WESTCHESTER'S HEALTH

Published by the

WESTCHESTER COUNTY DEPARTMENT OF HEALTH

Mark S. Rapoport, M.D., M.P.H.

Volume XL Hawthorne, N.Y. February 29, 1996 Number 1

WESTCHESTER'S HEALTH

Official Organ of the Westchester
County Department of Health

Published at the County Office Building
Hawthorne, N.Y.

Telephone: (914) 593-5149
Evenings, Sundays & Holidays: (914) 593-5100

George N Haloukas.....Editor

OFFICIAL

County Sanitary Code Amended

At a regular meeting of the Westchester County Board of Health held at Hawthorne, New York, on the 29th day of February 1996, a resolution was adopted pursuant to Sections 308, 309, 347 and 348 of the Public Health Law and to Section 149.21 of the Westchester County Charter to amend the Westchester County Sanitary Code by repealing the existing Article XX, Sections 873.2001 through 873.2071 inclusive and adopting the revised Article XX, Sections 873.2001 through 873.2111 inclusive.

ARTICLE XX
Smoking; Clean Indoor Air

Section 873.2001. Smoking; clean indoor air; purpose.
Section 873.2011. Smoking; clean indoor air; definitions.
Section 873.2021. Smoking; clean indoor air; smoking restrictions.
Section 873.2031. Smoking; clean indoor air; posting of signs.
Section 873.2041. Smoking; clean indoor air; smoking restrictions inapplicable.
Section 873.2051. Smoking; clean indoor air; general provisions.
Section 873.2061. Smoking; clean indoor air; violations.
Section 873.2071. Smoking; clean indoor air; enforcement.
Section 873.2081. Smoking; clean indoor air; waiver.
Section 873.2091. Smoking; clean indoor air; penalties.
Section 873.2101. Smoking; clean indoor air; limitation of causes

Resolution

RESOLVED, that the existing Article XX, Sections 873.2001 through 873.2071 are repealed and a revised Article XX, Sections 873.2001 through 873.2111 are adopted as follows:

Section 873.2001. Smoking; clean indoor air; purpose.
Section 873.2011. Smoking; clean indoor air; definitions.
Section 873.2021. Smoking; clean indoor air; smoking restrictions.
Section 873.2031. Smoking; clean indoor air; posting of signs.
Section 873.2041. Smoking; clean indoor air; smoking restrictions inapplicable.
Section 873.2051. Smoking; clean indoor air; general provisions.
Section 873.2061. Smoking; clean indoor air; violations.
Section 873.2071. Smoking; clean indoor air; enforcement.
Section 873.2081. Smoking; clean indoor air; waiver.
Section 873.2091. Smoking; clean indoor air; penalties.
Section 873.2101. Smoking; clean indoor air; limitation of causes of action.
Section 873.2111. Smoking; clean indoor air; rules and regulations.

RESOLVED, that the aforesaid amendments shall be effective July 1, 1996.

RESOLVED, that the Department of Health of the County of Westchester is hereby authorized, ordered and directed to publish the above action in WESTCHESTER'S HEALTH, the official publication of the Department.

Adopted this 29th day of February, 1996 at a regular meeting of the Board of Health of the County of Westchester held in Hawthorne, New York.

_____

Secretary to the Board

ARTICLE XX
Smoking; Clean Indoor Air

873.2001. Smoking; clean indoor air; purpose.

THE PURPOSE OF THIS ARTICLE IS TO PROTECT PEOPLE FROM THE DELETERIOUS EFFECTS OF SECOND-HAND OR ENVIRONMENTAL TOBACCO SMOKE BY PROHIBITING OR REGULATING SMOKING IN CERTAIN INDOOR PLACES.

873.2011. Smoking; clean indoor air; definitions.

WHENEVER USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE MEANINGS HEREINAFTER SET FORTH OR INDICATED:

1. "AUDITORIUM" MEANS THE PART OF A PUBLIC BUILDING WHERE AN AUDIENCE SITS BUT DOES NOT INCLUDE ANY CORRIDORS, HALLWAYS OR LOBBIES ADJACENT THERETO.

2. "BAR" MEANS ANY INDOOR AREA OPEN TO THE PUBLIC DEVOTED TO THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION AND WHERE THE SERVICE OF FOOD IS ONLY INCIDENTAL TO THE CONSUMPTION OF SUCH BEVERAGES. SERVICE OF FOOD SHALL BE CONSIDERED INCIDENTAL IF THE FOOD SERVICE GENERATES LESS THAN FORTY PERCENT OF THE TOTAL ANNUAL GROSS SALES. ANY BAR THAT GENERATES FORTY PERCENT OR MORE OF TOTAL ANNUAL GROSS SALES FROM THE SALE OF FOOD FOR ON-PREMISES CONSUMPTION SHALL BE A FOOD SERVICE ESTABLISHMENT.

3. "BAR AREA OF A FOOD SERVICE ESTABLISHMENT" MEANS ANY INDOOR AREA - INCLUDING BAR STOOLS, TABLES AND CHAIRS - OF A FOOD SERVICE ESTABLISHMENT, DEVOTED TO THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION AND WHERE THE SERVICE OF FOOD IS ONLY INCIDENTAL TO THE CONSUMPTION OF SUCH BEVERAGES. SERVICE OF FOOD SHALL BE CONSIDERED INCIDENTAL IF THE FOOD SERVICE IN THIS AREA CONSTITUTES LESS THAN FORTY PERCENT OF TOTAL GROSS SALES OF THE AREA.

4. "BUFFER ZONE" SHALL MEAN SIX FEET OF CONTINUOUS SPACE OR A CONTINUOUS BARRIER (WITH NECESSARY OPENINGS FOR INGRESS AND EGRESS) OF AT LEAST 56 INCHES IN HEIGHT SEPARATING THE BAR AREA WHERE SMOKING IS ALLOWED FROM THE REST OF THE NON-SMOKING FOOD SERVICE ESTABLISHMENT. NO SMOKING IS ALLOWED IN THE BUFFER ZONE.

5. "EMPLOYER" SHALL MEAN ANY PERSON, PARTNERSHIP, ASSOCIATE, CORPORATION OR NONPROFIT ENTITY WHICH EMPLOYS ONE OR MORE PERSONS.

6. "FACTORY" MEANS ANY MILL OR OTHER MANUFACTURING ESTABLISHMENT WHERE ONE OR MORE PERSONS ARE EMPLOYED IN MANUFACTURING, INCLUDING MAKING, ALTERING, REPAIRING, FINISHING, BOTTLING, CANNING, CLEANING OR LAUNDERING ANY ARTICLE OR THING.

7. "FOOD SERVICE ESTABLISHMENT" MEANS ANY INDOOR AREA OPEN TO THE PUBLIC OR PORTION THEREOF IN WHICH THE BUSINESS IS THE SALE OF FOOD FOR ON-PREMISES CONSUMPTION AND WHICH HAS AN INDOOR SEATING CAPACITY OF ONE OR MORE PERSONS INCLUDING, BUT NOT LIMITED TO RESTAURANTS, CAFETERIAS, COFFEE SHOPS, DINERS, SANDWICH SHOPS OR SHORT ORDER CAFES. A FOOD SERVICE ESTABLISHMENT SHALL NOT INCLUDE THE BAR AREA OF SUCH ESTABLISHMENT.

8. "INDOOR AREA OPEN TO THE PUBLIC" MEANS ANY INDOOR AREA OR PORTION THEREOF GENERALLY ACCESSIBLE TO THE PUBLIC.

9. "PLACE OF EMPLOYMENT" MEANS ANY INDOOR AREA OR PORTION THEREOF UNDER THE CONTROL OF AN EMPLOYER IN WHICH EMPLOYEES OF THE EMPLOYER PERFORM SERVICES BUT WHICH IS NOT GENERALLY ACCESSIBLE TO THE PUBLIC.

10. "PUBLIC BUILDING" MEANS ANY BUILDING OWNED OR OPERATED BY THE ANY COUNTY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION,PUBLIC IMPROVEMENT OR SPECIAL DISTRICT, PUBLIC AUTHORITY, COMMISSION, AGENCY OR PUBLIC BENEFIT CORPORATION; OR ANY OTHER SEPARATE CORPORATE INSTRUMENTALITY OR UNIT OF LOCAL GOVERNMENT.

11. "SMOKE-FREE WORK AREA" MEANS AN ENCLOSED INDOOR AREA IN A PLACE OF EMPLOYMENT WHERE NO SMOKING OCCURS. SUCH AREA SHALL BE CLEARLY DESIGNATED, AND SEPARATE FROM ANY SMOKING AREA.

12. "SMOKING" MEANS BURNING OF A LIGHTED CIGAR, CIGARETTE, PIPE OR ANY OTHER MATTER OF SUBSTANCE WHICH CONTAINS TOBACCO.

13. "SMOKING AREA" MEANS AN ENCLOSED INDOOR AREA IN WHICH SMOKING IS PERMITTED. SUCH SMOKING AREA SHALL BE CLEARLY DESIGNATED AND SEPARATE FROM ANY AREA IN WHICH SMOKING IS NOT PERMITTED. IN A PLACE OF EMPLOYMENT, THE SMOKING AREA SHALL BE SEPARATED FROM A SMOKE-FREE WORK AREA BY WALLS OR SOME OTHER MEANS, EQUALLY EFFECTIVE IN REDUCING THE EFFECTS OF SMOKE ON THE SMOKE-FREE WORK AREA, OTHER THAN VENTILATION SYSTEMS OR AIR CLEANING DEVICES.

14. "TOBACCO BUSINESS" MEANS A SOLE PROPRIETORSHIP, CORPORATION, PARTNERSHIP OR OTHER ENTERPRISE IN WHICH THE PRIMARY ACTIVITY IS THE SALE, MANUFACTURE OR PROMOTION OF TOBACCO, TOBACCO PRODUCTS AND ACCESSORIES EITHER AT WHOLESALE OR RETAIL, AND IN WHICH THE SALE, MANUFACTURE OR PROMOTION OF OTHER PRODUCTS IS MERELY INCIDENTAL.

15. "WAITING AREA" MEANS ANY INDOOR AREA WHERE PEOPLE ARE IN LINE OR OTHERWISE WAITING FOR A DINING SEAT IN A FOOD SERVICE ESTABLISHMENT. IT SHALL INCLUDE THE BAR AREA OF A FOOD SERVICE ESTABLISHMENT IF PEOPLE ARE DIRECTED TO WAIT THERE.

16. "WAREHOUSE" MEANS ANY BUILDING OR STRUCTURE USED FOR THE PURPOSE OF STORING MERCHANDISE OR COMMODITIES.

17. "WORK AREA" MEANS AN AREA IN A PLACE OF EMPLOYMENT WHERE ONE OR MORE EMPLOYEES ARE ROUTINELY ASSIGNED AND PERFORM SERVICES FOR THEIR EMPLOYER.

873.2021. Smoking; clean indoor air; smoking restrictions.

1. SMOKING SHALL NOT BE PERMITTED AND NO PERSON SHALL SMOKE IN THE FOLLOWING INDOOR AREAS OPEN TO THE PUBLIC:

(A) AUDITORIUMS;

(B) ELEVATORS;

(C) GYMNASIUMS;

(D) ENCLOSED INDOOR AREAS OPEN TO THE PUBLIC CONTAINING A SWIMMING POOL;

(E) INDOOR AREAS OPEN TO THE PUBLIC IN FOOD STORES PROVIDED, HOWEVER, THAT ANY SEPARATE OR DISTINCT PORTION OR PART OF SUCH ESTABLISHMENT WHICH IS DEDICATED TO THE SALE OF FOOD FOR ON-PREMISES CONSUMPTION SHALL BE GOVERNED BY THE PROVISIONS OF SUBDIVISION FIVE OF THIS SECTION;

(F) CLASSROOMS, PROVIDED HOWEVER, THAT A CLASSROOM BEING USED OR OCCUPIED, TEMPORARILY OR PERMANENTLY, FOR PURPOSES OTHER THAN INSTRUCTION OR TRAINING SHALL BE GOVERNED BY THE PROVISIONS OF SUBDIVISION TWO OF THIS

(G) PUBLIC MEANS OF MASS TRANSPORTATION, AND WHEN OCCUPIED BY PASSENGERS, BUSES, VANS, TAXICABS AND LIMOUSINES; AND

(H) TICKETING AND BOARDING AREAS IN PUBLIC TRANSPORTATION TERMINALS.

2. EXCEPT AS PROVIDED IN SUBDIVISIONS THREE, FOUR AND FIVE OF THIS SECTION, SMOKING SHALL NOT BE PERMITTED AND NO PERSON SHALL SMOKE IN ANY INDOOR AREA OPEN TO THE PUBLIC, INCLUDING BUT NOT LIMITED TO ANY INDOOR AREA OPEN TO THE PUBLIC IN:

(A) ALL PUBLIC AND PRIVATE SCHOOLS, INCLUDING ELEMENTARY AND SECONDARY SCHOOLS, COLLEGES, UNIVERSITIES AND OTHER EDUCATIONAL AND VOCATIONAL INSTITUTIONS;

(B) GENERAL HOSPITALS AND RESIDENTIAL HEALTH CARE FACILITIES AS DEFINED IN THE NEW YORK STATE PUBLIC HEALTH LAW, AND OTHER HEALTH CARE FACILITIES LICENSED BY THE STATE IN WHICH PERSONS RESIDE, PROVIDED, HOWEVER, THAT CAFETERIAS AND LUNCHROOMS IN SUCH FACILITIES SHALL BE GOVERNED BY THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION SIX OF THIS SECTION;

(C) PUBLIC BUILDINGS, PROVIDED, HOWEVER, THAT AN EMPLOYEE WHOSE WORK AREA IS IN AN INDOOR AREA OPEN TO THE PUBLIC SHALL BE GOVERNED BY THE PROVISIONS OF SUBDIVISION SIX OF THIS SECTION;

(D) THEATERS;

(E) MUSEUMS;

(F) LIBRARIES;

(G) RETAIL STORES IN WHICH GOODS, WARES OR MERCHANDISE ARE OFFERED FOR SALE;

(H) COMMERCIAL ESTABLISHMENTS USED FOR THE PURPOSE OF CARRYING ON OR EXERCISING ANY TRADE, PROFESSION, VOCATION OR CHARITABLE ACTIVITY;

(I) INDOOR ARENAS;

(J) WAITING ROOMS AND WAITING AREAS;

(K) BANKS AND OTHER FINANCIAL INSTITUTIONS;

(L) RESTROOMS;

(M) WAITING AREAS IN PUBLIC TRANSPORTATION TERMINALS; AND

(N) SERVICE AREAS IN CAFETERIAS AND BUSINESSES SELLING FOOD FOR ON-PREMISES AND OFF-PREMISES CONSUMPTION.

3. THE OWNER, OPERATOR OR MANAGER OF AN INDOOR AREA OPEN TO THE PUBLIC SUBJECT TO SUBDIVISION TWO OF THIS SECTION MAY DESIGNATE A SMOKING AREA OR AREAS. SUCH SMOKING AREA SHALL NOT INCLUDE ANY OF THE INDOOR AREAS OPEN TO THE PUBLIC SET FORTH IN SUBDIVISION ONE OF THIS SECTION.

4. (A) THE OWNER, OPERATOR OR MANAGER OF A BOWLING ESTABLISHMENT MAY PERMIT SMOKING IN THE CONCOURSE AREA, WHICH IS THE AREA DIRECTLY BEHIND AND IMMEDIATELY CONTIGUOUS TO THE BOWLER SETTEE AREA, BUT SHALL PROVIDE A NONSMOKING AREA CONSTITUTING AT LEAST TWENTY-FIVE PERCENT OF THE SQUARE FOOTAGE OF THE CONCOURSE AREA.

(B) THE ORGANIZER OR SPONSOR OF BINGO SHALL PROVIDE A CONTIGUOUS NONSMOKING AREA SUFFICIENT TO MEET PATRON DEMAND. IF AT LEAST FIFTY PERCENT OF SEATING CAPACITY IS DESIGNATED FOR NONSMOKERS, DEMAND SHALL BE DEEMED TO HAVE BEEN MET. THE ORGANIZER OR SPONSOR MAY NOT DETERMINE THAT NO SUCH DEMAND EXISTS. NOTICE SHALL BE PROMINENTLY POSTED AT EACH ENTRANCE STATING THAT A NONSMOKING SECTION IS AVAILABLE.

5. THE FOLLOWING SMOKING RESTRICTIONS AND PROHIBITIONS SHALL APPLY AT FOOD SERVICE ESTABLISHMENTS:

(A) SMOKING SHALL NOT BE PERMITTED AND NO PERSON SHALL SMOKE IN THE INDOOR DINING, WAITING AND OTHER PUBLIC AREAS OF FOOD SERVICE ESTABLISHMENTS. THIS PROHIBITION SHALL NOT PERTAIN TO THE BAR AREA OF THE FOOD SERVICE ESTABLISHMENT OR A BAR AS DEFINED IN THIS ARTICLE. A BUFFER

6. EACH EMPLOYER SHALL ADOPT AND IMPLEMENT A WRITTEN SMOKING POLICY. THE POLICY SHALL APPLY ONLY TO A PLACE OF EMPLOYMENT AS DEFINED IN SECTION 873.2011(9) OF THIS ARTICLE AND SHALL REQUIRE AT LEAST THE FOLLOWING:

(A) THAT EMPLOYERS SHALL PROVIDE NONSMOKING EMPLOYEES WITH A SMOKE-FREE WORK AREA;

(B) THAT EMPLOYERS MAY SET ASIDE A WORK AREA FOR SMOKING IF ALL EMPLOYEES ASSIGNED TO THE WORK AREA AGREE TO THE DESIGNATION;

(C) THAT EMPLOYERS SHALL PROVIDE FOR CONTIGUOUS NONSMOKING AREAS IN EMPLOYEE CAFETERIAS, LUNCHROOMS AND LOUNGES. THE CONTIGUOUS NONSMOKING AREAS IN EMPLOYEE CAFETERIAS AND LUNCHROOMS SHALL BE SUFFICIENT TO MEET EMPLOYEE DEMAND. AN EMPLOYER MAY NOT DETERMINE THAT NO SUCH DEMAND EXISTS. IF SEVENTY PERCENT OF THE INDOOR SEATING CAPACITY IS DESIGNATED AS A NON-SMOKING AREA, EMPLOYEE DEMAND SHALL BE DEEMED TO HAVE BEEN MET. THE DESIGNATION OF LESS THAN SEVENTY PERCENT OF THE INDOOR SEATING CAPACITY FOR DINING OF A FOOD SERVICE ESTABLISHMENT AS A NONSMOKING AREA SHALL NOT CREATE THE PRESUMPTION OF NONCOMPLIANCE WITH THE PROVISIONS OF THIS SUBDIVISION;

(D) THAT SMOKING SHALL BE PROHIBITED IN AUDITORIUMS, GYMNASIUMS, RESTROOMS, ELEVATORS, CLASSROOMS, HALLWAYS, EMPLOYEE MEDICAL FACILITIES AND ROOMS OR AREAS WHICH CONTAIN PHOTOCOPYING EQUIPMENT OR OTHER OFFICE EQUIPMENT USED IN COMMON, AND IN COMPANY VEHICLES OCCUPIED BY MORE THAN ONE PERSON UNLESS THE OCCUPANTS OF SUCH VEHICLE AGREE THAT SMOKING MAY BE PERMITTED.

(E) THAT SMOKING SHALL BE PROHIBITED IN CONFERENCE ROOMS AND MEETING ROOMS, UNLESS EVERYONE IN THAT ROOM AGREES THAT SMOKING MAY BE PERMITTED;

(F) THAT AN EMPLOYER MAY DESIGNATE A SEPARATE ENCLOSED ROOM OR ROOMS NOT OPEN TO THE PUBLIC FOR USE AS A SMOKING AREA;

(G) THAT EMPLOYERS SHALL PROMINENTLY POST THE SMOKING POLICY IN THE WORKPLACE, AND SUPPLY A WRITTEN COPY UPON REQUEST TO ANY EXISTING OR PROSPECTIVE EMPLOYEE;

(H) AN EMPLOYER SHALL NOT BE REQUIRED TO MAKE ANY EXPENDITURES OR STRUCTURAL CHANGES TO CREATE A SMOKE-FREE WORK AREA. IN THE EVENT AN EMPLOYER CANNOT, AFTER USING ITS BEST EFFORTS, COMPLY WITH AN EMPLOYEE'S REQUEST FOR A SMOKE-FREE WORK AREA, THE EMPLOYER SHALL DESIGNATE THAT EMPLOYEE'S WORK AREA AS A SMOKE-FREE WORK AREA; AND

(I) ANY PROVISIONS IN A SMOKING POLICY THAT ARE MORE RESTRICTIVE THAN THE MINIMUM REQUIREMENTS SET FORTH IN THIS SUBDIVISION SHALL, IF A COLLECTIVE BARGAINING UNIT EXISTS, BE SUBJECT TO APPLICABLE LAW GOVERNING COLLECTIVE BARGAINING.

873.2031 Smoking; clean indoor air; posting of signs.

1. SMOKING" OR "NO SMOKING" SIGNS, OR THE INTERNATIONAL "NO SMOKING" SYMBOL, WHICH CONSISTS OF A PICTORIAL REPRESENTATION OF A BURNING CIGARETTE ENCLOSED IN A CIRCLE WITH A BAR ACROSS IT, SHALL BE PROMINENTLY POSTED AND PROPERLY MAINTAINED WHERE SMOKING IS REGULATED BY THIS ARTICLE, BY THE OWNER, OPERATOR, MANAGER OR OTHER PERSON HAVING CONTROL OF SUCH INDOOR AREA.

2. THE OWNER, OPERATOR OR MANAGER OF A HOTEL OR MOTEL THAT CHOOSES TO DEVELOP AND IMPLEMENT A SMOKING POLICY FOR ROOMS RENTED TO GUESTS SHALL POST A NOTICE AT THE RECEPTION AREA OF THE ESTABLISHMENT AS TO THE AVAILABILITY, UPON REQUEST, OF ROOMS IN WHICH NO SMOKING IS ALLOWED.

873.2041 Smoking; clean indoor air; smoking restrictions inapplicable.

THIS ARTICLE SHALL NOT APPLY TO:

1. PRIVATE HOMES, PRIVATE RESIDENCES AND PRIVATE AUTOMOBILES;

2. ANY INDOOR AREA WHERE PRIVATE SOCIAL FUNCTIONS ARE BEING HELD WHEN SEATING ARRANGEMENTS ARE UNDER THE CONTROL OF THE SPONSOR OF THE FUNCTION AND NOT THE OWNER, OPERATOR, MANAGER OR PERSON IN CHARGE OF SUCH INDOOR AREA.

3. ANY INDOOR AREA OPEN TO THE PUBLIC EXCLUSIVELY RESERVED FOR CONVENTIONS AND TRADE SHOWS IF THE SPONSOR OR ORGANIZER GIVES NOTICE IN ANY PROMOTIONAL MATERIAL OR ADVERTISEMENTS THAT SMOKING WILL NOT BE RESTRICTED, AND PROMINENTLY POSTS NOTICE AT THE ENTRANCE TO THE CONVENTION OR TRADE SHOW ADVISING THE PUBLIC THAT SMOKING WILL NOT BE RESTRICTED.

4. A HOTEL OR MOTEL ROOM RENTED TO ONE OR MORE GUESTS;

5. TOBACCO BUSINESSES;

6. LIMOUSINES UNDER PRIVATE HIRE BY AN INDIVIDUAL OR CORPORATION; AND

7. WHOLLY OR PARTIALLY ENCLOSED PRIVATE BOXES IN INDOOR ARENAS.

873.2051. Smoking; clean indoor air; 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 AREA.

873.2061. Smoking; clean indoor air; violations.

1. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY THAT OWNS, MANAGES,OPERATES OR OTHERWISE CONTROLS THE USE OF AN INDOOR AREA OPEN TO THE PUBLIC IN WHICH SMOKING IS PROHIBITED OR RESTRICTED PURSUANT TO SECTION 873.2021 OF THIS ARTICLE TO FAIL TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE. FOR VIOLATIONS OF THIS SUBDIVISION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT DURING THE RELEVANT TIME PERIOD ACTUAL CONTROL OF THE INDOOR AREA OPEN TO THE PUBLIC WAS NOT EXERCISED BY THE RESPONDENT, BUT RATHER BY A LESSEE, THE SUBLESSEE OR ANY OTHER PERSON. TO ESTABLISH AN AFFIRMATIVE DEFENSE, THE RESPONDENT SHALL SUBMIT AN AFFIDAVIT AND MAY SUBMIT ANY OTHER RELEVANT PROOF INDICATING THAT THE RESPONDENT DID NOT EXERCISE ACTUAL CONTROL OF SAID AREA DURING THE RELEVANT TIME PERIOD. SUCH AFFIDAVIT AND OTHER PROOF SHALL BE MAILED BY CERTIFIED MAIL TO THE APPROPRIATE ENFORCEMENT OFFICER WITHIN THIRTY DAYS OF RECEIPT OF SUCH NOTICE OF VIOLATION.

2. IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY THAT OWNS, MANAGES OR OPERATES A FOOD SERVICE ESTABLISHMENT OR BAR IN WHICH SMOKING IS RESTRICTED OR PROHIBITED TO FAIL TO DESIGNATE AREAS PURSUANT TO SUBDIVISION FIVE OF SECTION 873.2021 OF THIS ARTICLE, OR TO FAIL TO MAKE GOOD FAITH EFFORTS TO ENSURE THAT EMPLOYEES RESPONSIBLE FOR SEATING ARRANGEMENTS SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE. IN ACTIONS BROUGHT FOR VIOLATIONS OF SUBDIVISION FIVE OF SECTION 873.2021 OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT NOTICE OF A VIOLATION WAS PROVIDED TO A CUSTOMER.

3. IT SHALL BE UNLAWFUL FOR AN EMPLOYER WHOSE PLACE OF EMPLOYMENT IS SUBJECT TO SUBDIVISION SIX OF SECTION 873.2021 OF THIS ARTICLE TO FAIL TO COMPLY WITH THE PROVISIONS OF SUCH SUBDIVISION. FOR VIOLATIONS OF SUBDIVISION SIX OF SECTION 873.2021 OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER HAS MADE GOOD FAITH EFFORTS TO ENSURE THAT EMPLOYEES COMPLY WITH THE PROVISIONS OF ANY POLICY ADOPTED PURSUANT TO SUBDIVISION SIX OF SECTION 873.2021 OF THIS ARTICLE.

4. IT SHALL BE UNLAWFUL FOR ANY PERSON TO SMOKE IN ANY AREA WHERE SMOKING IS PROHIBITED OR RESTRICTED UNDER SECTION 873.2021 OF THIS ARTICLE.

873.2071. Smoking; clean indoor air; enforcement.

1. FOR THE PURPOSE OF THIS ARTICLE THE TERM "ENFORCEMENT OFFICER" SHALL MEAN THE COMMISSIONER OF HEALTH OF WESTCHESTER COUNTY OR HIS DESIGNATED REPRESENTATIVES.

2. ANY PERSON WHO DESIRES TO REGISTER A COMPLAINT UNDER THIS ARTICLE MAY DO SO WITH THE APPROPRIATE ENFORCEMENT OFFICER.

3. THE OWNER, MANAGER, OPERATOR OR OTHER PERSON HAVING CONTROL OF ANY INDOOR AREA OPEN TO THE PUBLIC, FOOD SERVICE ESTABLISHMENT OR PLACE OF EMPLOYMENT UNDER THIS ARTICLE, SHALL INFORM, OR SHALL DESIGNATE AN AGENT WHO SHALL BE RESPONSIBLE FOR INFORMING INDIVIDUALS SMOKING IN A AREA IN WHICH SMOKING IS NOT PERMITTED THAT THEY ARE IN VIOLATION OF THIS ARTICLE.

873.2081. Smoking; clean indoor air; waiver.

1. THE ENFORCEMENT OFFICER MAY GRANT A WAIVER FROM THE APPLICATION OF A SPECIFIC PROVISION OF THIS ARTICLE, PROVIDED THAT PRIOR TO THE GRANTING OF ANY SUCH WAIVER THE APPLICANT FOR A WAIVER SHALL ESTABLISH THAT:

(A) COMPLIANCE WITH A SPECIFIC PROVISION OF THIS ARTICLE WOULD CAUSE UNDUE FINANCIAL HARDSHIP; OR

(B) OTHER FACTORS, INCLUDING BUT NOT LIMITED TO THE PHYSICAL LAYOUT, EXIST WHICH WOULD RENDER STRICT COMPLIANCE UNREASONABLE.

2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, THE ENFORCEMENT OFFICER SHALL GRANT A WAIVER FROM THE APPLICATION OF SUBDIVISION SIX OF SECTION 873.2021 OF THIS ARTICLE TO ANY APPLICANT WHO AS THE OWNER, OPERATOR OR MANAGER OF A FACTORY OR WAREHOUSE DEMONSTRATES THAT THE EFFECTS OF SMOKING ON EMPLOYEES IN WORK AREAS HAVE BEEN REDUCED TO A MINIMAL DEGREE BY FACTORS, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL LAYOUT OR SIZE OF SUCH FACTORY OR WAREHOUSE.

3. SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO WORK AREAS IN SEPARATE ENCLOSED OFFICES, EMPLOYEE CAFETERIAS, LUNCHROOMS OR LOUNGES IN A FACTORY OR WAREHOUSE.

4. EVERY WAIVER GRANTED SHALL BE SUBJECT TO SUCH CONDITIONS OR RESTRICTIONS AS MAY BE NECESSARY TO MINIMIZE THE ADVERSE EFFECTS OF THE WAIVER UPON PERSONS SUBJECT TO AN INVOLUNTARY EXPOSURE TO SECOND-HAND SMOKE AND TO ENSURE THAT THE WAIVER IS CONSISTENT WITH THE GENERAL PURPOSE OF THIS ARTICLE.

873.2091. Smoking; clean indoor air; penalties.

THE BOARD OF HEALTH MAY IMPOSE A CIVIL PENALTIES FOR VIOLATIONS OF THIS ARTICLE IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN ARTICLE II OF CHAPTER 873 OF THIS SANITARY CODE.

873.2101. Smoking; clean indoor air; limitation of causes of action.

AN EMPLOYER, ADMINISTRATOR, MANAGER, OWNER OR OPERATOR OF ANY INDOOR AREA, FOOD SERVICE ESTABLISHMENT, OR PLACE OF EMPLOYMENT REGULATED BY THIS ARTICLE WHO COMPLIES OR FAILS TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY LEGAL LIABILITY OR ACTION SOLELY AS A RESULT OF SUCH COMPLIANCE OR NONCOMPLIANCE EXCEPT AS PROVIDED IN SECTION 873.2091 OF THIS ARTICLE. NOTHING IN ANY OTHER SECTION OF THIS ARTICLE SHALL BE CONSTRUED TO CREATE, IMPAIR, ALTER, LIMIT, MODIFY, ENLARGE, ABROGATE OR RESTRICT ANY THEORY OF LIABILITY UPON WHICH ANY PERSON MAY BE HELD LIABLE TO ANY OTHER PERSON FOR EXPOSURE TO SMOKE.

873.2111 Smoking; clean indoor air; rules and regulations.

THE COMMISSIONER SHALL NOT PROMULGATE ANY RULES OR REGULATIONS TO EFFECTUATE THE PROVISIONS OF SECTION 873.2011, SUBDIVISION SIX OF SECTION 873.2021 OR SUBDIVISION ONE OF SECTION 873.2031 OF THIS ARTICLE, THE COMMISSIONER SHALL NOT PROMULGATE ANY RULES OR REGULATIONS THAT CREATE, LIMIT OR ENLARGE ANY SMOKING RESTRICTIONS.

S 6. SEVERABILITY. IF ANY PROVISION OF THIS ACT OR ANY PORTION THEREOF OR THE APPLICATION OR METHOD OF IMPLEMENTATION IS HELD INVALID, THE REMAINDER OF THIS ACT OR PORTION OF ANY PROVISION THEREOF AND THE APPLICATION AND IMPLEMENTATION OF ANY PORTION OF ANY PROVISION THEREOF TO OTHER PERSONS OR CIRCUMSTANCES, SHALL NOT BE AFFECTED BY SUCH HOLDING AND SHALL REMAIN IN FULL FORCE AND EFFECT.

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

I, Mark S. Rapoport, M.D., M.P.H., Commissioner of the Westchester County Department of Health, do hereby certify that I have compared the foregoing with the original resolutions and amendments adopted by the Board of Health at a meeting held in Hawthorne, New York, on the 29th day of February, 1996, and that same is a true and complete copy of the amendments of said code as adopted on the 29th day of February, 1996, and is published by the authority and order and under the direction of the Westchester County Board of Health.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Westchester County Department of Health, this 29th day of February, 1996.

Mark S. Rapoport, M.D., M.P.H.
Commissioner
Westchester County Department
of Health