

LOCAL LAW NO. "I" FOR 2020

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK TO PROHIBIT SMOKING IN COMMON AREAS OF MULTIPLE UNIT DWELLINGS

Introduced: 10/13/20

By Mr. Efekoro, Mss. Cunningham, Plotsky, Messrs. Peter, Kuhn, Burgdorf, A. Joyce, Feeney, Bruschi, Cleary, Commisso, Ethier, Fein, Ms. Lekakis, Messrs. Miller, Reidy, Reinhardt, Ricard, Simpson, Beston, Clay, Domalewicz, Drake, Grimm, R. Joyce, Mauriello, Mayo, Mss. McLaughlin, McLean Lane, Messrs. O'Brien, Perlee, Smith, Tunny, Mss. Whalen and Willingham:

Section 1: TITLE

This Local Law shall be known as the "Albany County Smoke-Free Common Areas Law."

Section 2: STATUTORY AUTHORIZATION

This Local Law is hereby adopted pursuant to the provisions of the New York Municipal Home Rule Law § 10(1)(ii)(a)(12).

Section 3: FINDINGS; PURPOSE

This Legislature finds that, each year, 41,000 people die prematurely from exposure to second hand smoke. According to the U.S. Surgeon General, there is no safe level of secondhand smoke exposure. E-cigarette aerosol (often called vapor) can also contain harmful and potentially harmful substances including nicotine, ultrafine particles, flavoring chemicals, volatile organic compounds, and heavy metals. For tenants and owners of multiple unit dwellings, such as apartments and condominiums, tobacco smoke and vapor from a neighboring unit that infiltrates their homes results in daily exposure to many hazardous chemicals due to secondhand smoke and vapor which travels through lighting fixtures, cracks in walls, shared heating and ventilation, around plumbing, and under doors.

Therefore, it is the purpose of this Local Law to protect the public health and welfare of the residents of Albany County by prohibiting smoking and "vaping" in common areas in multiple unit dwellings.

Section 4: DEFINITIONS

As used in this Local Law, the following terms shall have the meanings indicated:

INDOOR COMMON AREA – Every interior enclosed or unenclosed area of a multiple unit dwelling that residents of more than one unit are entitled to enter or use, including but not limited to halls, lobbies, interior courtyards, elevators, stairs,

community rooms, clubhouses, gym facilities, restrooms, laundry rooms, cooking areas, eating areas, and meeting rooms.

MULTIPLE UNIT DWELLING – Any dwelling which is rented, leased, or subleased out to be occupied as the temporary or permanent residence or home of three or more families or groups of tenants living independently of each other in separate dwelling units.

DWELLING UNIT – Any room or group of rooms located within a dwelling which forms a single habitable unit with facilities which are used or intended to be used for living or sleeping by human occupants.

SMOKING – The combustion of any cigar, cigarette, tobacco, marijuana, or any similar article or any other combustible substance in any manner or in any form.

VAPING – The release of tobacco, nicotine, marijuana, or e-cigarette aerosol or vapor in any manner or in any form via e-cigarette, Juul, or other similar device.

Section 5: PROHIBITION

Smoking and vaping are prohibited in indoor common areas of multiple unit dwellings, and within 5 feet of any outdoor ventilation intake.

Section 6: PENALTIES FOR VIOLATIONS

Any tenant or invitee of a tenant of a multiple unit dwelling who violates the provisions of Section 5 of this Local Law shall be subject to the imposition of a civil penalty by the Commissioner of Health of not more than \$250 for a first violation, \$350 for a second violation, and \$500 for each violation thereafter.

Any property owner, property manager and/or other person having control of a multiple unit dwelling who violates any provision of Section 7 of this Local Law shall be subject to the imposition of a civil penalty by the Commissioner of Health of not more than \$250 for a first violation, \$350 for a second violation, and \$500 for each violation thereafter. Proof of compliance with the provisions of Section 7 of this Local Law shall serve as an absolute defense to a charge pursuant to this Local Law.

Section 7: ENFORCEMENT AND ADMINISTRATION

Property owners, property managers and/or other persons having control of a multiple unit dwelling shall include in their written lease agreements dated after the effective date of this law that smoking and vaping are prohibited in all indoor common areas of the building(s). In instances where a written lease is not used, property owners, property managers and/or other persons having control of a multiple unit dwelling must advise in writing such tenants that smoking and vaping are prohibited in all indoor common areas of the building(s).

Property owners, property managers and/or other persons having control of a multiple unit dwelling shall post conspicuous signage at major entrances to the building(s) and in indoor common areas, stating that smoking and vaping are prohibited in all indoor common areas of the multiple unit dwelling.

Violations of this Local Law by a tenant or invitee of a tenant shall constitute just cause to bring an eviction proceeding against the tenant, to the extent allowable by state and local law.

Section 8: SEQRA COMPLIANCE

This County Legislature determines that this local law constitutes a “Type II action” pursuant to the provisions of the State Environmental Quality Review Act (SEQRA), and that no further action under SEQRA is required.

Section 9: SEVERABILITY

If any provision of this Local Law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, the remaining provisions of this Local Law shall remain in full force and effect.

Section 10: EFFECTIVE DATE

This Local Law shall take effect upon filing with the Secretary of State.

Referred to Law and Health Committees – 10/13/20

Favorable Recommendation Law Committee – 3/24/21

Favorable Recommendation Health Committee – 3/25/21

Mr. Ricard proposed the following amendment:

In Section 5: Prohibitions, Delete: “5 feet” and Add: “10 feet” after “dwellings, and within”

Amendment was adopted unanimously.

On long roll call vote the following members voted in favor: Messrs. Beston, Bruschi, Burgdorf, Clay, Cleary, Commisso, Ms. Cunningham, Messrs. Domalewicz, Drake, Efekoro, Ethier, Feeney, Fein, Grimm, A. Joyce, R. Joyce, Kuhn, Ms. Lekakis, Messrs. Mauriello, Mayo, Mss. McLaughlin, McLean Lane, Messrs. Miller, O’Brien, Perlee, Peter, Ms. Plotsky, Messrs. Reidy, Reinhardt, Ricard, Simpson, Smith, Tunny, Mss. Whalen and Willingham – 35

Those opposed – 0

Local Law was adopted as amended – 4/12/21