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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 the operation of non-tobacco hookah establishments

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Int. No. 2071

By Council Members Cabrera, Kallos and Gjonaj

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 the operation of non-tobacco hookah establishments

Be it enacted by the Council as follows:

Section 1. Subdivision aaa of section 17-502 of the administrative code of the city of New York, as added by local law number 187 for the year 2017, is amended to read as follows:

aaa. “[Non-tobacco] Class A non-tobacco hookah establishment” means an establishment that, as of the date of enactment of the local law that added this subdivision, 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, and that has a permit issued by the department pursuant to section 17-513.5.

§ 2. Section 17-502 of the administrative code of the city of New York, as added by local law number

187 for the year 2017, is amended by adding a new subdivision bbb to read as follows:

bbb. “Class B non-tobacco hookah establishment” means an establishment that generates less than fifty percent of its total annual gross sales during the preceding calendar year from the on-site sale of non-tobacco smoking products, and that has a permit issued by the department pursuant to section 17-513.5.

§ 3. Subdivision d of section 17-513.1 of the administrative code of the city of New York, as added by local law number 187 for the year 2017, is amended to read as follows:

d. Any entity that in good faith believes itself to be a class A non-tobacco hookah establishment shall have 180 days from the effective date of the local law that added this subdivision to apply to the department for a permit as a class A non-tobacco hookah establishment. No permit application shall be approved by the department for any entity that fails to meet any requirement for a permit contained in subdivision g of section 17-513.5. During the period of time from the effective date of the local law that added this subdivision until the expiration of 180 days, no provision of the local law that added this subdivision, except for the provisions of this section, shall apply to such entity.

§ 4. Section 17-513.5 of the administrative code of the city of New York, as added by local law number 187 for the year 2017, is amended to read as follows:

§ 17-513.5 Non-tobacco hookah establishments.

a. It shall be unlawful for a person to operate a class A or class B non-tobacco hookah establishment without a permit from the department.

b. 1. A permit issued to a class A non-tobacco hookah establishment pursuant to this section shall be valid for one year.

2. A permit issued to a class B non-tobacco hookah establishment pursuant to this section shall be valid for two years.

c. 1. A permit issued to a class A non-tobacco hookah establishment pursuant to this section is not assignable or transferrable.

2. A permit issued to a class B non-tobacco hookah establishment pursuant to this section is assignable or transferrable where a new owner of such establishment notifies the department within five business days and receives approval for such assignment or transfer.

d. 1. Where any person becomes the beneficial owner of 10 percent or more of the stock of [an organization] a class A non-tobacco hookah establishment to which a permit has been granted pursuant to this section, if such person previously did not hold at least a 10 percent interest, such permit shall immediately become void.

2. Where any person becomes the beneficial owner of 25 percent or more of the stock of a class B non-tobacco hookah establishment to which a permit has been granted pursuant to this section, if such person previously did not hold at least a 25 percent interest, such owner shall notify the department within five business days.

e. 1. Any permit issued pursuant to this section shall immediately become void upon the addition or termination of any general partner or upon the dissolution of a partnership that owns a class A non-tobacco hookah establishment.

2. Upon the addition or termination of any general partner or upon the dissolution of a partnership that owns a class B non-tobacco hookah establishment, the department shall review any permit for compliance with the requirements of this section. The department may rescind a permit based upon the findings of such review.

f. The department may charge a fee of \$25 for a permit issued pursuant to this section.

g. To obtain and renew a permit issued pursuant to this section for a class A or class B non-tobacco hookah establishment, a person shall demonstrate that:

1. [such] Such class A non-tobacco hookah establishment: (a) generated 50 percent or more of its total annual gross sales during the preceding calendar year from the on-site sale of non-tobacco smoking products; and

[2. such non-tobacco hookah establishment] (b) has been operating as a non-tobacco hookah

establishment since at least the date of enactment of the local law that created this section, and has not expanded its size or changed its location on or after the date of enactment of the local law that added this section;

2. Such class B non-tobacco hookah establishment generated less than 50 percent of its total annual gross sales during the preceding calendar year from the on-site sale of non-tobacco smoking products;

3. [such] Such class A or class B non-tobacco hookah establishment has not been found to have served shisha containing tobacco or nicotine, in violation of subdivision a of section 17-508 or subdivision 1 of section 1399-s of the public health law, after the effective date of the local law that added this section;

4. [such] Such class A or class B non-tobacco hookah establishment does not owe a civil penalty for a violation of any provision of this chapter or of chapter 7 of title 17; and

5. [the] The permit of such class A or class B non-tobacco hookah establishment issued pursuant to this section has not been revoked pursuant to subdivision l of section 17-508 or subdivision b of section 17-716.

§ 5. Subdivision b of section 17-716 of the administrative code of the city of New York, as added by local law number 187 for the year 2017, is amended to read as follows:

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 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] three or more occasions at a class A or class B non-tobacco hookah establishment, the commissioner shall revoke the class A or class B non-tobacco hookah establishment permit issued to such person pursuant to section 17-513.5.

§ 6. Section 17-719 of the administrative code of the city of New York, as added by local law number

187 for the year 2017, is amended to read as follows:

§ 17-719 Requirements relating to non-tobacco hookah establishments.

a. 1. It shall be unlawful for a person to permit an individual under 21 years of age to enter a class A non-tobacco hookah establishment during operating hours. Entry into such class A non-tobacco hookah establishment shall 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. Such identification need not be required of any individual who reasonably appears to be at least 30 years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the granting of permission to enter such [an] class A establishment to an individual under 21 years of age.

2. It shall be unlawful for a person to permit an individual under 21 years of age to enter a class B non-tobacco hookah establishment during the operating hours when non-tobacco shisha is available for consumption or sale as described in subdivision c of this section. Entry into such class B non-tobacco hookah establishment during such operating hours shall 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. Such identification need not be required of any individual who reasonably appears to be at least 30 years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the granting of permission to enter such class B establishment to an individual under 21 years of age.

b. [Non-tobacco] All class A and class B non-tobacco hookah establishments, as defined in section 17-502, shall 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, as defined in section 17-502, in accordance with rules promulgated by the department.

c. It shall be unlawful for a class B non-tobacco hookah establishment to allow the purchase or

consumption of non-tobacco shisha on the premises of such establishment before 10:00 p.m. or after 4:00 a.m.

§ 7. This local law takes effect 90 days after it becomes law.

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