

**LOCAL LAW NO. 6 OF 2011
COUNTY OF ROCKLAND
STATE OF NEW YORK**

(Introduced by: Hon. Alden H. Wolfe and Connie L. Coker)

Mr. Wolfe offered the following Local Law, which was seconded by Ms. Coker and adopted:

A local law requiring owners of multiple dwelling rental properties to develop, implement and distribute a smoking policy for their properties to all current and prospective tenants of dwelling units within the County of Rockland.

Be it enacted by the legislature of the county of Rockland as follows:

Section 1. Name of local law

This law shall be known as “the Rockland County Multiple Dwelling Smoking Policy Act.”

Section 2. Legislative intent.

Secondhand smoke is the smoke that comes from the burning end of a cigarette, pipe or cigar, and the smoke exhaled from the lungs of smokers. Secondhand smoke is often involuntarily inhaled by nonsmokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. Secondhand smoke can migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects in neighboring families. Secondhand smoke causes almost 50,000 deaths in adult non-smokers in the United States each year, including approximately 3,400 from lung cancer and another 22,000 to 69,000 from heart disease. Furthermore, according to the U.S. Surgeon General, residential exposure is a leading source of secondhand smoke for both children and adults, and children exposed to secondhand smoke are at an increased risk for sudden infant death, acute respiratory infections, ear problems, and more severe asthma.¹ Although individuals can normally choose to stay away from smokers or establishments that permit smoking, there is no such option in multiple dwellings because secondhand smoke lingers in the air hours after cigarettes have been extinguished and can migrate between units in multifamily buildings. Heating, ventilating and air conditioning systems do not control exposure to secondhand smoke; rather, these systems actually distribute secondhand smoke throughout the building.

While private owners as well as public housing authorities have the ability to restrict smoking in or on their properties, they are not required to do so. Furthermore, for those properties that have smoking policies that limit where or when people may smoke in or on the properties, there is no requirement that the policy be distributed to all prospective renters of dwelling units. If owners of multiple dwellings were required to develop a smoking policy and distribute it with a lease for the multiple dwelling, potential renters would be put on notice of where and when smoking is permitted and they could then make an educated decision about where they wish to live. Aside from the health considerations, this would also greatly reduce the number of conflicts between smokers and non-smokers, as all people living in the multiple dwelling will be placed on notice about where and when people are permitted to smoke.

¹ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

There are additional social factors to consider: it is usually the poorer segment of society that rents a dwelling unit in a multiple dwelling, as opposed to purchasing a residence. It is this same population that tends to suffer from less education, poor housing quality and nutrition, and inadequate health insurance, as well as decreased access to quality medical care. This often results in people in this population – particularly children – having a predisposition to illness. People in this category who are exposed to secondhand smoke suffer from more frequent and more severe illness as a result of this exposure. To the extent possible, people in this population should be afforded the necessary information to facilitate healthy living choices.

It should be noted that although the Rockland County Sanitary Code Section 22.3.1 permits smoking in private homes and private residences, including private living space within a multiple dwelling, Section 22.2.7 prohibits smoking in all multiple dwelling common areas, including but not limited to hallways and laundry rooms, and multiple dwelling areas with contiguous overhangs or awnings.

The purpose of this law is to safeguard the health and well-being of all Rockland County residents by requiring owners of multiple dwelling rental properties to develop, implement and distribute a smoking policy for their properties to all current and prospective tenants of dwelling units. This will promote awareness of the dangers of second-hand smoke and provide prospective renters of dwelling units in multiple dwellings the necessary information to make informed decisions about where to live and enable them to choose to live in a smoke-free environment.

Section 3. Definitions.

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

- A. **COUNTY** – The County of Rockland, New York.
- B. **COMMISSIONER** - the Commissioner of Health of the Rockland County Health District.
- C. **MULTIPLE DWELLING** – any dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the temporary or permanent residence or home of three or more families living independently of each other, as defined in Sanitary Code Section 13.7.18.
- D. **DWELLING UNIT** – any room or group or rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living or sleeping by human occupants.
- E. **OWNER** – any person who, alone or jointly or severally with other:
 - (1) shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof, or
 - (2) shall have charge, care, or control of any dwelling or dwelling unit, as owner, lessee, mortgagee or vendee in possession, assignee of rents, or as a receiver; or an executor, administrator, trustee, or guardian of the estate of the owner. Any agent for any of the above shall be bound to comply with the provisions of this Local Law to the same extent as if he were the owner.
- F. **PERSON** - any individual, firm, corporation, association, partnership, institution, public body, joint stock association or any other group of individuals, and includes the plural as well as the singular.

Section 4. Requirements.

- A. Owners of multiple dwelling rental properties are required to:
- (1) develop and implement a smoking policy that details where and when smoking is permitted in multiple dwellings, if at all;
 - (2) distribute the smoking policy to all current tenants of multiple dwellings within thirty (30) days of this law going into effect;
 - (3) post a copy of the smoking policy in the following public areas of the multiple dwelling, if applicable: all entrances, walls adjacent to elevators and mailboxes, and laundry/common rooms;
 - (4) attach a copy of the smoking policy to all leases for dwelling units in the multiple dwelling, to be provided to all prospective tenants or upon request; and
 - (5) provide a copy of the smoking policy to all tenants who enter into oral leases or agreements to rent by the day, week, month or year, prior to the time tenants enter into such oral tenancy.
- B. Owners of multiple dwellings with five or more dwelling units are required to file a copy of their smoking policy with the Rockland County Department of Health within 30 days of this law going into effect.

Section 5. Enforcement and Penalties.

Any owner who violates the provisions of this chapter shall be subject to the imposition by the Rockland County Department of Health of a civil penalty pursuant to Section 1.25 of the Rockland County Sanitary Code. No civil penalty shall be imposed by the Department of Health as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard pursuant to the normal procedures of the Department of Health. Prior to the imposition of the first civil penalty on an alleged violator for failure to develop, implement and file a copy of a smoking policy with the Department of Health, if so required, the Department of Health shall make a good-faith effort to issue a warning to the alleged violator, shall make a good-faith effort to educate the alleged violator about the provisions of this chapter, and shall provide the alleged violator thirty (30) days to comply with the provisions of this chapter and provide a copy of the smoking policy to the Health Department, even if not initially required to do so under this Law. Failure to comply within thirty (30) days will subject the alleged violator to a civil penalty of no less than \$500.

Section 6. Education

The Department of Health shall promulgate and make available information regarding the dangers of smoking and secondhand smoke, in such manner as may be reasonably determined by the Commissioner of Health, or his/her designees. Smoking policies filed with the Department of Health may be made available to the public in such manner as may be reasonably determined by the Commissioner of Health, or his/her designees.

Section 7. Applicability

This law shall apply to any and all actions occurring on or after the effective date of this law.

Section 8. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 9. Effective date.

This local law shall take effect on January 1, 2012.

The vote resulted as follows:

| | | |
|---------|----|---|
| Ayes: | 14 | (Bierker, Coker, Day, Earl, Grant, Hood, Jr., Jackson, Meyers, Murphy, Schoenberger, Soskin, Sparaco, Wolfe, Cornell) |
| Nay: | 01 | (Legislator Jobson) |
| Absent: | 02 | (Legislators Michel, Moroney) |