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Title:	A Local Law to amend the administrative code of the city of New York, in relation to the sale of cigarettes and tobacco products, and the regulation of retail dealers and wholesale dealers of cigarettes, 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.				
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10/30/2013	A	City Council	Approved by Council	Pass
10/30/2013	A	City Council	Sent to Mayor by Council	
11/19/2013	A	Mayor	Hearing Held by Mayor	
11/19/2013	A	Mayor	Signed Into Law by Mayor	
11/19/2013	A	City Council	Recved from Mayor by Council	

Int. No. 1021-A

By Council Members Arroyo, Cabrera, Chin, Comrie, Jr., Dromm, Fidler, King, Lander, Lappin, Rodriguez, Levin, Vann, Vacca, Palma, Gennaro, Koslowitz, Van Bramer, Koo, Crowley, Eugene and Recchia, Jr. (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, and the regulation of retail dealers and wholesale dealers of cigarettes, 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 are the only consumer products that, when used exactly as intended, kill up to one-third of regular users. Currently, 981,000 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 cigarettes and tobacco products. The City has succeeded in reducing the prevalence of adult tobacco use from 21.5% in 2002 to 15.5% in 2012, a 28% 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 from taking up smoking is critical because, in New York City, 80% of adults who become daily smokers start smoking before reaching the age of twenty-one, and nationwide, 99% of

smokers start by age twenty-six. The City employs a strong retail inspection program to prevent illegal sales to youth, conducting more than 9,000 retail inspections annually, only 10% of which result in violations. Nevertheless, 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%. High prices reduce the prevalence of tobacco use, the probability of trying tobacco for the first time, the average number of 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 minimizing 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, contraband cigarettes are widely available at low effective prices that are only possible through tax evasion, thereby undermining the public health purpose of New York City's high cigarette taxes. Criminal actors take advantage of the disparities in state cigarette excise taxes along the East Coast by trafficking cigarettes from low-tax jurisdictions to high-tax jurisdictions, violating numerous laws in the process. For example, Virginia's excise tax on cigarettes is \$0.30 per pack; in New York City, the combined excise tax is \$5.85 per pack, including the \$4.35 State tax and the \$1.50 City tax. A trafficker purchasing 10,000 packs of cigarettes in Virginia could profit tens of thousands of dollars reselling them in New York City.

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. Out of 1,071 targeted investigations of

licensed retailers in 2012 by the New York City Department of Finance's Sheriff's Office, 55% of the retailers possessed cigarettes without the required New York City tax stamp.

Cigarette tax evasion puts law-abiding retailers at a competitive disadvantage relative to retailers and street sellers selling untaxed cigarettes. Cigarette tax evasion also hurts the government and taxpayers. 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 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, including price-sensitive youth, to purchase deadly and highly addictive products.

Third, as cigarette prices have 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 or other fees specific to cigarettes 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.

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) create a price floor for a package of cigarettes and little cigars; and (4) 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 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 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 three-year period; or

(2) the violation of any provision of chapter thirteen of this title or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivision a or b of section 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, 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, 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 general fund of the city. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Cigarettes or

flavored tobacco product 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. Section 17-176 of the administrative code of the city of New York, as added by local law number 27 for the year 1990, is amended to read as follows:

§ 17-176 Prohibitions on the distribution of tobacco products.

a. Definitions. For purposes of this section:

(1) “Distribute” means to give, sell, deliver, offer to give, sell or deliver, or cause or hire any person to give, sell, deliver or offer to give, sell or deliver.

(2) “Less than basic cost” means free of charge, a nominal or discount price, or any other price less than the distributor’s cost, to which shall be added the full value of any stamps or taxes which may be required by law.

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

(4) “Public event” means any event to which the general public is invited or permitted, including but not limited to musical concerts or performances, athletic competitions, public fairs, carnivals, flea markets, bazaars and artistic or cultural performances or exhibitions. A private function such as a wedding, party, testimonial dinner or other similar gathering in which the seating arrangements are under the control of the organizer or sponsor of the event, and not the person who owns, manages, operates or otherwise controls the use of the place in which the function is held, is not a public event within the meaning of this paragraph.

(5) “Public place” means any area to which the general public is invited or permitted, including but not limited to parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions, gymnasiums, public malls and property owned, occupied or operated by the city of New York or an agency thereof.

(6) “Tobacco product” means any [substance which contains tobacco, including but not limited to cigarettes, cigars, smoking tobacco and smokeless tobacco] 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 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.

b. Distribution of tobacco products to the general public at less than basic cost prohibited in public places and at public events. No persons shall distribute a tobacco product for commercial purposes at less than the basic cost of such product to members of the general public in public places or at public events.

[c. Exemptions. The provisions of subdivision b shall not apply to (i) the serving of free samples of smoking tobacco or smokeless tobacco to persons of legal age in stores that sell tobacco products to the general public; or

(ii) the distribution of tobacco products at less than basic cost by retailers, manufacturers or

distributors of such products to any employees of such companies who are of legal age.]

d. Penalties. (1) Any person found to be in violation of this section shall be guilty of a misdemeanor and liable for a civil penalty of not more than five hundred dollars for the first violation and not more than one thousand dollars for the second and each subsequent violation.

(2) A proceeding to recover any civil penalty authorized pursuant to the provisions of this section 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 or to any body succeeding the administrative tribunal. Such tribunal or its successor shall have the power to impose the civil penalties prescribed by this section.

(3) The corporation counsel may make an application to the supreme court for an order restraining the continued violation of this section or enjoining the future commission of such practice.

§ 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 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 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.

b. 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.

c. 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.

d. 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.

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

f. Penalties. (1) Any person who violates subdivision b, c, or d 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) No person shall be liable under this section for more than one violation of any of subdivisions b, c, or d during a single day.

(3) A violation of subdivision b, c, or d 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 such retail dealer for the place of business where such violation occurred.

g. 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 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 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, y, z, and aa to read as follows:

w. “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.

x. “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.

y. “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.

z. “Shisha” means any product made primarily of tobacco or other leaf, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe.

aa. “Herbal cigarette” means a product that is meant to be smoked like a cigarette but is composed of one or more herbs and does not contain tobacco.

§ 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. 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.

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

§ 15. 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] department of finance shall enforce the provisions of this subchapter. The department of consumer affairs shall enforce sections 17-703, 17-703.1, 17-704, 17-705 and 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.

§ 16. 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 provisions of this subchapter.

§ 17. 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 and license revocation for a person found to be in violation of the provisions of 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 five hundred 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 subdivision a or b of section 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. Any person found to be in violation of subdivision c of section 17-706 shall be

liable for a civil penalty of not more than five hundred dollars in any single day.

(5) In addition, for a second violation of any of sections 17-703, 17-703.2, 17-704, 17-705 or subdivision a or b of section 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, 17-703.2, 17-704, 17-705 or subdivision a or b of section 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.

§ 18. 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.

§ 19. 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 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 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.

§ 20. 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.

§ 21. 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 section 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.

§ 22. 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], 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.

§ 23. 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.

§ 24. 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.

§ 25. 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, 17-703.2, 17-704, 17-705 or subdivision a or b of section 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.

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

§ 20-207 Violations.

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 three-year period; or

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

§ 27. This local law shall take effect immediately, provided that:

(i) sections two, seven, eight, nine, eleven, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-four and twenty-six shall take effect sixty days after its enactment;

(ii) sections five, six, ten, twelve and thirteen shall take effect one hundred twenty days after its enactment;

(iii) section twenty-five shall take effect one hundred eighty days after its enactment; and

(iv) the commissioners of finance, consumer affairs and health and mental hygiene may take such actions as are necessary for its implementation, including the promulgation of rules, prior to such effective dates.

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