|  |  |
| --- | --- |
|  | **The Council of the City of New York****Finance Division****Latonia Mckinney, Director****Fiscal Impact Statement****Proposed Intro. No: 139-C****Committee:** **Health** |
| **Title:** A local law to amend the administrative code of the city of New York, in relation to the regulation of non-tobacco smoking products, and to amend the fire code of the city of New York, and the New York city mechanical code, in relation to the operation of non-tobacco hookah establishments | **Sponsor(S):** Council Members Gentile, Koo, Vacca, Cabrera, Johnson, Torres, Rodriguez, King, Dromm, Palma, Richards, Treyger, Greenfield, Mendez, Eugene, Barron, Maisel, Salamanca, Lander, Cohen, Rosenthal, Mealy, Miller, Rose, Cumbo, Koslowitz, Vallone and Ulrich |

**Summary of Legislation:** The proposed legislation would render it unlawful for a person to operate a non-tobacco hookah establishment without a permit from the Department of Health and Mental Hygiene (DOHMH). In order to obtain and renew such a permit, a person would need to demonstrate that the establishment generated fifty percent or more of its total annual gross sales during the preceding calendar year from the on-site sale of non-tobacco smoking products. The person would also need to demonstrate that the establishment had been operating as a non-tobacco hookah establishment since at least the date of enactment of this legislation and had not been found to have served shisha containing tobacco or nicotine during this time. Finally, the person would need to demonstrate that the establishment did not owe a civil penalty or have a revoked permit pertaining to non-tobacco hookah. The local law would give entities that in good faith believe themselves to be non-tobacco hookah establishments 180 days from the date this local law becomes effect to apply to DOHMH for a permit.

The legislation would also render it unlawful for a person to permit an individual under 21 years of age to enter a non-tobacco hookah establishment during operating hours. Entry into such an establishment would be permitted 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 21 years of age, unless the individual reasonably appears to be at least thirty years of age. The legislation would establish civil penalties of $200 for the first violation of this provision and not more than $200 for each additional violation found the same day, and $500 for the second and each subsequent violation at the same place of business, as well as require revocation of the establishment’s license for violations of this provision on two or more occasions.

The legislation would also require non-tobacco hookah establishments to clean and sanitize the interior of the bowl, stem, hose, base, and any other part of paraphernalia provided to customers for smoking non-tobacco smoking products, in accordance with rules promulgated by DOHMH. The legislation would establish civil penalties of $100 for the first violation of this provision and not more than $100 for each additional violation found the same day, as well as $200 for each subsequent violation at the same place of business.

Lastly, the legislation amends the New York City mechanical code and the New York City fire code to include and clarify requirements relating to non-tobacco hookah establishments.

**Effective Date:** This legislation would take effect 180 days after becoming law except that section seventeen (requiring DOHMH to educate businesses about their obligations under the law) takes effect immediately and is deemed repealed one year after it becomes law, section ten (prescribing certain civil penalties) takes effect on the same day as Proposed Intro. 1076-A, and sections twelve and thirteen (making certain changes to the New York City mechanical code) take effect three years after becoming law. Furthermore, the Health Commissioner and Fire Commissioner may take actions, including the promulgation of rules, prior to the effective date of the local law.

**Fiscal Year In Which Full Fiscal Impact Anticipated:** Fiscal 2018

**Fiscal Impact Statement:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Effective FY18** | **FY Succeeding Effective FY 19** | **Full Fiscal Impact FY18** |
| **Revenues** | $3,000 | $0 | $3,000 |
| **Expenditures** | $0 | $0 | $0 |
| **Net** | $3,000 | $0 | $3,000 |

**Impact on Revenues:** It is anticipated that this legislation would result in approximately $3,000 in Fiscal 2018. The legislation would enable DOHMH to charge a fee of $25 dollars for a permit to operate a non-tobacco hookah establishment; this non-transferrable permit would be valid for one year. There were 121 hookah establishments in New York City in 2015, according to a study published in *JMIR Public Health and Surveillance*. Given the 180-day time limit, and assuming an October enactment date, the hookah establishments would apply for a permit in Fiscal 2018 and generate $3,000.

Although the bill allows for the issuance of civil penalties, the City anticipates full compliance with the legislation and, therefore, does not expect any revenue from violations.

**Impact on Expenditures:** It is estimated that this bill would not have an impact on expenditures because the relevant City agencies would utilize existing resources to implement and enforce the legislation.

**Source of Funds To Cover Estimated Costs:** N/A

**Source of Information:** New York City Council Finance Division

New York City Department of Health and Mental Hygiene

**Estimate Prepared By:** Jeanette Merrill, Legislative Financial Analyst

**Estimate Reviewed By:** Nathan Toth, Deputy Director, NYC Council Finance Division

Crilhien R. Francisco, Unit Head, NYC Council Finance Division

Eric Bernstein, Counsel, NYC Council Finance Division

**Legislative History:** This legislation was introduced to the full Council on March 12, 2014 and was referred to the Committee on Health (Committee). The bill was subsequently amended after introduction. The Committee held a hearing on the amended version, Proposed Intro. No. 139-A, on February 25, 2016 and the bill was laid over. The bill was subsequently amended a second time, and the Committee held a second hearing on the amended legislation, Proposed Intro. No. 139-B, on April 27, 2017. The bill was again laid over after this hearing. The bill was subsequently amended a third time, and the Committee will vote on the amended legislation, Proposed Intro. No. 139-C, at a hearing on September 26, 2017. Upon successful vote by the Committee, the full Council will vote on the legislation on September 27, 2017.

**Date Prepared:** September 12, 2017