how the correction was accomplished, and shall indicate how respondent plans to prevent such violation(s) from recurring.
- (ii) Such supporting documentation as the Department may require shall be submitted with the certification.
 - (iii) The certification shall be signed and dated by the permittee, owner, director, officer, partner, manager, operator or other person having control, and shall be sworn to before a notary public.
 - (iv) The certification shall be mailed or delivered to the Department at the address specified on the order to correct.
- (d) Violations of the Act shall be punishable as provided in the Act. Violations of these rules which are not also violations of the Act shall be subject to a penalty not to exceed one thousand dollars (\$1,000), in accordance with §555(b)(2) of the New York City Charter.
 - (e) Where the Commissioner has issued a license or permit pursuant to Articles 5 and 81 of the Health Code, he or she may suspend or revoke such permit for such reasons as she or he determines is sufficient grounds for suspension or revocation, in accordance with §5.17(b) of the Health Code. Such reasons may include, but not be limited to, willful or continuous violations of the Smoke-Free Air Act and these rules.
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- 24 RCNY, Health Code, Title IV, §181.17:
Smoking prohibited in certain areas**
- (a) It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette or pipe in any elevator or in any retail food establishment commonly known as a supermarket.
* * *
 - (d) It shall be unlawful, except as provided in subsection (e), to smoke or carry a lighted cigar, cigarette or pipe in any enclosed public space in which 50 or more persons gather for religious, recreational, political or social purpose. This subsection shall not apply to:
 - (1) Any place in which social functions such as weddings, parties, testimonial dinners and similar functions are held and in which the seating arrangements are under the control of the sponsor of the function and not of the owner or person in charge of such place.
 - (e) The owner or person in charge of any building, structure or place specified in subsections (c) and (d) may designate special areas therein where smoking is permitted unless otherwise prohibited by the Fire Department or by other law.
 - (f) Signs prohibiting or permitting smoking, as the case may be, shall be posted conspicuously by the owner or person in charge of each building, structure or place specified in subsections (a), (b), (c) and (d).