

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1992

No. 83

By the Speaker (Council Member Vallone), Council Members Williams, Michels, Leffler, Albanese, Maloney, Rivera, Clarke, Linares, Fusco, Malave-Dilan, Duane, Fields and White; also Council Members Alter, Cruz, DiBrienza, Eldridge, Fisher, Freed, Harrison, Horwitz, Koslowitz, McCabe, Povman, Powell IV, Robinson, Warden, Abel, Millard, Cerullo III, Wooten, Robles and Eisland.

A LOCAL LAW

To amend the Administrative Code of the City of New York in relation to tobacco products.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. The Council finds that the health risks attributable to tobacco use have been well established. According to the United States Centers for Disease Control, tobacco addiction kills 434,000 Americans each year and is responsible for approximately 1,199,000 years of potential life lost before the age of 65. In New York City, the Department of Health reports that tobacco addiction kills some 11,000 New Yorkers each year.

The Council finds that the problem of tobacco addiction among children is particularly alarming. In 1988, American children under the age of eighteen spent \$1.26 billion for one billion packs of cigarettes and 26 million containers of chewing tobacco, resulting in profits of \$221 million for cigarette manufacturers. Studies show that the majority of adult tobacco addicts began smoking in their teens. According to the American Heart Association, Lung Association and Cancer Society, 25% of tobacco addicts begin using tobacco products before the age of 12, 50% before the age of 14 and 90% before the age of 20. The New York City Department of Consumer Affairs reports that 200 New York children begin the deadly habit of cigarette smoking every day, and, according to the National Institute on Drug Abuse, 18.7% of high school seniors smoke daily. National Institute on Drug Abuse studies also indicate that high school seniors who smoke are more likely to have used illicit drugs as compared to non-smoking high school seniors, demonstrating that tobacco is often a gateway drug.

It is the intention of the Council to make it more difficult for minors to unlawfully purchase tobacco products. This legislation would require the direct retail seller of tobacco products to be at least 18 years of age or under the direct supervision of someone at least 18 years of age. That seller would be required to have direct, personal con-

tact with the purchaser, who must provide photographic proof-of-age indicating that he or she is legally permitted to buy tobacco products in New York State, unless he or she reasonably appears to be at least twenty-five years of age. The legislation would also prohibit the sale of loose, individual cigarettes or other tobacco products that have been removed from their packaging so as to eliminate the health warnings required by law. In addition, it is the Council's intention to provide New York City's students with tobacco-free educational environments to the greatest extent allowable by law. Thus, tobacco product use on all school premises, both public and private, shall be prohibited.

Besides the grave dangers posed by tobacco use to the health of New York City residents of all ages, the Council also finds that tobacco use threatens the general welfare of all New Yorkers by causing enormous financial costs to the taxpayers, in the form of health care benefits, and a loss of productivity among the city's workforce.

Costs associated with illness and injury due to smoking may be immediate or deferred; there are both costs to the individual and costs to society in general. In the United States, economic costs due to smoking-attributable disease were estimated at \$53.7 billion in 1984 and \$65 billion in 1985. These costs include direct health care costs, indirect costs and other cost factors. Direct health care costs relating to smoking include hospitalization, physician services, nursing home care and medication. These costs are ordinarily paid by the individual, however, due to the large number of uninsured individuals in New York City and due to the fact that New York City pays a portion of Medicaid costs, the city is forced to bear a portion of the burden of direct health care costs relating to smoking. According to the New York City Department of Health, in 1989, direct health care costs attributable to smoking in New York City exceeded \$550 million. Indirect costs due to smoking are the value of lost productivity, output or foregone manpower when smoking related illness and death cause lost time from work and from other productive activities. According to the Department of Health, in 1989, indirect costs due to smoking exceeded \$1.3 billion in New York City.

The Council concludes that the enormous public costs resulting from tobacco addiction must be decreased by attempting to discourage all New Yorkers from the use of tobacco products. The Council deems the placement of tobacco product advertisements on certain property owned or operated by the city and certain property or facilities licensed by the city, inappropriate and contrary to the general welfare of the city's residents. It is the Council's desire to eliminate tobacco product advertisements from such properties and facilities. However, if such tobacco product advertisements are permitted on these properties and facilities, it is the intention of the Council to require the placement of at least one public health message for every four tobacco advertisements placed or appearing in or on certain property and facilities owned or operated, in whole or in part, by the City of New York and certain property and facilities licensed by the City of New York. It is not the intent of the Council to require the placement or display of such public health messages on privately owned real property.

§ 2. Title 17 of the administrative code of the city of New York is hereby amended by adding thereto a new chapter 7, to follow chapter 6, to read as follows:

CHAPTER 7

TOBACCO PRODUCT REGULATION ACT

§ 17-616 Short title. This chapter shall be known and may be cited as the

"Tobacco Product Regulation Act."

§ 17-617 Definitions. For purposes of this chapter, the following terms shall be defined as follows:

a. *"Affiliated company" means any business entity which is the holder of a right to place or display advertisements in or on a unit of advertising space and which has a relationship with a holder of a right to place or display advertisements in or on another unit of advertising space; such relationship shall be an identity of all principal owners or all directors; provided, however, that only entities which are holders of a right to place or display advertisements on the same type of units of advertising space shall be considered affiliated companies for purposes of this chapter.*

b. *"Authorizing agency" means the agency or other unit of local government of the city of New York which is (i) acting on behalf of the city with respect to a written agreement between the city and a private party which allows the placement or display of advertisements in or on a unit of advertising space; (ii) any agency designated by the mayor as having responsibility for a unit of advertising space that is the subject of a written agreement with the city which allows the placement or display of advertisements in or on such unit; or (iii) the issuer of a license or permit that expressly grants the right to place or display advertisements in or on a unit of advertising space. In the event that there is no authorizing agency as defined by this subdivision for a unit of advertising space, the authorizing agency for such unit shall be the agency with the primary expertise in the subject area covered by the written agreement with the city which allows the placement or display of advertisements in or on such unit.*

c. *"Cigarette license" means the license issued pursuant to section 11-1303 of the code.*

d. *"City of New York" or "city" means the city of New York or any of its agencies or other unit of local government.*

e. *"Employee" means any person who provides services for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services without monetary compensation.*

f. *"For-hire vehicle" means "for-hire vehicle" as defined in section 19-502 of the code.*

g. *"For-hire vehicle base" means a place of business from which for-hire vehicles are dispatched.*

h. *"Instrumentality of public transportation" means buses operated pursuant to a franchise or consent issued by or from the city of New York, ferries and ferry terminals owned or operated by the city of New York, trams and their appurtenances, bus stop shelters and licensed vehicles as defined in section 19-502 of the code.*

i. *"Person" means any natural person, partnership, corporation, government agency, association or other legal entity.*

j. *"Public health message" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, the primary purpose of which is to communicate the health risks of tobacco product use or the health benefits of not using tobacco products.*

k. *"Retail dealer" means "retail dealer" as defined in section 11-1301 of the code, and any employee or other agent of such retail dealer.*

l. "School premises" means the buildings, grounds or facilities, or any portion thereof, owned or occupied by public or private institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level.

m. "Special event" means an event (i) for which a permit has been issued by the city of New York; (ii) which has a duration of no longer than seven days; and (iii) for which an agreement has been entered into with the city that provides for the placement or display of signage intended to discourage the use of tobacco products.

n. "Taxicab" means "taxicab" as defined in section 19-502 of the code.

o. "Taxicab fleet" means a corporate entity organized for the ownership or operation of twenty-five or more taxicabs, which taxicabs are dispatched from a single location serving as both garage and office of record, which location has been approved by the taxi and limousine commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs, and which location has a dispatcher on the premises at least eighteen hours every day who is responsible for assigning drivers to fleet taxicabs.

p. "Taxicab minifleet" means a corporation licensed by the taxi and limousine commission to own and operate two or more taxicabs.

q. "Tobacco advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

r. "Tobacco product" means any substance which contains tobacco, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco.

s. "Trademark" means any word, name, symbol, logo, emblem or device, or any combination thereof, used by a person to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

t. "Trade name" means any name used by a person to identify his or her business or vocation.

u. "Unit of advertising space" means any real property, space, facility or instrumentality of public transportation, or any portion thereof, (i) owned or operated by, or leased from or to the city, or which is located or operates on real property owned or operated by or leased from or to the city, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency; or (ii) with respect to which a license or permit has been issued by the city that expressly grants the right to place or display advertisements, but not including licenses or permits issued pursuant to the building code.

§ 17-618 Out-of-package sales prohibited. All tobacco products sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer or packager which bears a health warning required by federal statute.

§ 17-619 Age restriction on handling. ~~It shall be unlawful for a retail dealer to permit an employee or other agent of the retail dealer to sell, dispense or otherwise handle a tobacco product unless such employee or other agent is (1) at least eighteen years of age; or (2) under the direct supervision of the retail dealer or an employee or other agent of the retail dealer who is at least eighteen years of age, and who is present on the premises.~~

§ 17-620 Sale of tobacco products to minors prohibited. Any person operating a place of business wherein tobacco products are sold or offered for sale is prohibited from selling such products to individuals under eighteen 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 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 tobacco products 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 indicating 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 a tobacco product to an individual under eighteen years of age.

§ 17-621 Public health messages required where tobacco advertisements appear on certain properties. a. (1) There shall be a minimum of one public health message placed or displayed in or on a unit of advertising space for every four tobacco advertisements placed or displayed in or on such unit. Twenty-five percent of the public health messages placed or displayed in or on such unit shall be directed to the youth population. In the event that there is at least one tobacco advertisement but fewer than four tobacco advertisements placed or displayed in or on a unit of advertising space, there shall be a minimum of one public health message placed or displayed in or on such unit and such public health message shall be directed to the youth population. Unless otherwise expressly provided, the requirements set forth in this section shall not be applicable to any advertisements placed or displayed in connection with a special event; provided, however, that any advertisements placed or displayed in connection with a special event which would otherwise be subject to the requirements of this section shall not be exempt from such requirements where the advertisements are placed or displayed more than thirty days prior to the commencement of such special event. In addition, the requirements set forth in this section shall not be applicable to any tobacco advertisement which is less than one hundred forty-four square inches and is placed or displayed in or on a sales counter where the sale of tobacco products is transacted in a place of business that is located on real property owned or operated by or leased from or to the city.

(2) The public health messages required by this section shall, to the greatest extent possible, be comparable in size, location and visibility to the tobacco advertisements placed or displayed in or on a unit of advertising space and shall be installed and maintained by the holder of the right to place or display advertisements in or on such unit in

accordance with the same standards, and the holder shall utilize the same materials and methods for display, as are used by such holder for any advertisements placed or displayed in or on such unit.

b. (1) It shall be the responsibility of the holder of the right to place or display advertisements in or on a unit of advertising space (i) to maintain at all times the ratio of public health messages to tobacco advertisements required by this section; and (ii) to maintain accurate records indicating on a daily basis the number of tobacco advertisements and public health messages placed or displayed by such holder, the locations of such advertisements and public health messages, and any other information deemed necessary by the authorizing agency or the department of health. Such holder shall provide to the city council and the authorizing agency for such unit a quarterly report containing the number of tobacco advertisements and public health messages placed or displayed by such holder during the preceding three months, the locations of such advertisements and public health messages, the dates on which such advertisements and public health messages were placed and displayed and any other information deemed necessary by the authorizing agency or the department of health. The authorizing agency shall provide a copy of the quarterly report to the department of health and any analysis of such report deemed necessary by the department. Any such holders who are affiliated companies may combine their units of advertising space for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. Taxicabs which are part of a taxicab fleet or taxicab minifleet may be combined for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. For-hire vehicles affiliated with a for-hire vehicle base may be combined for purposes of complying with the ratio requirements, maintaining the daily records and providing the quarterly report, required by this section. In such cases, the owner of the taxicab fleet, taxicab minifleet or for-hire vehicle base shall comply with the ratio requirements, maintain the daily records and provide the quarterly report on behalf of the owners of the taxicabs or for-hire vehicles.

(2) The holder of the permit authorizing a special event shall provide a report to the authorizing agency containing the number, locations and dates of placement and display of (i) advertisements which promoted the special event, identifying those advertisements which were tobacco advertisements; (ii) signage which was intended to discourage the use of tobacco products; and (iii) any public health messages. Such report shall also include any other information deemed necessary by the authorizing agency or the department of health. The authorizing agency shall provide a copy of such report to the department.

c. The department of health, together with the authorizing agencies, shall encourage the creation and submission of public health messages by interested individuals, groups or other entities. The authorizing agency for a unit of advertising space shall ensure that (i) at least twenty-five percent of the public health messages placed or displayed in or on such unit are directed to the youth population; and (ii) the ratio of public health messages to tobacco advertisements required by this section is achieved for such unit, through regular monitoring and enforcement activities.

d. Any interested individual, group or other entity may develop, print and make

available for distribution such public health messages at no cost to the city of New York or the holders of the right to place or display advertisements in or on units of advertising space. Such public health messages shall be printed utilizing the same materials as are used for any advertisements placed or displayed in or on each unit of advertising space. Any costs associated with the posting of the public health messages required by this section and any costs in terms of foregone advertising revenues associated with the placement or display of such public health messages in or on a unit of advertising space shall be borne by the holder of the right to place or display advertisements in or on such unit. Where the city is the sole holder of the right to place or display advertisements in or on a unit of advertising space, the city shall bear any costs associated with the posting of the public health messages and any costs in terms of foregone advertising revenues.

e. (1) Any interested individual, group or other entity may submit a proposed public health message to the department of health for approval. The department shall select for placement or display in or on a unit of advertising space those public health messages which it deems to communicate most effectively the health risks of tobacco product use or the health benefits of not using tobacco products. Such public health messages shall not use the name, image or likeness of any individual without the consent of that individual or shall not infringe any person's trade name, trademark, service mark or copyright, under applicable federal and state law. The department shall, to the greatest extent possible, select public health messages which are sufficiently different in visual images and text in order to ensure the holder of the right to place or display advertising an adequate selection of public health messages for placement or display in or on such holder's unit of advertising space. The department shall clearly indicate those public health messages which it deems to be directed to the youth population.

(2) The authorizing agency for a unit of advertising space shall review the public health messages selected by the department for conformance to the same standards, if any, regarding form, appearance and appropriateness to which advertisements accepted for placement or display in or on such unit are required to conform, pursuant to any agreement applicable to such unit to which the city is a party, or to any license or permit which has been issued by the city that expressly grants the right to place or display advertisements in or on such unit. The authorizing agency shall submit to the holder of the right to place or display advertising in or on such unit, those public health messages which it deems to conform to applicable standards pursuant to any agreement with or license or permit from the city applicable to such holder's unit. Within one week after the receipt of such public health messages, the holder of the right to place or display advertisements or his or her designee shall submit to the authorizing agency any recommendations concerning the selected public health messages based upon the standards, if any, regarding form, appearance and appropriateness to which advertisements accepted for placement or display in or on the unit of advertising space are required to conform pursuant to any contracts governing the placement or display of advertisements in or on such unit. Within two weeks after the receipt of any recommendations from the holder of the right to place or display advertising, the authorizing agency shall make its final decision as to which public health messages conform to applicable standards and notify the department which samples of public health messages the authorizing agency will

make available to the holder for placement or display. The holder of the right to place or display advertisements in or on the unit of advertising space shall not be required to replace a public health message placed or displayed in or on such unit with a different public health message more than four times annually.

f. It shall be the responsibility of the interested individuals, groups or other entities to provide the public health messages required by this section. To the extent that such public health messages are not provided in sufficient quantity to maintain the ratio between tobacco advertisements and public health messages required by this section: (1) those public health messages actually provided shall be placed or displayed in or on a unit of advertising space in accordance with the requirements of this section to the extent possible; and (2) tobacco advertisements may continue to be placed or displayed in or on such unit in a proportion in excess of the ratio required by this section.

g. (1) Any person who is the holder of a valid license or permit from, or is a party to an otherwise valid agreement with, the city of New York in effect on the date of enactment of the local law that added this section shall not be subject to the requirements of this section for the term of such license, permit or agreement. However, where such agreement provides for a right or rights of renewal for one or more periods upon the same terms and conditions or terms and conditions set forth in such agreement, the holder who is a party to such agreement or any agreements entered into pursuant to such right or rights of renewal shall be subject to the requirements of this section five years after the commencement of the first renewal period.

(2) Any holder of the right to place or display advertisements in or on a unit of advertising space who is subject to a collective bargaining agreement in effect on the date of enactment of the local law that added this section which provides for an apportionment of revenues resulting from advertisements placed or displayed in or on such unit shall not be subject to the requirements of this section until the expiration of the collective bargaining agreement.

h. If on the date of enactment of the local law that added this section, any party to a valid agreement with, or holder of a valid license or permit from, the city of New York is also a party to a valid contract entered into on or prior to such date with an entity other than the city of New York which extends beyond the term of such party's agreement with, or license or permit from, the city, such party shall not be subject to the requirements of subdivisions a through g of this section if compliance with such subdivisions would result in a material breach of the contract between such party and an entity other than the city, provided that such party:

1. shall promptly comply with subdivisions a through g of this section upon the expiration of such contract term, excluding any periods of time subject to an option to renew such contract, or upon the removal of any legal barrier to compliance prior to the expiration of the original contract term, whichever is earlier. Any person who claims to be covered by this paragraph and who fails to comply with subdivisions a through g of this section within the time limits set forth herein shall be liable for a civil penalty of not more than five hundred dollars for each day of non-compliance following the expiration of the original contract term or upon the removal of any legal barrier to compliance, whichever is earlier. Such civil penalty shall be recovered in accordance with the provisions of subdivision b of section 17-624; and

2. shall within ten days of the effective date of the local law that added this section, notify the authorizing agency for the unit of advertising space in writing of such person's inability to comply with subdivisions a through g of this section, setting forth in detail the reasons therefor and the earliest date upon which compliance can be achieved. The authorizing agency shall, as soon as practicable after receipt of such information, forward it to the department of health and the city council. Any person who fails to notify the authorizing agency as required by this paragraph or who knowingly submits information required by this paragraph which is false or misleading shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than one thousand dollars.

§ 17-622 Use of tobacco products on school premises prohibited. It shall be unlawful for any person to use a tobacco product, including chewing tobacco, on school premises at any time.

§ 17-623 Enforcement. The department of health and the department of consumer affairs shall enforce the provisions of this chapter. In addition, designated enforcement employees of any authorizing agency shall have the power to enforce the provisions of this chapter.

§ 17-624 Violations and penalties. a. Any person found to be in violation of section 17-618, 17-619 or 17-620 shall be liable for a civil penalty of not more than three hundred dollars for the first violation; not more than five hundred dollars for the second violation at the same place of business within a two-year period; and not more than one thousand dollars for the third and all subsequent violations at the same place of business within a two-year period. In addition, for a third and all subsequent violations at the same place of business within a two-year period, any person who engages in business as a retail dealer shall be subject to the mandatory suspension of his or her cigarette license for such place of business, for a period not to exceed one year. A cigarette license shall be suspended at the same hearing at which a retail dealer is found liable for a third violation or subsequent violations at the same place of business within a two-year period. Any person who shall knowingly make a false statement or who shall falsify or allow to be falsified any record or report required by section 17-621, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand five hundred dollars, or by imprisonment not to exceed six months, or both. Any person who shall make a false statement or who shall falsify or allow to be falsified any record or report required by section 17-621, or who shall fail to maintain any record or submit any report required by section 17-621, shall be liable for a civil penalty of not less than three hundred dollars nor more than one thousand five hundred dollars. Any person who violates section 17-622 shall be liable for a civil penalty of not more than fifty dollars for each violation.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-618, 17-619 or 17-620 of this chapter shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health where the department of health issues such notice or the adjudication division of the department of consumer affairs where that department issues such notice. Such notice shall contain a

statement that any hearing for a third violation or subsequent violations of section 17-618, 17-619 or 17-620 at the same place of business within a two-year period shall also constitute a hearing for the suspension of a retail dealer's cigarette license where the retail dealer is found to be in violation of any such sections. Where the department of health finds a retail dealer to be liable for a violation of section 17-618, 17-619 or 17-620 that department shall notify the department of consumer affairs within thirty days of such finding. Where the department of consumer affairs finds a retail dealer to be liable for a violation of section 17-618, 17-619 or 17-620, that department shall notify the department of health within thirty days of such finding. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-621 or authorized pursuant to subdivision h of section 17-621 shall be returnable to the administrative tribunal established by the board of health. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-622 shall be returnable to the administrative tribunal established by the board of health. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section or subdivision h of section 17-621 of this chapter. The adjudication division of the department of consumer affairs shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-618, 17-619 or 17-620 of this chapter.

c. The penalties provided by subdivision a of this section and subdivision h of section 17-621 of this chapter shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

d. Whenever any person has engaged in any acts or practices which constitute a violation of any provision of this chapter or of any rule promulgated thereunder, the city may make application to a court of competent jurisdiction for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order or other order enjoining such acts or practices.

§ 17-625 *Report.* Not later than twelve months after the effective date of the local law that added this section and each year thereafter, the department shall submit a report to the mayor and the city council concerning the administration and enforcement of this chapter.

§ 17-626 *Construction.* Nothing contained in this chapter shall be construed to preclude the city of New York from prohibiting the placement or display of tobacco advertisements in or on units of advertising space.

§ 3. Subdivision d of section 11-1303 of such code, as amended by chapter 808 of the laws of 1992, is hereby amended to read as follows:

d. Commissioner of finance may suspend or revoke licenses. The commissioner of finance may suspend or revoke, *after a hearing*, a cigarette license (1) whenever the commissioner finds that the holder thereof has failed to comply with any of the provisions of this chapter or any rules or regulations of the commissioner of finance prescribed, adopted and promulgated under this chapter; or (2) *in accordance with the requirements of any other section of this code which authorizes the commissioner of finance to suspend or revoke a cigarette license.* Upon suspending or revoking any cigarette license, the commissioner of finance shall direct the holder thereof to surrender to the commissioner of finance immediately all licenses or duplicates thereof issued to

such holder and the holder shall surrender promptly all such licenses to the commissioner of finance as directed. Before the commissioner of finance suspends or revokes a cigarette license he or she shall notify the holder and the holder shall be entitled to a hearing, if desired, if the holder, within ninety days from the date of such notification, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. After such hearing, the commissioner of finance, good cause appearing therefor, may suspend or revoke the license. The commissioner of finance may by regulation, provide for granting a similar hearing to an applicant who has been refused a license by the commissioner of finance.

§ 4. Paragraph 13 of subdivision a of section 17-503 of such code, as added by local law number 2 for the year 1988, is hereby amended to read as follows:

13. All pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade[; provided, however, that this section shall not prohibit smoking in areas designated for smoking in employee dining areas, lounges, or administrative offices, so long as (A) prior written approval is received from the fire commissioner, and (B) smoking in such areas is not otherwise prohibited pursuant to section 17-504]. *This paragraph shall apply to all enclosed areas of such schools notwithstanding any inconsistent provisions of section 17-504 or 17-505 of this chapter which permit smoking in certain work areas of places of employment.*

§ 5. Subdivision a of section 19-525 of such code is hereby amended to read as follows:

a. No vehicle licensed pursuant to the provisions of this chapter shall carry any advertising on the exterior of such vehicle, *including its roof and trunk*, unless the owner thereof shall first have obtained from the commission a permit to carry such exterior advertising.

§ 6. Section 365 of the charter of the city of New York is hereby amended by relettering subdivision b as subdivision c and by adding thereto a new subdivision b to read as follows:

b. *Every agreement memorializing the terms and conditions of a franchise, revocable consent or concession shall contain an agreement by the grantee that it will (1) permit the placement or display of the public health messages required by section 17-621 of the code, on any property subject to such franchise, revocable consent or concession, or any facility, plant, equipment or other property used in connection with such franchise, revocable consent or concession; and (2) bear any costs associated with the posting of such public health messages and any costs in terms of foregone advertising revenues associated with the placement or display of such public health messages.*

§ 7. This local law shall take effect one hundred and eighty days after its enactment into law. Actions necessary to prepare for the implementation of this local law may be taken prior to the effective date.

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 8, 1992, and approved by the Mayor on October 27, 1992.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 83 of 1992, Council Int. No. 2-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on October 8, 1992: 43 for, 4 against.

Was approved by the Mayor on October 27, 1992.

Was returned to the City Clerk on October 27, 1992.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel