

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2013**

No. 94

Introduced by Council Members Gennaro, Chin, Palma, Van Bramer, The Speaker (Council Member Quinn), Rodriguez, Rivera, Dromm, Vacca, Brewer, Dickens, Crowley, Eugene and King.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to raising the sales age from eighteen to twenty-one years for cigarettes and tobacco products and establishing a sales age of twenty-one years for electronic cigarettes.

Be it enacted by the Council as follows:

Section 1. Legislative intent. Tobacco use remains a leading cause of preventable premature death in New York City, killing thousands of New Yorkers every year and increasing the risks of lung cancer, heart disease, stroke, asthma, emphysema, pre-term delivery, low birth weight, and many other types of cancer. Furthermore, cigarettes are the only consumer products that, when used exactly as intended, kill up to one-third of regular users.

In 2002, the City launched a comprehensive program to reduce and prevent tobacco use. By implementing multiple strategies-including legislation restricting the use and sale of cigarettes and tobacco products, public education media campaigns, and the promotion of smoking cessation-and rigorously evaluating those efforts, the City has succeeded in reducing the prevalence of adult smoking by 28 percent, from 21.5 percent in 2002 to 15.5 percent in 2012. The prevalence of youth smoking has also declined substantially, from 17.6 percent in 2001 to 8.5 percent in 2007. Youth smoking rates, however, have plateaued since 2007, and remain at 8.5 percent as of 2011. Almost 100,000 persons between eighteen and twenty-four years of age, as

well as 19,000 New York City public high school students, currently smoke.

Most smokers start using tobacco as youth or young adults. In New York City, 80 percent of smokers started smoking before they turned twenty-one years old. Furthermore, there is strong evidence that people who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age. The transition from experimental to regular smoking typically occurs around twenty years old. Most people who are not smokers by twenty-one years of age do not start smoking later in their lives.

Raising the legal sales age for cigarettes and tobacco products will reduce access to both products in stores among young adults, between eighteen and twenty years old, and among youth who are younger than eighteen. According to one study, raising the minimum sales age to twenty-one could reduce the smoking rate over time among eighteen to twenty year olds by 55 percent and among fourteen to seventeen year olds by two-thirds. Raising the sales age will reduce access to cigarettes and tobacco products by youth because youth often acquire such products from older friends: 90 percent of people purchasing cigarettes for minors are between eighteen and twenty years old.

Other jurisdictions that have increased the minimum sales age for cigarettes and tobacco products have seen decreases in tobacco use among youth. In 2005, Needham, Massachusetts increased the legal sales age from eighteen to twenty-one years. Between 2006 and 2012, the percentage of high school students in Needham who reported smoking declined from 12.9 percent to 5.5 percent, a decrease of over 50 percent. In 2007, England increased the minimum sales age from sixteen to eighteen years. By 2009, there was a 30 percent decline in smoking among youth between the ages of sixteen and seventeen, and younger students between the ages of eleven and fifteen were one-third less likely to be regular smokers than they had been

previously.

Electronic cigarettes have emerged as an alternative to cigarettes. Sales of electronic cigarettes doubled from nearly \$300 million in 2011 to \$600 million in 2012. According to data released by the Centers for Disease Control and Prevention, the percentage of middle and high school students in the United States who have used electronic cigarettes more than doubled from 2011 to 2012. Among high school students, the percentage who reported ever using an electronic cigarette increased from 4.7 percent in 2011 to 10.0 percent in 2012. More than 1.78 million middle and high school students nationwide tried electronic cigarettes in 2012. Electronic cigarettes are not regulated by the Food and Drug Administration (FDA) and contain nicotine, a potent and highly addictive substance, as well as potentially harmful chemicals. Although the long-term effects of electronic cigarette use require further study, the FDA has expressed concerns about their safety. Adolescents are more susceptible to the addictive properties of nicotine. Compared with adults, adolescents appear to display evidence of nicotine dependence at much lower levels of consumption. Thus, exposure to nicotine during adolescence may lead to a lifetime of nicotine addiction. Establishing a legal sales age of twenty-one years for electronic cigarettes will reduce electronic cigarette use among youth and prevent the emergence of a new generation that is addicted to nicotine.

The Council therefore finds that establishing a minimum sales age of twenty-one for cigarettes, tobacco products, and electronic cigarettes will reduce smoking, tobacco, and electronic cigarette use among youth and young adults, and decrease the likelihood that members of this cohort will become smokers or electronic cigarette users later in life. This increase in the minimum sales age will also reduce high school students' opportunities to access tobacco or electronic cigarettes from legal buyers. Moreover, this proposal will simplify enforcement for

retailers selling cigarettes, tobacco products, or electronic cigarettes because New York State driver's licenses conspicuously indicate when a licensee is under twenty-one years of age. Finally, raising the minimum sales age will augment existing tobacco prevention and control programs and improve the general health of all New Yorkers.

§ 2. Section 17-702 of the administrative code of the city of New York is amended by adding a new subdivision bb to read as follows:

bb. "Electronic cigarette" means a battery-operated device that contains nicotine and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette.

§ 3. Section 17-706 of the administrative code of the city of New York, as renumbered and amended by local law number 69 for the year 2009, is hereby amended to read as follows:

§ 17-706 Sale of *cigarettes*, tobacco products, *or electronic cigarettes* to minors and young adults prohibited.

a. Any person operating a place of business wherein *cigarettes*, tobacco products, *or electronic cigarettes* are sold or offered for sale [must be licensed as required by section 17-703 of this code and] is prohibited from selling such *cigarettes*, tobacco products, *or electronic cigarettes* to individuals under [eighteen] *twenty-one* years of age[, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, ROLLING PAPER OR PIPES, TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height]. Sale of *cigarettes*, tobacco products, *or electronic*

cigarettes in such places[, other than by a vending machine,] shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least [eighteen] *twenty-one* years of age. Such identification need not be required of any individual who reasonably appears to be at least [twenty-five] *thirty* years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of [a tobacco product] *cigarettes, tobacco products, or electronic cigarettes* to an individual under [eighteen] *twenty-one* years of age.

b. Any person operating a place of business wherein non-tobacco shisha, pipes, or rolling papers are sold or offered for sale is prohibited from selling such non-tobacco shisha, pipes, or rolling papers to individuals under eighteen years of age. Sale of non-tobacco shisha, pipes, or rolling papers in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of non-tobacco shisha, pipes, or rolling papers to an individual under eighteen years of age.

c. Any person operating a place of business wherein cigarettes, tobacco products, electronic cigarettes, herbal cigarettes, non-tobacco shisha, pipes, or rolling papers are sold or offered for sale shall post in a conspicuous place a sign, in accordance with the rules of the department, advising persons about the minimum age requirements for the purchase of such items.

§ 4. This local law shall take effect one hundred eighty days after it shall have been enacted into law, provided that the commissioner of the department of health and mental hygiene

may take such actions as are necessary for the implementation of this local law, including promulgation of rules, on and after the date of enactment.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on October 30, 2013 and approved by the Mayor on November 19, 2013.

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 94 of 2013, Council Int. No. 250-A of 2010) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.