

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2019**

No. 228

Introduced by Council Members Levine, Cohen, Powers, Lander, Rosenthal, Rivera, Ayala, Chin, Cabrera, Gibson, Reynoso, King, Brannan, Koo, Rodriguez, Koslowitz, Dromm, Espinal, Grodenchik, Menchaca, Adams, Constantinides, Maisel, Holden, Louis, Treyger, Moya, Van Bramer, Kallos, Torres and Eugene.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to prohibiting the sale of flavored electronic cigarettes and flavored e-liquids and conducting outreach regarding the availability of smoking cessation services

Be it enacted by the Council as follows:

Section 1. The heading of section 11-4024 of the administrative code of the city of New York, as added by local law number 97 for the year 2013, is amended to read as follows:

§ 11-4024 Seizure and forfeiture of taxed and lawfully stamped cigarettes sold or possessed by unlicensed retail or wholesale dealers [and], flavored tobacco products, *flavored electronic cigarettes and flavored e-liquid.*

§ 2. Section 11-4024 of the administrative code of the city of New York is amended by adding a new subdivision e to read as follows:

(e) For purposes of this section, a flavored tobacco product means a flavored tobacco product, flavored electronic cigarette or flavored e-liquid.

§ 3. Paragraph (6) of subdivision a of section 17-176, as amended by local law number 97 for the year 2013, is amended to read as follows:

(6) "Tobacco product" means any product which contains 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, tobacco-containing shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes, *electronic cigarettes or e-liquid* 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.

§ 4. The definition of “tobacco product” in subdivision a of section 17-176.1, as amended by local law number 145 for the year 2017, is amended to read as follows:

"Tobacco product" means any product which contains 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, shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes, *electronic cigarettes or e-liquid* 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.

§ 5. Subdivisions r and bb of section 17-702 of the administrative code of the city of New York, subdivision r as amended by local law number 97 for the year 2013, and subdivision bb as amended by local law number 144 for the year 2017, is amended to read as follows:

r. "Tobacco product" means any product which contains 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, tobacco-containing shisha, or dissolvable tobacco product. Tobacco

product shall not include cigarettes, *electronic cigarettes or e-liquid* 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.

bb. "Electronic cigarette" [means a battery-operated device that heats a liquid, gel, herb, or other substance and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette] *has the same meaning as such term is defined in section 20-560.*

§ 6. The heading of subchapter 2 of chapter 7 of title 17 of the administrative code of the city of New York, as amended by local law number 187 for the year 2017 and by local law number 69 for the year 2009, is amended to read as follows:

REGULATION OF THE SALE OF [HERBAL CIGARETTES AND] FLAVORED TOBACCO PRODUCTS, *FLAVORED ELECTRONIC CIGARETTES AND FLAVORED E-LIQUID*, AND REGULATION OF AGE OF ENTRY TO NON-TOBACCO HOOKAH ESTABLISHMENTS

§ 7. Section 17-713 of the administrative code of the city of New York, as amended by local law number 69 for the year 2009, and subdivisions a and j of such section as amended by local law number 97 for the year 2013, is amended to read 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. "Characterizing flavor"] *Characterizing flavor. The term "characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, [menthol, mint or wintergreen,] imparted either prior to or during consumption of a tobacco product [or component part thereof], electronic cigarette or e-liquid,* including, but not limited to, tastes or aromas relating to any *menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb [or], spice, or any "concept flavor" that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor;* provided, however, that no tobacco product, *electronic cigarette or e-liquid* shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

Cigarette. The term "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.

[c. "Component part" means any element of a tobacco product , including, but not limited to, the tobacco, filter and paper, but not including any constituent.

d. "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.]

Electronic cigarette. The term "electronic cigarette" has the same meaning as such term is defined in section 20-560.

E-liquid. The term “e-liquid” has the same meaning as such term is defined in section 20-560.

Flavored electronic cigarette. The term "flavored electronic cigarette" means any electronic cigarette that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of an electronic cigarette, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such electronic cigarette, that such electronic cigarette has or produces a characterizing flavor shall constitute presumptive evidence that such electronic cigarette is a flavored electronic cigarette.

Flavored e-liquid. The term “flavored e-liquid” means any e-liquid that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of an e-liquid, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such e-liquid, that such e-liquid has or produces a characterizing flavor shall constitute presumptive evidence that such e-liquid is a flavored e-liquid.

[e. "Flavored tobacco product"] *Flavored tobacco product. The term "flavored tobacco product" means any tobacco product [or any component part thereof that contains a constituent] that imparts a characterizing flavor other than menthol, mint and wintergreen. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor, other than menthol, mint and wintergreen, shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.*

[g. "Person"] *Person. The term "person" means any natural person, partnership, firm, joint stock company, corporation, or employee thereof, or other legal entity.*

[h. "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

i. "Tobacco bar"] *Tobacco bar.* The term "tobacco bar" has the meaning as such term is defined in subdivision jj of section 17-502 [of this code].

[j. "Tobacco product"] *Tobacco product.* The term "tobacco product" means any product which contains 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, tobacco-containing shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes, *electronic cigarettes or e-liquid* 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 17-715 of the administrative code of the city of New York, as amended by local law 97 for the year 2013, is amended to read as follows:

§ 17-715 Sale of flavored tobacco products, *flavored electronic cigarettes and flavored e-liquid* prohibited. a. 1. 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.] 2. There shall be a presumption that a retail dealer, *as defined in section 17-702*, 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.

b. 1. 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 electronic cigarette or flavored e-liquid.

2. There shall be a presumption that an electronic cigarette retail dealer, as defined in section 20-560, in possession of six or more flavored electronic cigarettes, or more than 12 fluid ounces (354.882 mL) of flavored e-liquid, possesses such flavored electronic cigarettes or flavored e-liquid with intent to sell or offer for sale.

§ 9. Section 17-716 of the administrative code of the city of New York, as amended by local law 191 for the year 2017, is amended to read as follows:

§ 17-716 Violations and penalties. a. Any person who violates *subdivision a* of section 17-715 [of this subchapter] 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 at the same place of business within a three-year period, and not more than two thousand dollars for each additional violation found on that day; and not more than five thousand dollars for the third and all subsequent violations at the same place of business within a 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 three-year period, any person who engages in business as a retail dealer, as such term is defined in section 20-201, shall be subject to the mandatory suspension of his or her license, issued pursuant to section 20-202, for such place of business, for a period not to exceed one year. Such 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 three-year period.

a-1. Any person who violates subdivision b of section 17-715 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 at the same place of business within a three-year period, and not more than two thousand dollars for each additional violation found on that day; and not more than five thousand dollars for the third and all subsequent violations at the same place of business within a 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 three-year period, any person who engages in business as an electronic cigarette retail dealer, as such term is defined in section 20-560, shall be subject to the mandatory suspension of his or her license, issued pursuant to section 20-561, for such place of business, for a period not to exceed one year. Such license shall be suspended at the same hearing at which an electronic cigarette retail dealer is found liable for a third violation or subsequent violations at the same place of business within a three-year period.

b. Any person who violates subdivision a of section 17-719 shall be liable for a civil penalty of two hundred dollars for the first violation, and not more than two hundred dollars for each additional violation found on the same day; and five hundred dollars for the second violation and each subsequent violation at the same place of business. A proceeding to recover any such civil penalty shall be commenced by the service of a notice of violation returnable to [any tribunal established within] the office of administrative trials and hearings or *any tribunal established*

within any agency of the city designated to conduct such proceedings. When a person has been found to be in violation of subdivision a of section 17-719 on two or more occasions at a non-tobacco hookah establishment, the commissioner shall revoke the non-tobacco hookah establishment permit issued to such person pursuant to section 17-513.5.

c. Any person found to be in violation of subdivision b of section 17-719 shall be liable for a civil penalty of one hundred dollars for the first violation and not more than one hundred dollars for each additional violation found on the same day, and two hundred dollars for each subsequent violation at the same place of business. A proceeding to recover any such civil penalty shall be commenced by the service of a notice of violation returnable to [any tribunal established within] the office of administrative trials and hearings or *any tribunal established* within any agency of the city designated to conduct such proceedings.

§ 10. Section 20-560 of the administrative code of the city of New York, as added by local law 144 for the year 2017, is amended to read as follows:

§ 20-560 Definitions. As used in this subchapter, the following terms have the following meanings:

Electronic cigarette. The term "electronic cigarette" means [a] *an electronic or battery-operated device that [heats a liquid, gel, herb, and/or other substance and] delivers [vapor] an aerosol or emission for inhalation. Electronic cigarette [shall include] also means any refill, cartridge, [and] any other component of an electronic cigarette and any e-liquid. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.*

Electronic cigarette retail dealer. The term "electronic cigarette retail dealer" means any person

engaged in the retail sale of electronic cigarettes. For the purposes of this subchapter *and title 17 of this code*, the possession or transportation at any one time of more than 20 electronic cigarettes *or more than 12 fluid ounces (354.882 mL) of e-liquid* by any person other than a manufacturer or a person delivering electronic cigarettes *or e-liquids* in the regular course of business for a manufacturer or electronic cigarette retail dealer, shall be presumptive evidence that such person is an electronic cigarette retail dealer.

E-liquid. The term "e-liquid" means a solution, substance or material used in an electronic cigarette to produce an aerosol or emission to be inhaled by the user, whether or not the solution, substance or material contains nicotine.

Good standing. The term "good standing" means any electronic cigarette retail dealer that has not been found to have violated subdivision b of section 17-704.1 or subdivision a-1 of section 17-706 on more than one day during the previous three consecutive years.

Person. Notwithstanding sections 1-112 and 20-102 of the code, the term "person" means any individual, partnership, society, association, joint-stock company, corporation, limited liability company, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

Pharmacy. The term "pharmacy" means "pharmacy" as defined in subdivision 1 of section 6802 of the education law, and any retail store that contains a pharmacy.

Retail store. The term "retail store" means any place that, in the regular course of business, sells or rents goods directly to the public.

§ 11. Outreach and education regarding the availability of smoking cessation services. The

department of health and mental hygiene shall conduct a public information and outreach campaign to educate the public regarding the availability of smoking cessation services in New York city. Such campaign shall be conducted in conjunction with other agencies, including but not limited to the department of education and the department of consumer affairs, and shall include, but not be limited to, information regarding the availability of free or low-cost smoking cessation medication and services.

§ 12. This local law takes effect on the first day of the month next succeeding the one hundred eightieth day after it becomes law, provided that the department of consumer affairs, the department of finance and the department of health and mental hygiene may take such measures as are necessary for implementation of this local law, including the promulgation of rules, prior to such date, and except that section eleven of this local law shall take effect 90 days after it becomes law.

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

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on November 26, 2019 and approved by the Mayor on December 16, 2019.

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

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 228 of 2019, Council Int. No. 1362-A of 2019) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.