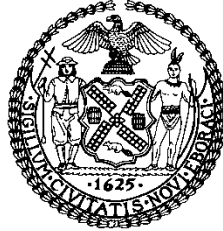


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THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE HUMAN SERVICES DIVISION

Robert Newman, Legislative Director

COMMITTEE ON HEALTH

Hon. Maria del Carmen Arroyo, Chair

May 2, 2013

PROPOSED INT. NO. 250-A:

By Council Members Gennaro, Chin, Palma, Van Bramer, The Speaker (Council Member Quinn), Rodriguez, Rivera, Dromm, Vacca, Brewer and Dickens.

TITLE:

A Local Law in relation to raising the legal tobacco products sales age to twenty-one years.

ADMINISTRATIVE CODE:

Amends section 17-706 of chapter 7 of title 17 of the administrative code of the city of New York.

INT. NO. 1020:

By Council Members Arroyo, Cabrera, Chin, Comrie, Dromm, Fidler, King, Lander, Lappin, Rodriguez, Levin, Vann, and Vacca (by request of the Mayor)

TITLE:

A Local Law in relation to the display of cigarettes and tobacco products by retail dealers of cigarettes and age restrictions on entry to retail tobacco stores.

ADMINISTRATIVE CODE:

Amends chapter 7 of title 17 of the administrative code of the city of New York by adding a new section 17-705.1 and a new subchapter 3.

INT. NO. 1021:

By Council Members Arroyo, Cabrera, Chin, Comrie, Dromm, Fidler, King, Lander, Lappin, Rodriguez, Levin, Vann, and Vacca (by request of the Mayor)

TITLE:

A Local Law in relation to the sale of cigarettes and tobacco products, the regulation of retail dealers and wholesale dealers of cigarettes, and repealing subdivision c of section 17-176 of the administrative code of the city of New York, relating to an exemption from such section, and repealing section 17-707 of the administrative code of the city of New York, relating to requiring public health messages where tobacco advertisements appear.

ADMINISTRATIVE CODE:

Amends subdivision 7 of section 11-1301; amends section 11-1304 by adding a new subdivision d; amends chapter 40 of title 11 by adding new sections 11-4023 and 11-4024; repeals subdivision c of section 17-176; amends title 17 by adding a new section 17-176.1; amends subdivision r of section 17-702; amends section 17-702 by adding new subdivisions w, x, and y; amends section 17-703; amends title 17 to add a new section 17-703.1; amends title 17 to add a new section 17-703.2; amends section 17-704; amends section 17-705; amends section 17-706; repeals section 17-707; amends section 17-709; amends subchapter 1 of title 17 of by adding a new section 17-709.1; amends subdivisions a, b, c and e of section 17-710; amends section 17-710 by adding a new subdivision g; amends subdivisions a and j of section 17-713; amends section 17-715; amends section 17-716; amends section 17-717; amends section 17-718; amends subdivision f of section 20-201; amends subdivision d of section 20-202, subparagraph C of paragraph 1 of subdivision d and paragraph 4 of subdivision d; amends section 20-207, and adds a new subdivision c.

I. INTRODUCTION

On May 2, 2013, the Committee on Health, chaired by Council Member Maria del Carmen Arroyo, will hold a hearing on Proposed Int. No. 250-A, a local law to amend the Administrative Code of the City of New York (the Code), in relation to raising the legal tobacco products sales age to twenty-one years; Int. No. 1020, a local law to amend the Code in relation to the display of cigarettes and tobacco products by retail dealers of cigarettes and age restrictions on entry to retail tobacco stores; Int. No. 1021, a local law to amend the Code, in relation to the sale of cigarettes and tobacco products, the regulation of retail dealers and wholesale dealers of cigarettes, and repealing subdivision c of section 17-176, relating to an exemption from such section, and repealing section 17-707, relating to requiring public health messages where tobacco advertisements appear.

Witnesses invited to testify include representatives from the New York City Department of Health and Mental Hygiene (DOHMH), the New York City Department of Finance (DOF), the New York City Department of Consumer Affairs (DCA), public health advocates, representatives of the tobacco and cigarettes industries, representatives of small businesses and retailers, local chambers of commerce, and consumer advocates.

II. BACKGROUND

A. Smoking and Tobacco Use: Health and Economic Impact

Tobacco use is the leading cause of preventable, premature death in the United States and New York City.¹ In the United States, smoking is responsible for about one in five deaths

¹ New York City Department of Health and Mental Hygiene. *Preventing Non-Communicable Diseases and Injuries:*

annually or about 443,000 deaths per year.² In New York City, smoking claims the lives of approximately 7,000 New Yorkers ages 30 years and older and approximately 2,200 premature deaths each year.³ According to the Centers for Disease Control and Prevention (CDC), tobacco use causes more deaths each year than the total number of deaths combined from the human immunodeficiency virus (HIV), illegal drug use, alcohol use, motor vehicle injuries, suicides and murders.⁴ As the American Cancer Society underscores, because “cigarette smoking and tobacco use are acquired behaviors—activities that people choose to do—smoking is the most preventable cause of death in our society.”⁵

Smoking causes the overwhelming majority of lung cancer deaths—an estimated 90% of all lung cancer deaths in men and 80% of all lung cancer deaths in women⁶—and causes many other types of cancer, including cancers of the throat, mouth, nasal cavity, esophagus, stomach,

Innovative Solutions from New York City. New York, New York City Department of Health and Mental Hygiene, 2011. See also Goodarz Danaei, Eric L. Ding, Dariush Mozaffarian, Ben Taylor, Jürgen Rehm, Christopher J. L. Murray, and Majid Ezzati, *The preventable causes of death in the United States: comparative risk assessment of dietary, lifestyle, and metabolic risk factors*, PLoS Med 2009;6(4): e1000058.

² Centers for Disease Control and Prevention, *Smoking & Tobacco Use*, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/ (last accessed April 29, 2013).

³ New York City Department of Health and Mental Hygiene. *Preventing Non-Communicable Diseases and Injuries: Innovative Solutions from New York City*. New York, New York City Department of Health and Mental Hygiene, 2011.

⁴ Centers for Disease Control and Prevention, *Health Effects of Cigarette Smoking*, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/ (last accessed April 29, 2013).

⁵ American Cancer Society, *Cigarette Smoking*, <http://www.cancer.org/cancer/cancercauses/tobaccocancer/cigarettesmoking/cigarette-smoking-who-and-how-affects-health> (last accessed April 29, 2013).

⁶ Centers for Disease Control and Prevention, *Health Effects of Cigarette Smoking*, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/ (last accessed April 29, 2013).

pancreas, kidney, bladder, and cervix, and acute myeloid leukemia.⁷ Smoking also increases the risk of other diseases, including coronary heart disease, stroke and lung disease.⁸

Smoking claims more than just lives; it causes substantial economic impact. The American Cancer Society reports that smoking causes more than \$193 billion in health-related costs each year, including both medical costs and the cost of lost productivity due to smoking.⁹ Between 2000 and 2004, productivity losses due to smoking among workers cost the US economy an average of almost \$97 billion per year.¹⁰ Smoking-related illnesses cost New Yorker state residents billions of dollars annually in health care costs and lost productivity.¹¹

B. Recent Initiatives to Combat Smoking & Tobacco Use

Over the past decade, New York City has taken significant steps to combat smoking and tobacco use, from initiatives aimed at reducing tobacco use among adults to those designed to prevent youth from starting to use cigarettes and tobacco products. Such initiatives have included (1) the imposition of high cigarette excise taxes¹²; (2) educational media campaigns on

⁷ National Cancer Institute, *Tobacco Facts*, <http://www.cancer.gov/cancertopics/tobacco/statisticssnapshot#1> (last accessed April 29, 2013).

⁸ Centers for Disease Control and Prevention, *Health Effects of Cigarette Smoking*, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/ (last accessed April 29, 2013).

⁹ American Cancer Society, *How Does Tobacco Use Affect the Economy?*, <http://www.cancer.org/cancer/cancercauses/tobaccocancer/questionsaboutsmokingtobaccoandhealth/questions-about-smoking-tobacco-and-health-tob-and-economy> (last accessed April 29, 2013).

¹⁰ *Id.*

¹¹ NYS Dept. of Health Tobacco Control Program, *The costs of tobacco on NY State*, <http://www.nysmokefree.com/EMP/EMPsubpage.aspx?p=60&p1=6020>, (last accessed April 30, 2013).

¹² New York City has the highest combined excise tax on cigarettes. New York State has a tax of \$4.35 per pack, and New York City imposes a local excise tax of \$1.50 per pack, bringing the combined tax rate in New York City to \$5.85. Campaign for Tobacco-Free Kids, *Top Combined State-Local Cigarette Tax Rates*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0267.pdf>.

the risks of tobacco use¹³; (3) cessation programs designed to help people quit¹⁴; and (4) restrictions and regulations on the sale and use of tobacco products.¹⁵

Between 2002 and 2010, the prevalence of adult smoking in the City decreased from 21.5% in 2002 to 14.8% in 2011, a 31% reduction.¹⁶ The prevalence of smoking among youth has also declined dramatically, from 17.6% in 2001 to 8.5% in 2007.¹⁷ However, despite the significant drop in smoking among youth, youth smoking rates have plateaued since 2007, and remain at 8.5 percent as of 2011.¹⁸

C. Smoking Among Young Persons: Prevalence, Transition to Life-Long Smoking and Availability of Tobacco Products through Social Means

Currently, hundreds of thousands of New Yorkers smoke, including approximately 930,000 adults.¹⁹ However, the problem of youth smoking is acute. Of young persons between eighteen and twenty-four years of age, approximately 100,000 currently smoke.²⁰ Additionally, an estimated 19,000 New York City public high school students smoke.²¹

¹³ New York City Dept. of Health and Mental Hygiene, *Health Department Launches New Smoking Cessation Campaign, Suffering Every Minute, Which Depicts the Health Consequences of Smoking: City Announces Free Nicotine Patch and Gum Giveaway through September 20th*, <http://www.nyc.gov/html/doh/html/pr2012/pr023-12.shtml>, (last accessed April 30, 2013).

¹⁴ *Id.*

¹⁵ In 2002, New York City passed the Smoke-Free Air Act to prohibit smoking in virtually all workplaces and indoor recreational venues. In 2009, the act was expanded to prohibit smoking within 15 feet of entrances, exits and grounds of New York City's hospitals. See Local Law 50 of 2009. In 2011, the Act was expanded again to include City parks, beaches, boardwalks, public golf courses, sports stadiums and pedestrian plazas. See (Local Law 11 of 2011. The City also restricted the sale of flavored non-cigarette tobacco products in 2009. See Local Law 69 of 2009.

¹⁶ New York City Dept. of Health and Mental Hygiene, *EPI Data Brief*, <http://www.nyc.gov/html/doh/downloads/pdf/epi/databrief19.pdf>, (last accessed April 30, 2013).

¹⁷ New York City Dept. of Health and Mental Hygiene, *Youth Risk Behavior Survey 2007, 2011*.

¹⁸ *Id.*

¹⁹ New York City Dept. of Health and Mental Hygiene, *EPI Research Report: Methodology Updates to the New York City Community Health Survey*, <http://www.nyc.gov/html/doh/downloads/pdf/epi/epiresearch-chsmethods.pdf>.

²⁰ New York City Dept. of Health and Mental Hygiene, *Community Health Survey, 2011*.

²¹ New York City Dept. of Health and Mental Hygiene, *Youth Risk Behavior Survey, 2011*.

There is overwhelming scientific evidence that life-long smokers start young. In the City, 80% of smokers started smoking before they turned twenty-one.²² Nationally, the percentage of smokers who start young are similar: according to the United States Surgeon General, approximately 90% of current smokers started by the age of 18, and 99% started by age 26.²³ The Surgeon General has found that almost no one starts smoking after age 25.²⁴ Moreover, the transition from experimental to regular smoking typically occurs around twenty years old.²⁵

Evidence also suggests that young persons are more susceptible to becoming addicted to smoking. According to the American Lung Association, 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.²⁶ Another study concludes that the onset of tobacco addiction among youth is rapid, noting that “a young cigarette smoker can begin to feel powerful desires for nicotine within two days of first inhaling . . . and about half of children who become addicted report symptoms of dependence by the time they are smoking only seven cigarettes a month.”²⁷ These findings contradict previously held conceptions that people have to smoke at least five cigarettes a day over a long period of time before they become addicted to nicotine.²⁸ The consequences of starting smoking

²² New York City Dept. of Health and Mental Hygiene, New York City Community Health Survey 2004-2007.

²³ United State Department of Health and Human Services, United States Surgeon General, *Preventing Tobacco Use Among Youth and Young Adults Fact Sheet*, <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/factsheet.html> (last accessed April 29, 2013).

²⁴ *Id.*

²⁵ Hammond D. (2005). Smoking behavior among young adults: Beyond youth prevention. *Tob Ctr*14:181-185.

²⁶ American Lung Association, *Children and Teens*, <http://www.lung.org/stop-smoking/about-smoking/facts-figures/children-teens-and-tobacco.html> (last accessed April 29, 2013).

²⁷ Nicholas Bakalar, *Nicotine Addiction Is Quick in Youths, Research Finds*, N.Y. TIMES (July 21, 2007) (reporting on a study published in *The Archives of Pediatrics and Adolescent Medicine*).

²⁸ *Id.*

young are profound: roughly one third of all youth who become regular smokers before adulthood will eventually die from smoking.²⁹

Currently, it is illegal for persons under 18 to purchase cigarettes or other tobacco products in New York State.³⁰ Nevertheless, studies suggest that friends are a common source of tobacco among underage youth.³¹ According to data from DOHMH, while the proportion of public high school students buying their own cigarettes from stores dropped between 1997 and 2011, the percentage of those who obtained cigarettes from someone else jumped from 40% to 52%.³² Often, the social sources of cigarettes for underage smokers are individuals who are just over the legal age: one study found that 90% of people purchasing cigarettes for minors were between 18 and 20 years of age.³³ Another study evaluating the potential efficacy of raising the legal purchase age of tobacco products to 21 found that high school students are less likely to come into contact with 21-year olds than 18-year olds in their social circles, which reduces the opportunity to access tobacco from legal buyers.³⁴

D. Taxes and Enforcement: Contraband Cigarettes & Illegal Sales of Cigarettes

Cigarette trafficking and illegal sales of cigarettes are a major problem in New York City. Cigarette trafficking costs New York City and State hundreds of millions of dollars annually in

²⁹Campaign for Tobacco Free Kids, *The Path to Tobacco Addiction Starts at Very Young Ages*, available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0127.pdf> (last accessed April 29, 2013).

³⁰N.Y.S. Pub. Health L. §1399-cc.; N.Y.C. Admin. Code § 17-706.

³¹See, e.g., DiFranza J, and Coleman M (2001). Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tob Ctrl* 2001;10:323-328.

³²New York City Dept. of Health and Mental Hygiene, Epiquery: NYC Interactive Health Data System -New York City Youth Risk Behavior Survey 1997-2011, <http://nyc.gov/health/epiquery> (last accessed April 19, 2013).

³³DiFranza J, and Coleman M (2001). Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tob Ctrl* 2001;10:323-328.

³⁴Ahmad, S. (2005). Closing the youth access gap: The projected health benefits and cost savings of a national policy to raise the legal smoking age to 21 in the United States. *Health Policy* 75:74-84.

foregone tax revenue.³⁵ Criminal actors take advantage of the disparities in cigarette prices among states along the East Coast by trafficking cigarettes from low-tax jurisdictions like Virginia to high-tax jurisdictions like New York City, violating numerous laws in the process.³⁶ For example, the state excise tax on a pack of cigarettes in Virginia is \$0.30; in New York City, the combined excise tax is \$5.85, including the \$4.35 State tax and the \$1.50 City tax.³⁷ A trafficker smuggling 10,000 packs of cigarettes purchased legally in Virginia could make a profit of approximately \$55,500 by reselling them in New York City, earning more than double the initial outlay.³⁸ Several studies suggest the widespread availability of trafficked cigarettes. In a 2011 study of littered cigarette packs in New York City, only 39% of littered packs bore the proper New York City tax stamp; and among packs with out-of-state stamps, 71.4% were from Virginia.³⁹

Targeted investigations of 877 licensed retailers in 2012 by the New York City Department of Finance's Sheriff's Office found that 52% of the retailers possessed cigarettes without the required New York City tax stamp.⁴⁰ In a 2010 survey, approximately 11% of New York City smokers reported purchasing their last pack of cigarettes from another person or on the street, presumably without payment of the City excise tax.⁴¹

³⁵ Brett Loomis, et al., *Implications of the June 2008 \$1.25 Cigarette Tax Increase*, NYS Dept. of Health, Nov. 2010, http://www.health.ny.gov/prevention/tobacco_control/docs/2010-11-12_tax_increase_topical_report.pdf.

³⁶ Joseph Henchman, Scott Drenkard, *Cigarette Taxes and Cigarette Smuggling by State*, The Tax Foundation, <http://taxfoundation.org/article/cigarette-taxes-and-cigarette-smuggling-state>.

³⁷ Campaign for Tobacco-Free Kids, *Top Combined State-Local Cigarette Tax Rates*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0267.pdf>.

³⁸ U.S. Government Accountability Office, *Report to Congressional Committees, Illicit Tobacco: Various Schemes Are Used to Evade Taxes and Fees*, GAO-11-313 at 14. (Mar. 2011)

³⁹ David Merriman and Howard Chernick, *Using Littered Pack Data to Estimate Cigarette Tax Avoidance in NYC*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192169.

⁴⁰ DOF inspects more than 8,000 retailers annually. Information provided by the New York City Department of Finance.

⁴¹ New York City Dept. of Health and Mental Hygiene, *Community Health Survey*. 2010.

On a broader level, New York State’s Department of Health estimated that cigarette excise tax evasion deprived the State of \$500 million in 2009.⁴² New York City’s cigarette tax revenue losses amount to a substantial portion of New York State’s losses. Available evidence suggests the extent of cigarette tax revenue losses has likely increased since 2009.⁴³

Illegal sales to underage youth also remain a substantial problem. In NYC, 25% of public high school students under 18 who smoke reported purchasing cigarettes in stores.⁴⁴

III. EFFORTS TO COMBAT TOBACCO USE

“Tobacco 19” & “Tobacco 21” Laws

In an effort to combat youth smoking, several states and localities around the country have passed laws raising the legal tobacco products sales age to 19—which are sometimes known as “Tobacco 19” laws. Alabama,⁴⁵ Alaska,⁴⁶ New Jersey⁴⁷ and Utah⁴⁸ are among the states that have raised the legal tobacco products sales age to 19. In New York State, Nassau,⁴⁹ Onondaga⁵⁰ and Suffolk⁵¹ counties all have also raised the legal sales age to 19. Among other

⁴² Brett Loomis, et al., *Implications of the June 2008 \$1.25 Cigarette Tax Increase*, NYS Dept. of Health, Nov. 2010, http://www.health.ny.gov/prevention/tobacco_control/docs/2010-11-12_tax_increase_topical_report.pdf.

⁴³ David Merriman and Howard Chernick, *Using Littered Pack Data to Estimate Cigarette Tax Avoidance in NYC*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192169; Marin K Kurti, Klaus von Lampe, Douglas E Thompson. *The illegal cigarette market in a socioeconomically deprived inner-city area: the case of the South Bronx*. Tobacco Control, 2013.

⁴⁴ New York City Dept. of Health and Mental Hygiene, *Youth Risk Behavior Survey*, 2011.

⁴⁵ Ala. Code § 28-11-13 (2011).

⁴⁶ Alaska Stat. §§ 11.76.100 & 11.76.105 (2011).

⁴⁷ N.J. Stat. Ann. § 2A:170-51.4 (2011).

⁴⁸ Utah Code Ann. §§ 76-10-104 et seq. & 76-10-105 (2011).

⁴⁹ Nassau County, N.Y., Local Law No. 5-2006 (Apr. 26, 2006).

⁵⁰ Onondaga County, N.Y., Local Law No. 2-2009 (Jan. 12, 2009).

⁵¹ Suffolk County, N.Y., Regulatory Local Laws ch. 792.

goals, these laws aim to combat youth smoking and to limit the indirect sale of tobacco products to underage smokers who obtain the products from their older peers.⁵²

Currently no state in the country has a “Tobacco 21” law, although at least one town in New England, Needham, Massachusetts, has passed such a law. In 2005, the Town of Needham increased the legal sales age from eighteen to twenty-one.⁵³ Needham’s experience suggests the measure worked in reducing the prevalence of young smokers. Between 2006 and 2012, high school students in Needham who reported smoking declined from 13% to 5.5%, a decrease of over 50%.⁵⁴ Other jurisdictions that have raised the minimum sales age have also experienced drops in youth smoking. In 2007, England raised the minimum sales age from 16 to 18, and within two years, there was a 30% decline in smoking among youth between the ages of sixteen and seventeen.⁵⁵ Also, younger students—those between eleven and fifteen—were one-third less likely to be regular smokers than they had been previously.⁵⁶ Finally, a computer simulated study predicted that raising the legal sales age to 21 would reduce the smoking prevalence of adults by 30% and 82% among 14-17 year olds over a 50-year period.⁵⁷

Some critics have argued that studies demonstrating the efficacy of raising the minimum purchase age in reducing youth smoking are inconclusive.⁵⁸ In addition, opponents of laws that raise the minimum sales age also cite lost profits and ineffectiveness as reasons against these

⁵² See, e.g., Press Release, Nassau County Legislature, *Abrahams and Majority Legislators Approve Law Raising Legal Age to 19 to Purchase Tobacco*, <http://www.nassaucountyny.gov/agencies/Legis/LD/01/NewsRelease/2006/042606tobacco19ka.html> (last accessed on April 29, 2013).

⁵³ Associated Press, *NYC Proposes Raising Age For Cigarette Purchases*, available at <http://www.npr.org/templates/story/story.php?storyId=178413124> (last accessed April 29, 2013).

⁵⁴ *Id.*

⁵⁵ Millett C, Lee JT, Gibbons DC, Glantz SA. Increasing the age for the legal purchase of tobacco in England: impacts on socio-economic disparities in youth smoking. *Thorax* 2011;66(10):862-865.

⁵⁶ *Id.*

⁵⁷ Ahmad, S. (2005). Closing the youth access gap: The projected health benefits and cost savings of a national policy to raise the legal smoking age to 21 in the United States. *Health Policy* 75:74-84.

⁵⁸ Nicholas Bakalar, *Debating Age Limits on Tobacco*, N.Y. TIMES (April 29, 2013) available at <http://well.blogs.nytimes.com/2013/04/29/debating-age-limits-on-tobacco/>.

laws. A representative of the National Association of Convenience Stores stated that a higher minimum tobacco purchase age could cut into sales that make up 40% of gross revenues for the average convenience store.⁵⁹ Furthermore, this representative argued, the law's effectiveness might be undercut by younger smokers who travel outside the City to lower-age jurisdictions to purchase tobacco products.⁶⁰

In the past week, New York State Senator Diane Savino and Assemblywoman Linda Rosenthal announced the introduction of a bill that would raise the legal age to purchase tobacco products to 21 across New York State.⁶¹

Price Floors and Coupon Bans

In recent years, legislatures have sought to combat the sale of cigarettes and marketing to youth through regulations that limit the use of discounts in the sale of tobacco products. According to a recent New York Times article, a Federal Trade Commission report issued in 2012 indicates that the tobacco industry spent \$6.5 billion on discounts in 2010.⁶² Experts have argued that discounts on cigarettes are one of the major ways cigarette makers “encourage price-conscious customers like teenagers and low-income smokers to buy.”⁶³ Based on numerous studies, high tobacco prices reduce tobacco consumption among both youth, who are especially price-sensitive, as well as adults.⁶⁴ According to the Campaign for Tobacco Free Kids, the

⁵⁹ Associated Press, *NYC Proposes Raising Age For Cigarette Purchases*, available at <http://www.npr.org/templates/story/story.php?storyId=178413124> (last accessed April 29, 2013).

⁶⁰ *Id.*

⁶¹ See Senate Bill S.4863, 2013 Regular Session (NY 2013); Assembly Bill A-7105, 2013 Regular Session (NY 2013).

⁶² Vivian Lee, *Bloomberg Seeks End to Cheap Cigarettes*, N.Y. TIMES (March 26, 2013).

⁶³ *Id.*

⁶⁴ Campaign for Tobacco-Free Kids, *Raising Cigarette Taxes Reduces Smoking, Especially Among Kids (and the Cigarette Companies Know It)*, <http://www.tobaccofreekids.org/research/factsheets/pdf/0146.pdf>. (last accessed April 30, 2013).

“general consensus is that every 10 percent increase in the real price of cigarettes reduces overall cigarette consumption by approximately three to five percent, reduces the number of young-adult smokers by 3.5 percent, and reduces the number of kids who smoke by six or seven percent.”⁶⁵

Cheap tobacco products may also be a barrier to quitting: In a 2011 study of New York City smokers attempting to quit, 25% reported using a coupon or other discount on their last purchase, saving an average \$1.25 per package of cigarettes.⁶⁶

A recent ordinance in Providence, Rhode Island bars retailers from accepting coupons for tobacco products or selling such items at a discount, for example, through multi-pack deals.⁶⁷ This law went into effect in January 2013. Members of the tobacco industry challenged this law, but a federal district judge ruled in favor of Providence, defending the city’s right to regulate sales and prices.⁶⁸ One of the goals of the law was to combat youth smoking by prohibiting discounts that make cigarettes cheap.⁶⁹

Requiring price increases on packs of cigarettes is not new around the country; about half of all states, including New York, require wholesalers and retailers to increase the price of cigarettes by a certain percentage.⁷⁰ These laws are generally intended to protect small retailers of tobacco products from competition by large chains which sell cigarettes below cost—a tactic referred to as “loss leading,” whereby a business sells a product at low price in order to draw in more business and stimulate demand of other products.⁷¹ Int. No. 1021, however, is distinguished from such “price formula” measures in both function and purpose: First, Int. No.

⁶⁵ *Id.*

⁶⁶ Survey of 2011 Nicotine Patch and Gum Program Participants, NYC Retail Advertising Tobacco Survey, 2011.

⁶⁷ See *Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence*, 2012 WL 6128707 (D.R.I. Dec. 10, 2012).

⁶⁸ *Id.*

⁶⁹ City of Providence, Rhode Island, *Providence Highlighted as a National Leader in Youth Tobacco Control*, <http://www.providenceri.com/mayor/providence-highlighted-as-a-national-leader-in>.

⁷⁰ Vivian Lee, *Bloomberg Seeks End to Cheap Cigarettes*, N.Y. TIMES (March 26, 2013).

⁷¹ *Id.*

1021 would specify a minimum price (\$10.50) for all packs of cigarettes—rather than creating a formula that raises the cost of the pack by a certain percentage; and second, it is designed to hinder sales to “low-income and minority smokers,” as opposed to protecting small business.⁷²

Finally, the increase in the price of cigarettes has arguably caused youth and young adults to migrate to cheaper tobacco products. Little cigars, for example, appear virtually identical to cigarettes and cost substantially less. Manufactured cigarillos, cigars and smokeless tobacco are also less expensive alternatives. These products are not subject to New York City excise taxes and are often sold individually for one to two dollars. Despite well-documented risks, smokers of all ages – especially youth and young adults in low-income urban areas – erroneously perceive cigars as less harmful than cigarettes, and increasingly opt for inexpensive cigars.⁷³

Product Display

Another new tool in combatting the sale of tobacco products is a “product display” restriction, which limits the display of tobacco products to consumers except at the time of sale. The Village of Haverstraw in Rockland County passed a ban on cigarette displays in retail stores in April 2012,⁷⁴ which was subsequently repealed.⁷⁵ In addition to limiting the display of the product, the Haverstraw ordinance also prohibited the display of listing of prices, advertising and signage related to the products.

⁷² *Id.*

⁷³ See Nyman AL, Taylor TM, Biener L., *Trends in cigar smoking and perceptions of health risks among Massachusetts adults*, Tobacco Control, June 2002; Fabian LA, Canlas LL, Potts J, Pickworth WB, *Ad lib smoking of Black & Mild cigarillos and cigarettes*, Nicotine & Tobacco Research, March 2012; Jolly DH, *Exploring the use of little cigars by students at a historically black university*, Preventing Chronic Disease, July 2008; Richter PA, Pederson LL, O'Hegarty MM, *Young adult smoker risk perceptions of traditional cigarettes and nontraditional tobacco products*, American Journal of Health Behavior, May-Jun. 2006; Malone RE, Yerger V, Pearson C., *Cigar risk perceptions in focus groups of urban African American youth*, Journal of Substance Abuse, 2001.

⁷⁴ Anemona Hartocollis, *Bloomberg's Plan Would Make Stores Conceal Cigarettes*, N.Y. TIMES (March 26, 2013).

⁷⁵ *Id.*

Studies suggest that restrictions on product display are effective in reducing youth smoking. One recent study indicates that restricting the display of tobacco products is one of the most important factors in deterring youth from attempting to purchase tobacco products in retail stores.⁷⁶ Exposure by youth to tobacco product displays is significantly associated with increases in youth smoking.⁷⁷

Bodegas, convenience and grocery stores and other retailers of tobacco products have opposed Int. No. 1021, arguing that compliance with Int. No. 1020 would be onerous.⁷⁸ Others are concerned that a display ban will harm business.⁷⁹

IV. ANALYSIS

A. Proposed Int. No. 250-A

Section one of Proposed Int. No. 250-A explains the intent of the bill, including findings on the human costs associated with tobacco use, the prevalence youth smoking despite steps taken in New York City over the past decade to reduce adult tobacco use and prevent youth from starting to use tobacco, statistics on when youth start smoking, the susceptibility of youth to nicotine addiction, and the effectiveness of laws in other jurisdictions that have raised the legal sales age. The bill finds that increasing the legal purchase age to twenty-one years will reduce smoking and tobacco use among eighteen to twenty year-olds, increase the likelihood that this

⁷⁶ Annice E. Kim, et al., Influence of Tobacco Displays and Ads on Youth: A Virtual Store Experiment, *Pediatrics* 2013: 131:1-8.

⁷⁷ Paynter J, Edwards R, Schluter PJ, McDuff I. Point of sale tobacco displays and smoking among 14-15 year olds in New Zealand: a cross-sectional study. *Tob Control* 2009;18(4):268-74.

⁷⁸ Lisa Colangelo , Kerry Burke & Erin Durkin, Mayor Bloomberg Bids to Ban Cigarettes and Tobacco from Being Displayed in Any Stores, *DAILY NEWS* (March 18, 2013).

⁷⁹ Associated Press, *Bodega Owners Fear 'Hide The Cigs' Legislation Would Hurt Business*, CBS News, Mar. 19, 2013, <http://newyork.cbslocal.com/2013/03/19/bodega-owners-fear-hide-the-cigs-legislation-would-hurt-business/>.

age group will not become smokers later in life, reduce high school students' ability to access tobacco from current legal buyers, and improve the general health of all New Yorkers.

Section 2 of this bill would raise the legal sales age of tobacco products from 18 years of age to 21 years of age, and substitute all references to eighteen years of age to twenty-one years of age. This bill section would also substitute the term “minor” with “young person.” Additionally, this section would raise the age—from twenty-five to thirty years of age—at which an individual is not required to show identification in order to purchase tobacco products if the individual reasonably appears to be at least that age. Finally, this section would maintain the requirement that businesses post a sign pertaining to the prohibition on the sale of tobacco products, but would require that the business posts a sign, in accordance with the rules of DOHMH, which advises persons on the minimum age requirements for the purchase of tobacco products.

Proposed Int. No. 250-A would take effect 180 days after its enactment, provided that the Commissioner of DOHMH shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

B. Int. No. 1020

Section one of Int. No. 1021 would amend chapter 7 of title 17 of the Code by adding a new §17-705.1. This section would

- Use the term “retail tobacco store,” which would have the same definition as the term in §17-502(u), which defines “retail tobacco store” as “a retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco

and chewing tobacco, and accessories and in which the sale of other products is merely incidental.”

- Prohibit a retail tobacco store from employing a person under the age of 18 where such person’s duties would require or permit him/her to handle cigarettes or tobacco products or work in an area where such products are on display, absent consent from such person’s parent or guardian.
- Prohibit a person under the age of 18 from entering a retail tobacco store unless such person is accompanied by his/her parent or guardian.
- Require retail tobacco stores to post a sign in a conspicuous place at any public entrance of the store that “NO PERSON UNDER THE AGE OF 18 IS PERMITTED TO ENTER THIS STORE, unless accompanied by a parent or guardian.”

Section 2 of the bill would amend chapter 7 of title 17 of the Code by adding a new subchapter 3 relating to the display of cigarettes and tobacco products.

- Section 17-719 of the new subchapter 3 relating to definitions would include the following definitions:
 - “Cigarette”: any roll for smoking made wholly or in part of tobacco or any other substance, regardless of its size or shape or whether or not such tobacco or substance is flavored, but the paper of which does not consist of any tobacco.
 - “Tobacco Product”: any product made or derived from tobacco intended for human consumption, as well as any component, part or accessory of such product. The definition excludes cigarettes or any product that has been approved by the United States Food and Drug Administration (FDA) for sale as a tobacco cessation product or for other medical purposes and that is being marketed and

sold solely for such purpose. Tobacco product would include, but not be limited to any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff or dissolvable tobacco product.

- “Retail dealer”: anyone licensed to sell cigarettes pursuant to §20-202 of the Code, which relates to the licensure of retail dealers.
 - “Legal tobacco customer”: a person who is at least 18 years of age.
 - “Retail tobacco store”: would have the same definition as the term used in section one of the bill.
- Section 17-720 under the new subchapter 3 relating to the prohibition of the display of cigarettes and tobacco products would
 - Prohibit retail dealers from displaying any cigarettes, cigarettes packaging, tobacco products or tobacco products packaging in a manner that allows a person to view such items prior to purchase at any place of business operated by such dealer.
 - Create the following exceptions to the display prohibition, permitting retail dealers to display cigarette packaging or other tobacco product packaging during:
 - the sale to a legal tobacco customer; or
 - the restocking of cigarettes or tobacco products.
 - Provide that the prohibition on display of cigarettes, cigarettes packaging, tobacco products or tobacco products packaging contained in section 2 of the bill would not apply to retail tobacco stores.
 - Provide that the prohibition on display of cigarettes, cigarettes packaging, tobacco products or tobacco products packaging contained in section 2 of the bill would

not apply to any place of business operated by a retail dealer that is not a chain store until 180 days after this bill's enactment.

- Define “chain store” as a retail establishment within New York City that is one of a group of fifteen or more retail establishments doing business nationally, operating under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.
- Provide that the provisions of §17-720 may be enforced by any authorized agent or employee of DOHMH or DCA, or the successor of either such agency.
- Provide the following civil penalties for any person who violates the provisions of §17-720:
 - \$1,000.00 for a first violation within a five year period;
 - \$2,000.00 for a second violation within a five year period; and
 - \$5,000.00 for a third or subsequent violation within a five year period.
- Provide that notice of violation of the provisions of §17-720 may be adjudicated by a tribunal of the issuing agency.

Int. No. 2010 would take effect 90 days after its enactment, provided that the Commissioner of DOHMH shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

C. Int. No. 1021

Section one of Int. No. 1021 explains the findings and intent of the bill, including findings on the prevalence of adult and youth smoking, the human and economic costs associated with tobacco use, the steps taken in New York City over the past decade to reduce adult tobacco use and prevent youth from starting to use tobacco, and the need for additional measures to

combat tobacco use among youth and adults, among which is the need to increase the prices of tobacco products in order to lower the demand for such products. The bill's findings note that low-priced tobacco products remain widely available throughout the City through a number of sources, including through the sale of contraband cigarettes, the use of coupons and other price discounts on the sale of cigarettes and tobacco products, and the increasing migration from cigarettes to cheaper tobacco products. The bill's intent is to reduce the persistent availability of low-priced cigarettes and tobacco products by (1) reducing the illegal evasion of cigarette excise taxes; (2) banning the redemption of coupons and other price reduction instruments in the sale of cigarettes and tobacco products; (3) requiring retailers to disclose to consumers complete and accurate pricing information, including all applicable taxes; (4) creating a price floor for a package of cigarettes and little cigars; and (5) requiring inexpensive cigars to be sold in packages of four.

Section two of Int. No. 1021 would amend §11-1301 of the Code to change the basis on which an individual is presumed to be a retail dealer. This bill section changes such basis from the possession or transportation at one time of 5,000 or more cigarettes to the possession or transportation at one time of 400 or more cigarettes.

Section 3 would amend section 11-1304 of the Code by adding a new subdivision d. New subdivision d would make it illegal for any person to sell, offer for sale, possess or transport any affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions (hereinafter "illegal tax stamps"), but would not apply to (1) a person, other than a retail dealer, in possession of twenty or fewer affixed stamps, (2) public officers or employees in performance of their official duties requiring possession of illegal tax stamps, or (3) any person authorized by

the Commissioner of DOF or the Commissioner of the New York State Department of Taxation and Finance to perform law enforcement functions.

Section 4 would amend chapter 40 of title 11 of the Code by adding new sections 11-4023 and 11-4024.

- Section 11-4023 would grant the Commissioner of DOF authority to seal the premises of any person determined to have committed certain violations, and to remove, seal or make inoperable devices, items or good used in connection with such acts. Specifically, the bases for sealing consist of:

- the violation of §11-1303(a) or (b) of the Code (relating to relating to licensure of wholesale and retail dealers), §17-703 of the Code (relating to license required for any person engaging in acts of a wholesale or retail dealer, and as amended by bill section 9) or §20-202 of Code (relating to licensure of retail dealers, and as amended by bill section 26), on at least two occasions within a two-year period; or
- the violation of any provision of chapter 13 of title 11 of the Code or any of sections §17-703 of the Code (relating to license required for any person engaging in acts of a wholesale or retail dealer, and as amended by bill section 9), §17-703.1 of the Code (requiring the posting of a sign that cigarettes sold must bear a valid tax stamp, as created by bill section 10), §17-703.2 of the Code (containing provisions relating to tax stamps, as created by bill section 11), §17-704 of the Code (relating to the prohibition on out-of-package sales, and as amended by bill section 12), §17-705 of the Code (relating to age and photo identification requirements of individuals handling the sale of tobacco products, and as

amended by bill section 13), 17-706 of the Code (pertaining to the sale of tobacco products to minors, and as amended by bill section 14), §17-715 of the Code (relating to prohibiting the sale of flavored tobacco products to minors, and as amended by bill section 21) or §20-202 of the Code (relating to licensure of retail dealers, and as amended by bill section 26) on at least three occasions within a three-year period.

This section also provides for the procedures for sealing premises, including: the posting requirement of a sealing order; the authorities empowered to enforce such an order; the storage of items removed from a sealed premises; costs for removal or storage payable prior to the release of such removed items; the process for reclaiming such removed items; provisions for a public sale of such removed items; the provisions for having a sealing order removed; the adjudicative procedure for challenging a sealing order; and the criminal penalty for violating a sealing order.

- Section 11-4024 relates to the seizure and forfeiture of taxed and lawfully stamped cigarettes sold or possessed by unlicensed retail or wholesale dealers and flavored tobacco products. This section empowers authorities to seize such products together with any vending machine or receptacle in which such products are held for sale. Additionally, this section describes the procedures for such seizure, the forfeiture of certain seized products, legal review of such seizure by an aggrieved party, a public sale of any vending machine or receptacles seized or their redemption by the owner, and the destruction of seized cigarettes or flavored tobacco products.

Section 5 of the legislation would repeal subdivision c of §17-176 of the Code, which prohibits the distribution of tobacco products for commercial purposes at less than the basic cost

of such products to members of the general public in public places or at public events, but contains an exemption that permits the serving of free promotional samples of smoking tobacco or smokeless tobacco to persons of legal age in stores that sell tobacco products to the general public, and also exempts the distribution of tobacco products at less than basic cost by retailers, manufacturers or distributors to any employees of such companies.

Section 6 adds a new section 17-176.1 to the Code, pertaining to the prohibition on the sale of discounted cigarettes and tobacco products. This section

- Adds the following definitions:
 - “Cigar”: a roll of tobacco for smoking that is wrapped in leaf tobacco or any substance containing tobacco. The term excludes the term “little cigar.”
 - “Cigarette”: any roll for smoking made wholly or in part of tobacco or any other substance, regardless of its size or shape or whether or not such tobacco or substance is flavored, but the paper of which does not consist of any tobacco.
 - “Cigarette price floor”: the minimum price, including all applicable taxes, for which one package of twenty cigarettes may be sold.
 - “Listed price”: the price listed on packages or any related, shelving, ad or display at the place where the cigarettes or tobacco products are sold and which includes all applicable taxes.
 - “Little cigar”: a roll of tobacco for smoking that is wrapped in leaf tobacco or any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.
 - “Little cigar price floor”: the minimum price, including all applicable taxes, for which one package of twenty little cigars may be sold.

- “Person”: any natural person, corporation, partnership, firm, organization or other legal entity. This is the same definition as is already provided in §17-176(a) of the Code.
- “Price reduction instrument”: any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue used to receive an article, product, service or accommodation without charge or at a discounted price.
- “Retail dealer”: any person other than a wholesale dealer engaged in selling cigarettes or such person’s employee or agent.
- “Tobacco Product”: this definition redefines tobacco product as it is currently defined in §17-176(a) of the Code. The current definition of tobacco product in §17-176(a) is “any substance which contains tobacco, including but not limited to cigarettes, cigars, smoking tobacco and smokeless tobacco.” Under bill section 6, the new definition of tobacco product expands the current definition of tobacco product to include any product made or derived from tobacco intended for human consumption, as well as any component, part or accessory of such product. The definition excludes cigarettes or any product that has been approved by the United States Food and Drug Administration (FDA) for sale as a tobacco cessation product or for other medical purposes and that is being marketed and sold solely for such purpose. This bill section adds “little cigar,” “chewing tobacco,” “pipe tobacco,” “roll-your-own tobacco,” “snus,” “bidi,” “snuff,” or “dissolvable tobacco product” to the examples of tobacco products in this definition, and removes “cigarettes,” “smoking tobacco” and “smokeless tobacco” from the list of examples.

- Requires that the “listed price” be displayed for any cigarettes or tobacco products which are on display.
- Prohibits the sale of cigarettes or tobacco products for less than the listed price, and prohibits: the acceptance of a price reduction instrument in any transaction related to the sale of cigarettes or tobacco products to a consumer; the sale of cigarettes or tobacco products through a multi-package discount; and the sale of any product other than cigarettes or tobacco products for less than the listed price in exchange for the purchase of cigarettes.
- Creates a price floor for cigarettes and little cigars of \$10.50 and prohibits the sale of cigarettes or little cigars for less than the price floor. The cigarette and little cigar price floors may be modified to account for the consumer price index, inflation and changes in taxes.
- Provides that DOHMH shall promulgate rules as may be necessary for the purpose of carrying out the new the provisions contained in this new bill section.
- Provides that any person who violates the provisions relating to the prohibition on the sale of cigarettes or tobacco products for the less than the listed price or the prohibition on the sale of cigarettes or little cigars for less than the price floor, or any rule promulgated pursuant to such provisions, shall be liable for a civil penalty in the following amounts:
 - \$1,000.00 for the first violation within a 5-year period;
 - \$2,000.00 for the second violation within a 5-year period; and
 - \$5,000.00 for the third violation within a 5-year period;

- Provides that any person who violates the requirement to display the “listed price” shall be liable for a civil penalty of not more than \$250.00.
- Provides that no person shall be liable for more than one violation during a single day of the provisions relating to the prohibition on the sale of cigarettes or tobacco products or the prohibition on sale of cigarettes or little cigars for less than the listed price.
- Provides that a violation of the provisions relating to the prohibition on the sale of cigarettes or tobacco products or the prohibition on the sale of cigarettes or little cigars for less than the listed price shall constitute a basis, pursuant to §20-206 of the Code (relating to the revocation and suspension of a retail dealer’s license), for the suspension or revocation of the license issued to the retail dealer’s place of business.
- Provides that DOHMH, DCA and DOF shall enforce the provisions of this new section.

Section 7 of the legislation would amend subdivision r of §17-702 of the Code, to redefine the term “tobacco product.” The changes to the definition of tobacco product are the same as those provided in bill Section 6 of the legislation.

Section 8 would amend §17-702 of the Code by adding new subdivisions w, x, and y, which contain the terms “Cigarette,” “Cigar,” and “Little cigar.” These terms would be given the same definition as those provided in Section 6 of the legislation.

Section 9 would amend §17-703 of the Code by broadening what would be required for licensure as a wholesale dealer or retail dealer. Section 9 would make it illegal to engage in “any act” as a wholesale dealer without licensure pursuant to §11-1303 of the Code or as a retail dealer without licensure pursuant to §20-202 of the Code.

Section 10 would add a new §17-703.1 to the Code, which would require retail dealers to post a sign in a conspicuous place at the point of sale of cigarettes or where cigarettes are

displayed or offered for sale stating that the cigarettes sold in New York City must be in packages bearing valid tax stamps.

Section 11 would add a new §17-703.2 to the Code, which would require:

- That any package containing cigarettes sold or offered for sale by a retail dealer shall bear a valid tax stamp as is required by §11-1302 of the Code.
- No retail dealer shall engage in a sale or purchase prohibited by §11-1303(e) or §20-205. Section 20-205 prohibits agents or dealers from selling cigarettes to an unlicensed dealer, or to a dealer whose license has been suspended or revoked, and prohibits dealers from purchasing cigarettes from any person other than a manufacturer or licensed wholesale dealer. Section 11-303(e) prohibits agents or dealers from selling cigarettes to an unlicensed wholesale or retail dealer, or to a wholesale or retail dealer whose license has been suspended or revoked, and prohibits dealers from purchasing cigarettes from any person other than a manufacturer or licensed wholesale dealer.
- No retail dealer shall sell, offer for sale, possess or transport any illegal tax stamps.
- No retail dealer shall engage in any act to hide or conceal
 - any cigarettes in unstamped or unlawfully stamped packages;
 - any illegal tax stamps; or
 - any cigarettes that are outside of a package in violation of the provision of the bill that would require that any package containing cigarettes sold or offered for sale by a retail dealer bear a valid tax stamp.

Section 12 would amend §17-704 of the Code pertaining to the prohibition of “out-of-package” sales by:

- Adding the term “cigarettes and” before the term “tobacco products” in §17-704(a) which prohibits such products from being sold out of the packages provided by the manufacturer, importer or packager.
- Adding a new subdivision b, which requires that cigars be sold in packages of four, unless the listed price of the individual cigar is greater than \$3.00.
- Adding a new subdivision c, which prohibits the sale of little cigars unless the little cigar is sold in a package of at least 20.

Section 13 would amend §17-705 of the Code pertaining to the age restriction on handling the sale of tobacco products by:

- Adding the term “cigarettes or” before the term “a tobacco product” in §17-705(a). This section would also require that a retail dealer’s employee or agents must be at least 18 years of age or must be under the direct supervision of someone 18 or older in order to handle the sale of “cigarettes or a tobacco product.”
- Adding a new subdivision b which would require that an individual handling the sale of cigarettes or a tobacco product must have a valid driver’s license or other government- or educational institution-issued photo identification.

Section 14 would amend §17-706 of the Code which pertains to the sale of tobacco products to minors. This bill section would add the term “cigarettes or” before each instance of the terms “tobacco products” or “a tobacco product” in §17-706. This bill section would maintain the requirement that businesses post a sign pertaining to the prohibition on the sale of tobacco products to minors, but would substitute the requirement specifying the exact content of the sign with a requirement that the business post the sign required by §1399-cc(2) of the New

York State Public Health Law, which specifies the exact content of the sign businesses are required to have.

Section 15 would repeal §17-707 of the Code, which relates to requiring public health messages to appear alongside tobacco advertisements.

Section 16 would amend §17-709 of the Code, which pertains to enforcement of subchapter 1 of chapter 7 of title 17. This section of the bill would remove DCA from enforcement of this subchapter, and add DOF to enforcement. This section would also add that DCA shall enforce the following sections of the Code as amended by

- §17-703.1 which requires the posting of a sign that cigarettes sold must bear a valid tax stamp;
- §17-704, relating to the prohibition on out-of-package sales;
- §17-705(a), requiring that a retail dealer's employee or agents must be 18 years or older or under the direct supervision of someone 18 years or older in order to handle the sale of cigarettes or a tobacco product; and
- §17-706, pertaining to the sale of tobacco products to minors.

Finally, this section would empower designated enforcement employees of authorizing agencies that have the power to enforce the provisions of this chapter to enforce such provisions.

Section 17 would add a new §17-709.1 to the Code, which would provide that the Commissioner of DOHMH and the Commissioner of DOF shall promulgate any rules necessary for the purposes of carrying out the provisions of chapter 7 of title 17 of the Code.

Section 18 would amend §§17-710(a)-(c) & (e) of the Code. Amendments include:

- Amending §17-710(a), amending the civil penalties for a violation of the provisions of this subchapter by:

- Adding the following penalties for any person found to be in violation of the requirement contained in section 9 of the bill (§17-703 of the Code, relating to license required for any person engaging in acts of a wholesale or retail dealer):
 - Not more than \$5,000.00 for the first violation;
 - Not more than \$5,000.00 for each additional violation found on that day;
and
 - Not more than \$10,000.00 for the second violation and each subsequent violation by that person.
- Adding a penalty of not more than \$250.00 in any single day for a violation of the requirement contained in section 10 of the bill (§17-703.1 of the Code, requiring the posting of a sign that cigarettes sold must bear a valid tax stamp).
- In addition to penalty that may be imposed pursuant to §11-1317 of the Code (relating to penalties and interest of any person failing to pay a tax), adding the following penalties for any person found to be in violation of the requirements contained in section 11 of the bill (§17-703.2 of the Code, containing provisions relating to tax stamps):
 - Not more than \$2,000.00 for the first violation;
 - Not more than \$2,000.00 for each additional violation found on that day;
and
 - Not more than \$5,000.00 for the second violation and each subsequent violation at the same place of business within a three-year period.

- Increasing the time period for which persons who commit violations contained in sections 12, 13 and 14 of the bill are subject to increased fines for subsequent violations.
- Makes changes to which violations can result in the revocation or suspension of a dealer's license, the time period within which such subsequent violations are counted towards revocation or suspension of a dealer's license, and which violations by a license holder shall be included in determining the total number of violations of that license holder or any subsequent license holder at the same place of business.
- Deletes provisions pertaining to violations and penalties for knowingly making any false statements pursuant to §17-707 of the Code, which would be repealed by section 15 of the bill.
- Amending §17-710(b) to provide for administrative and adjudication procedures pertaining to violations of the provisions contained in sections 9, 10, 11, 12, 13 and 14 of the bill.
- Amending §17-710(c) to provide that the penalties provided in §17-710(a), as amended by this section 18 of the bill, shall be in addition to any other provision of law or rule promulgated.
- Amending §17-710(e) which relates to arm's length transactions in the sale or transfer of businesses. This amendment would add a transaction conducted while violations are pending against the licensed dealer to the types of transactions that are presumed not to be at arm's length.

Section 19 would amend §17-710 of the Code by adding new subdivision g. This new subdivision would provide for the procedures relating to the suspension of a retail dealer's license for failure to pay civil penalties under chapter 13 of title 11 of the Code (relating to taxes on cigarettes), or any penalties imposed under any provision of chapter 7 of title 17 of the Code, §17-176.1 of the Code (prohibition on the sale of discounted cigarettes or tobacco products), or §17-177 of the Code (relating to penalties for distribution of tobacco products through vending machines).

Section 20 would amend subdivisions a and j of §17-710 of the Code by amending the definitions of "cigarette" and "tobacco products," so that they match the definitions contained in section 6 of the bill.

Section 21 would amend §17-715 of the Code. This section would make it illegal to "possess with the intent to sell or offer for sale" any flavored tobacco product, except in a tobacco bar. This bill section would also add a new subdivision b which would provide a presumption that a retail dealer in possession of four or more flavored tobacco products possesses such products with the intent to sell.

Section 22 would amend §17-716 of the Code, and would raise the penalty from not less than \$200.00 to not less than \$500.00 for a violation of §17-714 of the Code (prohibiting the sale of herbal cigarettes to minors). This section would also raise the penalties as follows for violations of §17-715 of the Code (relating to prohibiting the sale of flavored tobacco products to minors):

- From not more than \$500.00 to not more than \$1,000.00 for the first violation;
- From not more than \$500.00 to not more than \$1,000.00 for each additional violation found on that day;

- From not more than \$1,000.00 to not more than \$2,000.00 for the second violation at the same place of business;
- From not more than \$1,000.00 to not more than \$2,000.00 for the second violation at the same place of business found on that day;
- From not more \$2,000.00 to not more than \$5,000.00 for the third and all subsequent violations at the same place of business.

For the purpose of calculating penalties for subsequent violations under §17-715 of the Code, this section would increase the time period from two to three years, and would also increase the time period from two to three years for the purpose of calculating violations which would lead to the mandatory suspension of the dealer's license.

Section 23 of the bill would amend §17-717 of the Code by adding DOF to enforcement of provisions under subchapter 2 of chapter 7 of title 17, and add DOF to the administrative and adjudication procedures pertaining to violations of the provisions contained in sections 21 and 22 of the bill.

Section 24 would amend §17-718 of the Code by adding DOF to the agencies authorized to promulgate rules for carrying out the provisions under subchapter 2 of chapter 7 of title 17.

Section 25 would amend subdivision f of §20-201 of the Code to change the basis on which an individual shall be presumed to be a retail dealer in the same manner as provided in section 2 of the bill.

Section 26 would amend subdivision d of §20-202 of the Code. This section would remove the Commissioner of DCA's discretion in determining whether a retailer whose license has been revoked may be issued a new license within a two-year period following such revocation. This section would also add the provisions in sections 9, 10 and 11 of the bill as a

basis for the revocation or suspension of a dealer's license pursuant to the provisions contained in bill section 22. This section would also amend the provisions relating to arm's length transactions in the sale or transfer of businesses, adding a transaction conducted while violations are pending against the licensed dealer to the types of transactions that are presumed not to be at arm's length.

Section 27 would amend §20-207 of the Code. This section would amend §20-207(a) by adding that civil penalties issued for violations of §20-202(a) of the Code (relating to the license required of retail dealers), shall be in lieu of penalties imposed under the provision contained in section 9 of the bill, and that civil penalties imposed for violations of §20-205 (prohibiting certain transactions with unlicensed dealer or non-wholesale dealers or manufacturers), shall be in lieu of penalties imposed under the provision contained in section 11 of the bill). Finally, this section would authorize the Commissioner of DCA to order the sealing of any premises where any person has been found:

- to have engaged in unlicensed activity in violation of subchapter 2 of chapter 7 of title 17 on at least two occasions within a two-year period;
- to have violated the provisions contained in bill sections 12, 13, 14 and 21 on at least three occasions within a three-year period.

Int. No. 1021 would take effect immediately, except that sections 2, 7, 8, 9, 11, 18, 19, 20, 21, 22, 25, 26 and 27 of the legislation would take effect 60 days after its enactment, and except that sections 5, 6, 10, 12 and 13 would take effect 120 days after its enactment, provided that the commissioners of DOF, DCA and DOHMH shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective dates.

Proposed Int. No. 250-A

By Council Members Gennaro, Chin, Palma, Van Bramer, The Speaker (Council Member Quinn), Rodriguez, Rivera, Dromm, Vacca, Brewer and Dickens.

A LOCAL LAW

to amend the administrative code of the city of New York, in relation to raising the legal tobacco products sales age to twenty-one years.

Be it enacted by the Council as follows:

§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 risk of lung cancer, heart disease, stroke, asthma, emphysema, pre-term delivery, low birth weight, and many types of cancer. Furthermore, when used exactly as intended, tobacco kills one-third of its users. Beginning 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 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 31 percent, from 21.5 percent in 2002 to 14.8 percent in 2011. 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 young persons between eighteen and twenty-four years of age, as well as 20,000 New York City public high school students, currently smoke.

Most smokers start using tobacco as minors or young persons; in New York City, 80 percent of smokers started smoking before they turned twenty-one years old. Furthermore, according to the American Lung Association, 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 tobacco products will reduce access to tobacco products in stores among young persons eighteen to twenty years old, and among minors. Currently, teenagers who look close in age to eighteen years are significantly more likely to succeed in a tobacco purchase attempt than those who look younger. Furthermore, raising the sales age will reduce access to tobacco products by minors because it reduces access to tobacco acquired from older friends. Ninety percent of people purchasing cigarettes for minors are between eighteen and twenty years old.

Other jurisdictions that have increased the minimum sales age for tobacco products have also seen decreases in tobacco use among young persons. In 2005, Needham, Massachusetts increased the legal sales age from eighteen to twenty-one years. Between 2006 and 2012, high school students in Needham who reported smoking declined from 12.9 percent to 5.5 percent, a decrease of over 50 percent.

England increased the minimum sales age from sixteen to eighteen years in 2007, and by 2009, there was a 30 percent decline in smoking among youth between the ages of sixteen and seventeen; and younger students, those between eleven and fifteen, were one-third less likely to be regular smokers than they had been previously. According to one study, raising the smoking age to twenty-one years of age 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.

The Council therefore finds that increasing the tobacco purchase age to twenty-one years of age will reduce smoking and tobacco use by eighteen to twenty year olds, and increase the likelihood that people in this cohort will not become smokers later in life. This increase in the minimum age to buy cigarettes and tobacco will also reduce high school students' opportunities to access tobacco from current legal buyers, as well as simplify enforcement for retailers selling tobacco products because New York State driver's licenses conspicuously indicate when a licensee is less than twenty-one years of age. In addition, raising the legal age to buy tobacco to twenty-one years will augment existing tobacco prevention and control programs, help prevent the initiation of smoking by young persons and improve the general health of all New Yorkers.

§2. 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 tobacco products to [minors] young persons prohibited. Any person operating a place of business wherein tobacco products are sold or offered for sale must be licensed as required by section 17-703 of this code and is prohibited from selling such products 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.] a sign, in accordance with the rules of the department, advising persons about the minimum age requirements for the purchase of tobacco products. 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, 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 to an individual under [eighteen] twenty-one years of age.

§3. This local law shall take effect one hundred eighty days after it shall have become a law, provided that the commissioner of health and mental hygiene shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

Int. No. 70/2006
LS # 334
DSH
4/26/13

Int. No. 1020

By Council Members Arroyo, Cabrera, Chin, Comrie, Dromm, Fidler, King, Lander, Lappin, Rodriguez, Levin, Vann and Vacca (by request of the Mayor)

A LOCAL LAW

to amend the administrative code of the city of New York, in relation to the display of cigarettes and tobacco products by retail dealers of cigarettes and age restrictions on entry to retail tobacco stores.

Be it enacted by the Council as follows:

Section 1. Chapter 7 of title 17 of the administrative code of the city of New York is amended by adding a new section 17-705.1 to read as follows:

§ 17-705.1. Age restriction for retail tobacco stores.

a. For purposes of this section, “retail tobacco store” means “retail tobacco store” as defined in subdivision (u) of section 17-502 of the code.

b. No retail tobacco store shall employ, or permit to be employed, any person under the age of eighteen years where the duties of such person require or permit such person to handle cigarettes or tobacco products, or to work in an area where cigarettes and tobacco products are on display, absent written consent from such person’s parent or guardian.

c. No retail tobacco store shall permit any person under the age of eighteen years to enter such store unless such person is accompanied by a parent or guardian.

d. Retail tobacco stores shall post a sign in a conspicuous place at any public entrance to such stores on which the following statement shall be imprinted, “NO PERSON UNDER THE AGE OF 18 IS PERMITTED TO ENTER THIS STORE, unless accompanied by

a parent or guardian.” The sign shall be printed on a white card in red letters at least one-half inch in height.

§ 2. Chapter 7 of title 17 of the administrative code of the city of New York is amended by adding a new subchapter 3 to read as follows:

SUBCHAPTER 3 DISPLAY OF CIGARETTES AND TOBACCO PRODUCTS

§17-719 Definitions. For purposes of this subchapter, the following terms shall be defined as follows:

a. “Cigarette” means any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

b. “Tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purpose.

c. “Retail dealer ” means any person licensed to sell cigarettes pursuant to section 20-202 of this code.

d. “Legal tobacco customer” means a person who is at least eighteen years of age.

e. “Retail tobacco store” means “retail tobacco store” as defined in section subdivision (u) of section 17-502 of this code.

§17-720 Display of cigarettes and tobacco products prohibited.

a. Prohibition of display of cigarettes or cigarette packaging. A retail dealer shall not display or permit the display of any cigarettes or cigarette packaging in a manner that allows a person to view such cigarettes or cigarette packaging prior to purchase at any place of business operated by such dealer.

b. Prohibition of display of tobacco products or tobacco product packaging. A retail dealer shall not display or permit the display of any tobacco product or tobacco product packaging in a manner that allows a person to view such product or packaging prior to purchase at any place of business operated by such dealer.

c. Exceptions. Notwithstanding subdivisions a and b of this section, a retail dealer shall not be prohibited from displaying cigarette packaging or other tobacco product packaging during:

(1) a sale to a legal tobacco customer; or

(2) the restocking of cigarettes or tobacco products.

d. Subdivisions a and b of this section shall not apply to retail tobacco stores.

e. (1) Subdivisions a and b of this section shall not apply to any place of business operated by a retail dealer that is not a chain store until one hundred eighty days after the enactment of the local law that added this subdivision.

(2) For purposes of paragraph (1) of this subdivision, a “chain store” shall mean a retail establishment within the city of New York that is one of a group of fifteen or more retail

establishments doing business nationally, operating under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.

f. The provisions of this section may be enforced by any authorized agent or employee of the department or the department of consumer affairs, or the successor of either such agency.

g. Penalties. Any person who violates of this section shall be liable for a civil penalty in the following amounts:

(1) one thousand dollars for a first violation within a five year period;

(2) two thousand dollars for a second violation within a five year period; and

(3) five thousand dollars for a third or subsequent violation within a five year period.

h. Violations. Notices of violation of this section may be adjudicated at any tribunal authorized to hear a violation issued by the issuing agency.

§ 3. This local law shall take effect ninety days after it shall have been enacted into law, provided that the commissioner may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules.

Int. No. 1021

By Council Members Arroyo, Cabrera, Chin, Comrie, Dromm, Fidler, King, Lander, Lappin, Rodriguez, Levin, Vann and Vacca (by request of the Mayor)

A LOCAL LAW

to amend the administrative code of the city of New York, in relation to the sale of cigarettes and tobacco products, the regulation of retail dealers and wholesale dealers of cigarettes, and repealing subdivision c of section 17-176 of the administrative code of the city of New York, relating to an exemption from such section, and repealing section 17-707 of the administrative code of the city of New York, relating to requiring public health messages where tobacco advertisements appear.

Be it enacted by the Council as follows:

Section 1. Legislative findings. The Council hereby finds that tobacco use is a leading cause of preventable premature death in the United States and the City of New York, and cigarette trafficking costs New York City and State hundreds of millions of dollars annually in foregone tax revenue. Cigarettes and tobacco products are the only consumer products that, when used exactly as intended, kill up to one-half of regular users. Currently, 930,000 adults smoke in New York City. In 2011, 28,000 New York City public high school students under the age of eighteen experimented with smoking for the first time; of those, more than one-third (35%) currently smoke. In total, approximately 19,000 New York City public high school students under the age of eighteen smoke. Smoking-related illnesses cost New Yorkers billions of dollars annually in health care costs and lost productivity.

Given the substantial human and economic costs associated with tobacco use, New York City has taken numerous steps to reduce tobacco use among adults and to stop youth (persons under the age of eighteen) from starting to use cigarettes and tobacco products. In

2002, New York City employed a comprehensive, multifaceted tobacco control program incorporating the following components: (1) high cigarette excise taxes; (2) educational media campaigns on the risks of tobacco use; (3) a cessation program that helps people to quit; and (4) laws imposing restrictions and regulations on the sale and use of tobacco products. The City has succeeded in reducing the prevalence of adult tobacco use from 21.5% in 2002 to 14.8% in 2011, a 31% reduction. Prevalence among youth also declined substantially from 17.6% in 2001 to 8.5% in 2007. Youth smoking rates, however, have plateaued since, and remain at 8.5% as of 2011.

Because tobacco use persists among youth and adults, the City must take further action. Preventing youth and young adults (persons between eighteen and twenty-six years old) from taking up smoking is critical because, according to the United States Surgeon General, 88% of adults who become daily smokers start using tobacco products before reaching the age of eighteen, and 99% start by age twenty-six. Although the City employs a strong retail inspection program to prevent illegal sales to youth – inspecting more than 8,000 retailers annually, only 10% of which result in violations – more than a quarter of underage New York City public high school students who smoke buy their cigarettes from retail stores.

The Council further finds, based on numerous studies, that high tobacco prices reduce tobacco consumption among both youth, who are especially price-sensitive, and adults. A 10% increase in cigarette prices reduces demand among adult smokers by 3-5% and among youth by 7%. This reduction in demand is manifested in several ways: high prices reduce the prevalence of tobacco use, the probability of trying tobacco for the first time, the average cigarettes consumed per smoker, initiation of daily smoking, and initiation of daily heavy smoking. In addition, reductions in smoking prevalence indirectly lead to even greater

reductions by eliminating peer and parental influences and by helping addicted smokers to succeed in quitting.

Just as high tobacco prices decrease demand, the availability of low-priced cigarettes and tobacco products increases demand and contributes to continued tobacco use. Low-priced cigarettes and tobacco products are widely available in New York City through a number of sources:

First, tax-free contraband cigarettes are widely available and lower effective cigarette prices, thereby undermining the purpose of high cigarette taxes in New York City. Criminal actors take advantage of the disparities in cigarette prices among states along the east coast by trafficking cigarettes from low-tax jurisdictions like Virginia to high-tax jurisdictions like New York City, violating numerous laws in the process. For example, the state excise tax on a pack of cigarettes in Virginia is \$0.30; in New York City, the combined excise tax is \$5.85, including the \$4.35 State tax and the \$1.50 City tax. A trafficker smuggling 10,000 packs of cigarettes purchased legally in Virginia could make a profit of approximately \$55,500 by reselling them in New York City, earning more than double the initial outlay.

Several studies show the widespread availability of trafficked cigarettes. In a 2011 study of littered cigarette packs in New York City, only 39% of littered packs bore the proper New York City tax stamp; and among packs with out-of-state stamps, 71.4% were from Virginia. Targeted investigations of 877 licensed retailers in 2012 by the New York City Department of Finance's Sheriff's Office found that 52% of the retailers possessed cigarettes without the required New York City tax stamp. In a 2010 survey, approximately 11% of New York City smokers reported purchasing their last pack of cigarettes from another person or on the street, presumably without payment of the City excise tax.

Cigarette tax evasion puts law-abiding retailers at a competitive disadvantage relative to retailers and street sellers selling untaxed cigarettes. On a broader level, New York State's Department of Health estimated that cigarette excise tax evasion deprived the State of \$500 million in 2009. New York City's cigarette tax revenue losses amount to a substantial fraction of New York State's losses. Available evidence suggests the extent of cigarette tax revenue losses has likely increased since 2009.

Second, the use of coupons, multipackage discounts and other price reduction instruments, all of which are widely available in New York City, reduce retail prices for cigarettes and tobacco products. In a 2011 study of New York City smokers attempting to quit, 25% reported using a coupon or other discount on their last purchase, saving an average \$1.25 per package of cigarettes. Discounts entice consumers – often price-sensitive youth – to purchase deadly and highly addictive products. In addition, retailers do not display the prices of cigarettes and tobacco products in a uniform manner that includes all applicable taxes. This can deceive consumers, leading them to believe cigarettes and tobacco products are less expensive than they actually are.

Third, as the price of cigarettes has increased, smokers, particularly youth and young adults, have migrated to cheaper tobacco products. Little cigars, for example, appear virtually identical to cigarettes and cost substantially less. Manufactured cigarillos, cigars and smokeless tobacco are also less expensive alternatives. These products are not subject to New York City excise taxes and are often sold individually for one to two dollars. Despite well-documented risks, smokers of all ages – especially youth and young adults in low-income urban areas – erroneously perceive cigars as less harmful than cigarettes, and increasingly opt for inexpensive cigars.

The Council hereby declares that enactment of this law is necessary to address the persistent availability of low-priced cigarettes and tobacco products in New York City. This law will (1) reduce the illegal evasion of cigarette excise taxes; (2) ban the redemption of coupons and other price reduction instruments in the sale of cigarettes and tobacco products to consumers; (3) require retailers to disclose to consumers complete and accurate pricing information, including all applicable taxes, on cigarettes and tobacco products; (4) create a price floor for a package of cigarettes and little cigars; and (5) require inexpensive cigars to be sold in packages of no fewer than four. Such actions are necessary to maximize the public health impact of high tobacco prices, prevent consumer deception and ensure the accuracy of pricing information in the cigarette and tobacco product marketplace, prevent traffickers from profiting from illegal cigarette sales and New York City and State from losing billions of dollars in tax revenue, and protect law-abiding retailers who are at a competitive disadvantage relative to retailers who illegally evade excise taxes.

§ 2. Subdivision 7 of section 11-1301 of the administrative code of the city of New York is amended to read as follows:

7. “Retail dealer.” Any person other than a wholesale dealer engaged in selling cigarettes. For the purposes of this chapter, the possession or transportation at any one time of [five thousand or] more than four hundred cigarettes by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

§ 3. Section 11-1304 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

d. (1) Except as provided in this subdivision, it shall be unlawful for any person to sell, offer for sale, possess or transport any affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions.

(2) Paragraph one of this subdivision shall not apply to:

(A) a person, other than a retail dealer, in possession of twenty or fewer affixed tax stamps;

(B) public officers or employees in the performance of their official duties requiring possession or control of affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions; or

(C) any person authorized by the commissioner of finance or the commissioner of the department of taxation and finance of the state of New York to perform law enforcement functions.

§ 4. Chapter 40 of title 11 of the administrative code of the city of New York is amended by adding new sections 11-4023 and 11-4024 to read as follows:

§ 11-4023 Authority to seal premises.

(a) If any person has been finally determined to have engaged in the acts described in subdivision b of this section, the commissioner of finance shall be authorized to order:

(1) the sealing of any or all premises operated by such person where such acts occurred; and

(2) the removal, sealing or making inoperable of any devices, items or goods used in connection with any of such acts.

(b) The following acts shall serve as the basis for a sealing order pursuant to this section:

(1) the violation of subdivisions a or b of section 11-1303 of this title or section 17-703 or 20-202 of the code on at least two occasions within a two-year period; or

(2) the violation of any provision of chapter thirteen of this title or any of sections 17-703, 17-703.1, 17-703.2, 17-704, 17-705, 17-706, 17-715 or 20-202 of the code on at least three occasions within a three-year period.

(c) Orders of the commissioner to seal premises.

(1) Orders of the commissioner issued pursuant to this section shall be posted at the premises at which the acts described in subdivision b of this section have occurred.

(2) Ten days after the date of such posting, and upon the written directive of the commissioner, police officers designated in section 1.20 of the criminal procedure law and peace officers employed by the department of finance, including but not limited to the sheriff, undersheriff and deputy sheriffs of the city of New York designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, are authorized to act upon and enforce such orders.

(3) Any devices, items or goods removed pursuant to this section, other than items seized and forfeited pursuant to section 11-4021 of this chapter, shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such devices, items or goods may be charged with reasonable costs for removal and storage payable prior to the release of such devices, items or goods to such owner or such other person.

(4) The owner or other person lawfully entitled to reclaim the devices, items or goods described in paragraph three of this subdivision shall reclaim such devices, items or goods.

If such owner or such other person does not reclaim such devices, items or goods within ninety days of their removal, such devices, items or goods shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture the department shall, upon a public notice of at least five days, sell such forfeited devices, items or goods at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

(d) Unsealing of premises. The commissioner shall order that any premises which are sealed pursuant to this section shall be unsealed and that any devices, items or goods removed, sealed or otherwise made inoperable pursuant to this section shall be released, unsealed or made operable upon:

(1) payment of all outstanding cigarette taxes and civil penalties and all reasonable costs for removal and storage; and

(2) the expiration of a period of time from the date of enforcement of the order to be determined by the commissioner not to exceed sixty days.

(e) Any person aggrieved by an order issued pursuant to this section may seek judicial review of such order through a proceeding pursuant to article seventy-eight of the civil practice law and rules.

(f) Removal of seal. Any person who removes the seal on any premises or removes the seal on or makes operable any devices, items or goods sealed or otherwise made inoperable in accordance with an order of the commissioner shall be guilty of a misdemeanor.

§11-4024 Seizure and forfeiture of taxed and lawfully stamped cigarettes sold or possessed by unlicensed retail or wholesale dealers and flavored tobacco products.

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer employed by the department of finance, including but not limited to the sheriff, undersheriff or deputy sheriffs of the city of New York designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, shall discover (1) any cigarettes subject to any tax provided by chapter thirteen of this title, and upon which the tax has been paid and the stamps affixed as required by such chapter, but such cigarettes are sold, offered for sale or possessed by a person in violation of section 11-1303, 17-703 or 20-202 of this code, or (2) any flavored tobacco product that is sold, offered for sale or possessed with intent to sell in violation of section 17-715 of this code, he or she is hereby authorized and empowered forthwith to seize and take possession of such cigarettes or flavored tobacco product, together with any vending machine or receptacle in which such cigarettes or flavored tobacco product are held for sale. Such cigarettes or flavored tobacco product, vending machine or receptacle seized by such police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized cigarettes or flavored tobacco product and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle, shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized cigarettes or flavored tobacco product, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his own motion release the seized cigarettes, flavored tobacco product, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his decision to the petitioner. The decision of the commissioner shall be

reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machine or receptacle under this section, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machine or receptacle at public sale and pay the proceeds into the treasury of the city to the credit of the general fund. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Cigarettes and flavored tobacco products forfeited to the city under this section shall be destroyed or used for law enforcement purposes, except that cigarettes that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the cigarettes forfeited under this section may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited cigarettes.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom a seizure of cigarettes or flavored tobacco product under this section was made, to redeem any vending machine or receptacle seized with such cigarettes or flavored tobacco product, or may permit the owner of any such vending machine or receptacle to redeem the same, upon the payment of any civil penalty imposed pursuant to chapter seven of title seventeen or subchapter one of chapter two of title twenty of this code and the costs incurred in such proceeding.

§ 5. Subdivision c of section 17-176 of the administrative code of the city of New York is REPEALED.

§ 6. Title 17 of the administrative code of the city of New York is amended by adding a new section 17-176.1 to read as follows:

§ 17-176.1 Prohibition on the sale of discounted cigarettes and tobacco products.

a. Definitions. For purposes of this section:

“Cigar” means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

“Cigarette” means any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

“Cigarette price floor” means the minimum price, including all applicable taxes, for which one package of twenty cigarettes or more may be sold by a retail dealer.

“Listed price” means the price listed for cigarettes or tobacco products on their packages or on any related shelving, posting, advertising or display at the place where the cigarettes or tobacco products are sold or offered for sale, including all applicable taxes.

“Little cigar” means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

“Little cigar price floor” means the minimum price, including all applicable taxes, for which one package of twenty little cigars or more may be sold by a retail dealer.

“Person” means any natural person, corporation, partnership, firm, organization or other legal entity.

“Price reduction instrument” means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

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

“Tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purpose.

b. Requirement to display listed price of cigarettes and tobacco products. For any cigarettes and tobacco products on display for sale, a retail dealer shall display the listed price for all such cigarettes and tobacco products at the point of display or at the point of sale of such cigarettes and tobacco products.

c. Prohibition on the sale of cigarettes for less than the listed price. No person shall:

(1) honor or accept a price reduction instrument in any transaction related to the sale of cigarettes to a consumer;

(2) sell or offer for sale cigarettes to a consumer through any multi-package discount or otherwise provide to a consumer any cigarettes for less than the listed price in exchange for the purchase of any other cigarettes by the consumer;

(3) sell, offer for sale, or otherwise provide any product other than cigarettes to a consumer for less than the listed price in exchange for the purchase of cigarettes by the consumer; or

(4) sell, offer for sale, or otherwise provide cigarettes to a consumer for less than the listed price.

d. Prohibition on the sale of tobacco products for less than the listed price. No person shall:

(1) honor or accept a price reduction instrument in any transaction related to the sale of tobacco products to a consumer;

(2) sell or offer for sale tobacco products to a consumer through any multi-package discount or otherwise provide to a consumer any tobacco product for less than the listed price in exchange for the purchase of any other tobacco product by the consumer;

(3) sell, offer for sale, or otherwise provide any product other than a tobacco product to a consumer for less than the listed price in exchange for the purchase of a tobacco product by the consumer; or

(4) sell, offer for sale, or otherwise provide tobacco products to a consumer for less than the listed price.

e. Price floor for cigarettes and little cigars. (1) Prohibition on the sale of cigarettes below the cigarette price floor. No person shall sell or offer for sale a package of cigarettes to a consumer for a price less than the cigarette price floor. The cigarette price floor

shall be \$10.50 per package of cigarettes, provided that the cigarette price floor may be modified pursuant to paragraph three of this subdivision.

(2) Prohibition on the sale of little cigars below the little cigar price floor. No person shall sell or offer for sale a package of little cigars for a price less than the little cigar price floor. The little cigar price floor shall be equal to the cigarette price floor.

(3) The department may modify by rule the cigarette price floor and little cigar price floor to account for changes in the New York – northern New Jersey – Long Island consumer price index, adjusted for inflation, or changes in taxes for cigarettes or little cigars.

f. The department shall promulgate any rules as may be necessary for the purpose of carrying out this section.

g. Penalties. (1) Any person who violates subdivision c, d, or e of this section or any rule promulgated pursuant to any of such subdivisions shall be liable for a civil penalty in the following amounts:

(i) one thousand dollars for a first violation within a five-year period;

(ii) two thousand dollars for a second violation within a five-year period; and,

(iii) five thousand dollars for a third violation within a five-year period.

(2) Any person who violates subdivision b of this section or any rule promulgated pursuant to such subdivision shall be liable for a civil penalty of not more than two hundred fifty dollars.

(3) No person shall be liable under this section for more than one violation of any of subdivisions c, d or e during a single day.

(4) A violation of subdivision c, d, or e of this section by a retail dealer shall constitute a basis, pursuant to section 20-206 of the code, for the suspension or revocation of the license issued to the place of business of such retail dealer.

h. Enforcement. The department, the department of consumer affairs, and the department of finance shall enforce the provisions of this section at the tribunals that are authorized to hear violations issued by such departments.

§ 7. Subdivision r of section 17-702 of the administrative code of the city of New York, as added by local law number 83 for the year 1992, and renumbered by local law number 69 for the year 2009, is amended to read as follows:

r. "Tobacco product" means any [substance which contains tobacco, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco] product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

§ 8. Section 17-702 of the administrative code of the city of New York is amended by adding new subdivisions w, x, and y to read as follows:

w. "Cigarette" means cigarette as defined in section 17-176.1.

x. "Cigar" means cigar as defined in section 17-176.1.

y. "Little cigar" means little cigar as defined in section 17-176.1.

§ 9. Section 17-703 of the administrative code of the city of New York, as added by local law number 2 for the year 2000, and renumbered by local law number 69 for the year 2009, is amended to read as follows:

§ 17-703 License Required. It shall be unlawful for a person to engage in [business] any act as a wholesale dealer without a license as prescribed in section 11-1303 of the code, or engage in any act as a retail dealer without a license as prescribed in section 20-202 of the code.

§ 10. Title 17 of the administrative code of the city of New York is amended to add a new section 17-703.1 to read as follows:

§ 17-703.1 Sign required. A retail dealer shall post a sign in a conspicuous place at the point of sale of cigarettes or at the place where cigarettes are displayed or offered for sale stating that cigarettes sold in the city of New York must be in packages bearing valid tax stamps.

§ 11. Title 17 of the administrative code of the city of New York is amended to add a new section 17-703.2 to read as follows:

§ 17-703.2 Requirements for retail dealers concerning cigarette tax. a. Any package containing cigarettes sold or offered for sale by a retail dealer shall bear a valid tax stamp as required by section 11-1302 of the code. Except as provided in subdivision b of section 11-1305 of the code, any cigarettes possessed or transported in the city by a retail dealer shall be in a package bearing a valid tax stamp.

b. No retail dealer shall engage in a sale or purchase prohibited by subdivision e of section 11-1303 or section 20-205 of the code.

c. No retail dealer shall sell, offer for sale, possess or transport any affixed or unaffixed false, altered or counterfeit cigarette tax stamp, imprint or impression.

d. No retail dealer shall engage in any act to hide or conceal:

(1) any cigarettes in unstamped or unlawfully stamped packages;

(2) any affixed or unaffixed false, altered or counterfeit cigarette tax stamp,

imprint or impression; or

(3) any cigarettes that are outside of a package in violation of subdivision a of this

section.

§ 12. Section 17-704 of the administrative code of the city of New York, as added by local law number 83 for the year 1992, and renumbered by local law number 69 for the year 2009, is amended to read as follows:

§ 17-704 Out-of-package sales prohibited. a. All cigarettes and 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.

b. No retail dealer shall sell or offer for sale a cigar unless the cigar is sold in a package of at least four cigars, provided that this subdivision shall not apply to the sale or distribution of an individual cigar whose listed price, as defined in section 17-176.1 of this code, is greater than three dollars.

c. No retail dealer shall sell or offer for sale a little cigar unless the little cigar is sold in a package of at least twenty little cigars.

§ 13. Section 17-705 of the administrative code of the city of New York, as added by local law number 83 for the year 1992, and renumbered by local law number 69 for the year 2009, is amended to read as follows:

§ 17-705 Age restriction on handling and identification requirement. a. 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 cigarettes or 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.

b. It shall be unlawful for a retail dealer to permit an employee or other agent of such dealer to sell, dispense or otherwise handle cigarettes or a tobacco product unless such employee or agent possesses a driver's license or other photographic identification card issued by a government entity or educational institution to such employee or agent.

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

§ 17-706 Sale of cigarettes or tobacco products to minors prohibited. Any person operating a place of business wherein cigarettes or tobacco products 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 or tobacco 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, 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] the sign required by subdivision two of section 1399-cc of the public health law. Sale of cigarettes or 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, 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] cigarettes or tobacco products to an individual under eighteen years of age.

§ 15. Section 17-707 of the administrative code of the city of New York is REPEALED.

§ 16. Section 17-709 of the administrative code of the city of New York, as amended by local law number 69 for the year 2009, is amended to read as follows:

§ 17-709 Enforcement. The department of health and mental hygiene and [the department of consumer affairs] the department of finance shall enforce the provisions of this subchapter. The department of consumer affairs shall enforce sections 17-703.1, 17-704, subdivision a of section 17-705 and section 17-706 of this subchapter. In addition, designated enforcement employees of any authorizing agency [and the department of finance] shall have the power to enforce the provisions of this subchapter.

§ 17. Subchapter 1 of title 17 of the administrative code of the city of New York is amended by adding a new section 17-709.1 to read as follows:

§ 17-709.1 Rules. The commissioner of the department and the commissioner of finance shall promulgate any rules as may be necessary for the purposes of carrying out the provision of this subchapter.

§ 18. Subdivisions a, b, c and e of section 17-710 of the administrative code of the city of New York, as amended by local law number 69 for the year 2009, are amended to read as follows:

a. Civil penalties for a person found to be in violation of the provisions of this subchapter or the rules promulgated pursuant to this subchapter shall be as follows:

(1) Any person found to be in violation of section 17-703 shall be liable for a civil penalty of not more than five thousand dollars for the first violation, and not more than five thousand dollars for each additional violation found on that day; and not more than ten thousand dollars for the second violation and each subsequent violation by that person.

(2) Any person found to be in violation of section 17-703.1 shall be liable for a civil penalty of not more than two hundred fifty dollars in any single day.

(3) In addition to any penalty that may be imposed pursuant to subdivision b of section 11-1317 of the code, any person found to be in violation of section 17-703.2 of the code shall be liable for a civil penalty of not more than two thousand dollars for the first violation, and not more than two thousand dollars for each additional violation found on that day, and not more than five thousand dollars for the second violation and each subsequent violation at the same place of business within a three-year period.

(4) Any person found to be in violation of section 17-704, 17-705 or 17-706 shall be liable for a civil penalty of not more than one thousand dollars for the first violation, and not more than one thousand dollars for each additional violation found on that day; and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a [two-year] three-year period.

(5) In addition, for a second violation of any of sections 17-703, 17-703.1, 17-703.2, 17-704, 17-705 and 17-706 occurring on a different day and [all] any subsequent violations occurring on different days at the same place of business within a [two-year] three-year period, any person who engages in business as a retail dealer shall be subject to the mandatory revocation of his or her cigarette license for such place of business. [For purposes of this section, any] Any violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 by any license holder at a place of business shall be included in determining the number of violations by such license holder and by any subsequent license holder at the same place of business unless the subsequent license holder provides [the commissioner of consumer affairs] the commissioner of the department that has commenced the proceeding to recover a civil penalty pursuant to subdivision b of this section with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision e of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises. A cigarette license shall be revoked at the same hearing at which a retail dealer is found liable for a second violation or subsequent violations at the same place of business within a [two-year] three-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 17-707, 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 17-707, or who shall fail to maintain any record or submit any report required by section 17-707,

shall be liable for a civil penalty of not less than three hundred dollars nor more than one thousand five hundred dollars.]

(6) Any person who violates section 17-708 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 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 of this subchapter 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] health tribunal at the office of administrative trials and hearings where the department of health and mental hygiene issues such notice [or], the adjudication division of the department of consumer affairs where that department or a designated employee of any authorizing agency [or the department of finance] issues such notice, or an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. Such notice shall contain a statement that any hearing for a second violation or subsequent [violations] violation of [section 17-704, 17-705 or 17-706] any of such sections at the same place of business within a [two-year] three-year period shall also constitute a hearing for the revocation 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 and mental hygiene finds a retail dealer to be liable for a violation of section 17-704, 17-705 or 17-706 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 17-704, 17-705 or 17-706, 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 17-707 or authorized pursuant to subdivision h of section 17-707 shall be returnable to the administrative tribunal established by the board of health.] The department of health and mental hygiene, the department of consumer affairs and the department of finance shall notify each other within thirty days of a final determination that a retail dealer has been found to be in violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 of this subchapter. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-708 shall be returnable to the [administrative tribunal established by the board of health] health tribunal at the office of administrative trials and hearings. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section [or subdivision h of section 17-707 of this subchapter]. The adjudication division of the department of consumer affairs, the health tribunal at the office of administrative trials and hearings and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 of this subchapter.

c. The penalties provided by subdivision a of this section [and subdivision h of section 17-707 of this subchapter] shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

e. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where

neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises, such as a sale or lease entered into while there are violations pending against the original licensee that could result in revocation or suspension of the license.

§ 19. Section 17-710 of the administrative code of the city of New York is amended by adding a new subdivision g to read as follows:

g. Any retail dealer who fails to pay (1) any civil penalty imposed under chapter thirteen of title eleven of the code for the violation of any provision thereunder, or (2) any civil penalty imposed under this chapter for any violation thereof or under section 17-176.1 or section 17-177 of this title for any violation of such sections, shall be subject to suspension of his or her retail dealer license for the place of business where the violation occurred until such retail dealer pays all such civil penalties. Such retail dealer license shall not be renewed until such retail dealer pays all such civil penalties. A proceeding to suspend a retail dealer license pursuant to

this subdivision may be commenced by the department to which payment of the penalty is due, in the same manner as a proceeding pursuant to subdivision b of this section to recover a civil penalty. The adjudication division of the department of consumer affairs, the health tribunal at the office of administrative trials and hearings and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to suspend a retail dealer's license pursuant to this subdivision.

§ 20. Subdivisions a and j of section 17-713 of the administrative code of the city of New York, as added by local law number 69 for the year 2009, are amended to read as follows:

a. "Cigarette" means [(1) any roll made or used for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (2) any roll made or used for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this subdivision; provided, however, that no roll shall be considered to be a cigarette for purposes of paragraph (2) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on August first, two thousand nine] any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

j. "Tobacco product" means [any substance which contains tobacco, including, but not limited to, cigars and chewing tobacco; provided, however, that such term shall not

include cigarettes] any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

§ 21. Section 17-715 of the administrative code of the city of New York, as amended by local law number 69 for the year 2009, is amended to read as follows:

§ 17-715 Sale of flavored tobacco products prohibited.

a. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product except in a tobacco bar.

b. There shall be a presumption that a retail dealer in possession of four or more flavored tobacco products, which shall include individual tobacco products, packages of tobacco products, or any combination thereof, possesses such tobacco products with intent to sell or offer for sale.

§ 22. Section 17-716 of the administrative code of the city of New York, as amended by local law number 69 for the year 2009, is amended to read as follows:

§ 17-716 Violations and penalties. a. Any person who violates section 17-714 of this subchapter or any rules promulgated hereunder shall be liable for a civil penalty of not less than [two hundred and fifty] five hundred dollars, nor more than two thousand dollars for each violation.

b. Any person who violates section 17-715 of this subchapter shall be liable for a civil penalty of not more than [five hundred] one thousand dollars for the first violation, and not more than [five hundred] one thousand dollars for each additional violation found on that day; and not more than [one] two thousand dollars for the second violation at the same place of business within a [two-year] three-year period, and not more than [one] two thousand dollars for each additional violation found on that day; and not more than [two] five thousand dollars for the third and all subsequent violations at the same place of business within a [two-year] three-year period. In addition, for a third violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a [two-year] three-year period, any person who engages in business as a retail dealer, as such term is defined in section 20-201 of the code, shall be subject to the mandatory suspension of his or her cigarette license, issued pursuant to 20-202 of the code, 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] three-year period.

§ 23. Section 17-717 of the administrative code of the city of New York, as added by local law number 69 for the year 2009, is amended to read as follows:

§ 17-717 Enforcement. The department [and],₂ the department of consumer affairs and the department of finance shall enforce the provisions of this subchapter. A proceeding to recover any civil penalty authorized pursuant to section 17-716 of this subchapter shall be commenced by the service of a notice of violation returnable to the [administrative tribunal established by the board of health] health tribunal at the office of administrative trials and hearings where the department issues such a notice or to the adjudication division of the

department of consumer affairs where such department issues such a notice or to an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged. Such notice shall contain a statement that any hearing for a third violation or subsequent violation of section 17-715 of this subchapter at the same place of business within a [two-year] three-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 such section. The [administrative tribunal of the board of health and] health tribunal at the office of administrative trials and hearings, the adjudication division of the department of consumer affairs and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to render decisions and to impose the remedies and penalties provided for in section 17-716 of this subchapter, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings. The department [and], the department of consumer affairs and the department of finance shall notify each other within thirty days of finding that a retail dealer has been found liable for any section of this subchapter.

§ 24. Section 17-718 of the administrative code of the city of New York, as added by local law number 69 for the year 2009, is amended to read as follows:

§ 17-718 Rules. The commissioner of the department [and], the commissioner of [the department of] consumer affairs and the commissioner of finance shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this [section] subchapter.

§ 25. Subdivision f of section 20-201 of the administrative code of the city of New York, as added by local law number 2 for the year 2000, is amended to read as follows:

f. "Retail dealer" shall mean any person other than a wholesale dealer engaged in selling cigarettes. For the purposes of this chapter, the possession or transportation at any one time of [five thousand or] more than four hundred cigarettes by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

§ 26. Subdivision d of section 20-202 of the administrative code of the city of New York, subparagraph C of paragraph 1 of subdivision d as amended by local law number 22 for the year 2002 and paragraph 4 of subdivision d as amended by local law number 69 for the year 2009, is amended to read as follows:

d. Issuance of license.

1. A license shall be issued to a person to conduct the business of a retail dealer for each place of business where such person engages in selling cigarettes in the city only where:

(A) an applicant for a license or renewal thereof meets all the requirements prescribed herein and any criteria in addition thereto established by the commissioner by rule as he or she deems necessary to effectuate the purposes of this subchapter;

(B) an applicant satisfies the commissioner that such person is fit and able to conduct the business of a retail dealer; and

(C) the commissioner has not received notification from the commissioner of finance or the commissioner of the department of health and mental hygiene that such applicant is not in full compliance with any provisions of chapter thirteen of title eleven of this code, or

chapter forty of title eleven of this code relating to the sale of cigarettes, or chapter seven of title seventeen of this code, [or chapter eight of title seventeen of this code,] or any rules promulgated by the commissioner of finance or the commissioner of the department of health and mental hygiene to effectuate the purposes of such chapters.

2. A retail dealer license shall not be assignable and shall be valid only for the persons in whose names it is issued and for the transaction of business in the place designated therein and shall at all times be conspicuously displayed at the place for which it is issued.

3. Where a license for any place of business licensed pursuant to this subchapter has been revoked, the commissioner [in his or her discretion may] shall refuse to issue a license required under this subchapter, for a period of two years after such revocation, for such place of business or for any part of the building that had contained such place of business and was connected therewith, unless the applicant for such license demonstrates with documentary proof, to the satisfaction of the commissioner, that the applicant acquired the premises or business through an arm's length transaction.

4. For purposes of revocation of retail dealer licenses pursuant to section 17-710 of the code, any violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706, or for purposes of [revocation] suspension of retail dealer licenses pursuant to section 17-716 of the code, any violation of section 17-715, by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the commissioner with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction and that the sale or lease was not conducted, in

whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises.

5. For purposes of paragraphs 3 and 4 of section 20-202, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises, or revocation of a license, such as a sale or lease entered into while there are violations pending against the original licensee that could result in revocation or suspension of the license.

§ 27. Section 20-207 of the administrative code of the city of New York, as added by local law 2 for the year 2000, is amended, and a new subdivision c is added, to read as follows:

a. The civil penalties imposed pursuant to this section shall be in addition to any other sanctions and orders which may be imposed by the commissioner pursuant to this title including, but not limited to, such sanctions and orders which may be imposed pursuant to section 20-105 or to title 11 or title 17 of this code or pursuant to such other law the commissioner is authorized to enforce under this code. The civil penalties imposed pursuant to this section for a violation of subdivision a of section 20-202 shall be in lieu of the civil penalties imposed pursuant to section 17-703 of this code, and the civil penalties imposed pursuant to this section for a violation of section 20-205 shall be in lieu of the civil penalties imposed pursuant to subdivision b of section 17-703.2 of this code.

b. Notwithstanding the provisions of subdivision a and b of section 20-106 of this code, any person who violates any provision of this subchapter or any rules promulgated thereunder shall be subject to a civil penalty of not less than two hundred and fifty dollars but not more than two thousand dollars for each violation, to be recovered in a civil action or in an administrative tribunal with jurisdiction.

c. The commissioner, after notice and hearing, shall be authorized to order the sealing of any premises where any person has been found:

1. to have engaged in unlicensed activities in violation of this subchapter on at least two occasions within a two-year period; or

2. to have violated any of sections 17-704, 17-705, 17-706 or 17-715 on at least three occasions within a three-year period.

§ 28. This local law shall take effect immediately, except that sections two, seven, eight, nine, eleven, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-six and twenty-seven shall take effect sixty days after its enactment, and except that

sections five, six, ten, twelve and thirteen shall take effect one hundred twenty days after its enactment, provided that the commissioners of finance, consumer affairs and health and mental hygiene shall take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective dates.