

STATEMENT ( ) SUFFOLK COUNTY EXECUTIVE ( )

PETER F. COHALAN

APRIL 26, 1984

I AM RETURNING RESOLUTION NO. 217-1984, COMMONLY REFERRED TO AS THE "NO SMOKING BILL" VETOED.

THIS PROPOSED LOCAL LAW WOULD, IF ENACTED, MANDATE THE SETTING ASIDE OF NON-SMOKING AREAS IN ALL OFFICES WHERE MORE THAN 75 PERSONS WORK. IT WOULD ALSO REQUIRE THAT AT LEAST ONE-THIRD OF THE SEATS IN ALL RESTAURANTS WITH A CAPACITY OF 35 OR MORE PERSONS BE SET ASIDE FOR NON-SMOKERS. FURTHER, IT WOULD ALSO PROHIBIT SMOKING IN ESTABLISHMENTS WITH SERVICE LINES, IN OLD AGE HOMES, HEALTH SPAS, HEARING ROOMS, INDOOR SWIMMING POOLS, JURY ROOMS, PUBLIC LIBRARIES, PUBLIC RESTROOMS, THEATRES AND WAITING ROOMS.

WHILE I SYMPATHIZE WITH MANY OF THE OBJECTIVES OF THIS PROPOSED LOCAL LAW, AND WHILE I AM NOT A CIGARETTE SMOKER, I AM CONSTRAINED TO RETURN IT TO THE LEGISLATURE, VETOED, FOR THE FOLLOWING REASONS:

- (1) THE LEGISLATION CREATES ARBITRARY AND IRRATIONAL CLASSIFICATIONS IN VIOLATION OF FEDERAL AND STATE CONSTITUTIONAL GUARANTEES OF EQUAL PROTECTION. THE FOURTEENTH AMENDMENT PROHIBITS STATE AND LOCAL LEGISLATURES FROM ESTABLISHING CLASSIFICATIONS THAT ARE ARBITRARY AND WITHOUT RATIONAL RELATION TO THE INTERESTS SOUGHT TO BE ADVANCED BY THE LAW. THIS PROPOSED LOCAL LAW, FOR EXAMPLE, WOULD RESTRICT SMOKING IN RESTAURANTS AND OTHER EATING ESTABLISHMENTS WITH A CAPACITY OF 35 OR MORE CUSTOMERS, BUT WOULD EXEMPT SMALLER ESTABLISHMENTS, WHERE THE EFFECTS OF SMOKING ON NON-SMOKERS WOULD BE MORE CONCENTRATED. IN ADDITION, BARS ARE EXEMPTED FROM THE RESTRICTIONS APPLICABLE TO RESTAURANTS. IT IS MY BELIEF THAT THESE CLASSIFICATIONS AND EXEMPTIONS ARE TOTALLY ARBITRARY AND THUS RENDER THE PROPOSED LAW DEFECTIVE.
- (2) THIS PROPOSED LOCAL LAW PLACES AN UNFAIR ECONOMIC BURDEN ON RESTAURANTS AND SIMILAR EATING ESTABLISHMENTS WITH AN OCCUPIED CAPACITY OF 35 OR MORE PEOPLE. THE BURDEN OF THE ONE-THIRD SET ASIDE IS PARTICULARLY DISCRIMINATORY TOWARDS THOSE MEDIUM SIZED RESTAURANTS WHICH ARE THE BACKBONE OF THE RESTAURANT INDUSTRY IN SUFFOLK COUNTY. TO FORCE A MEDIUM SIZED RESTAURANT TO SET ASIDE ONE-THIRD OF HIS RESTAURANT AS A NON-SMOKING AREA, WHICH MANY TIMES WILL BE UNFILLED, MEANS A SURE LOSS OF REVENUE. THIS ADDITIONAL COST OF DOING BUSINESS WILL ONLY BE PASSED ALONG TO THE CUSTOMER IN THE LONG RUN.

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