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# Restaurants seek Superior Court stay of smoking law

**EAST GREENWICH** — With limits on smoking in local restaurants scheduled to take effect next week, representatives of a dozen restaurants and the Rhode Island Hospitality Association will be in Kent County Superior Court this morning asking a judge to block the new rules.

The plaintiffs are seeking a temporary order pending a full hearing, March 12, on a request for summary judgment on the legality of the smoking restrictions.

## **EAST GREENWICH**

ing restrictions.

The ordinance, passed April 25, requires all restaurants to either ban smoking or seal off a separate, ventilated area for smokers so secondhand smoke doesn't drift into nonsmoking areas. It was to take effect Dec. 1. Bars are not affected as long as they don't admit anyone under 18.

The restaurants filed suit to block the ordinance, but then turned their attention away from the courts and focused instead on defeating, in last fall's elections, the four council members who voted for the measure. With one exception — Councilman Vincent D. Bradley — the targeted members lost.

On Nov. 29, the new council voted 3 to 2 to pass an emergency ordinance that postponed the rules' implementation for 90 days. The delay, which drew fire from anti-smoking advocates who questioned whether an emergency existed, was passed after council President Marilyn J. Kiesel refused to accept comments from the people who filled the council chamber.

The emergency ordinance was supposed to give the council time to fur-

ther study the smoking law and allow the restaurants to explore a possible compromise.

But the council has never met on the issue, in spite of repeated requests by Bradley, and the restaurants have been unable to agree on a proposal that would satisfy them.

With Councilman Barry Dressler, who originally voted for the expansion, vowing that he would not support another deadline extension unless a compromise was reached, the emergency ordinance is due to expire March 1.

In deciding whether to grant a temporary order today, Judge Neri C. Vogel is expected to weigh, among other things, whether the restaurants will suffer irreparable harm if forced to comply with the smoking restrictions beginning next week and, if so, whether the harm of the lost business is outweighed by the harm of continued secondhand smoke in restaurants.

Town Solicitor Edmund L. Alves Jr. also said he will note that the restaurants have had nearly 10 months to prepare for the implementation of the ordinance.

At next month's hearing for summary judgment, a judge will decide whether cities and towns have the underlying authority to regulate smoking in the establishments licensed by the communities, or whether that authority over smoking is restricted to the General Assembly.

The basis for the East Greenwich ordinance was last year's state Supreme Court decision that gave Johnston the right to ban nude dancing in any establishment that holds a liquor license. The high court ruled that a city or town has the right to set restrictions on licenses it issues if the limitations are designed to maintain public health, safety and welfare.

The East Greenwich council said the public health threat posed by secondhand smoke is far clearer than the threat of nude dancing combined with liquor — the reason for the Johnston ordinance.

In his request for summary judgment, the lawyer for the restaurants, Brian A. Goldman,

who is also a lobbyist for the Philip Morris tobacco company, has countered that, while the Johnston restrictions are reasonable, the East Greenwich limits on restaurant smoking are not.

"Municipalities do not have unbridled power to impose unfair and absurd conditions upon the holders of liquor licenses," Goldman contends in his motion for summary judgment.

He says the General Assembly has not given communities the right to limit smoking in restaurants. A municipality's power to regulate restaurants is designed to protect the public "from unclean premises or equipment, unsanitary conditions, or impure or adulterated food products which would imperil the public health."

The restaurants suing the town are Pal's Family Restaurant, Mulberry Restaurant and Tavern, the East Greenwich Veteran Firemen's Association (which has an eatery and bar in its clubhouse), Twenty Water Street, Harbour-side Lobstermania, the Greenwich Hotel, Norman's Restaurant, Raphael Bar Risto, Richard's Pub, the Post Office Cafe, Audra's Cafe and the Kent Restaurant.

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