



Legislation Text

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By Council Members Cabrera, Gentile, Mendez, Rosenthal, Kallos, Barron and Maisel

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of electronic cigarettes and the licensing of electronic cigarette retail dealers

Be it enacted by the Council as follows:

Section 1. Subdivision qq of section 17-502 of the administrative code of the city of New York, as added by local law number 152 for the year 2013, is amended to read as follows:

qq. “Electronic cigarette” means [an electronic] 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. [Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.]

§ 2. Subdivision bb of section 17-702 of the administrative code of the city of New York, as added by local law number 94 for the year 2013, is amended to read as follows:

bb. “Electronic cigarette” means a battery-operated device that [contains nicotine] 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.

§ 3. Subdivision a of section 17-706 of the administrative code of the city of New York, as amended by chapter 542 of the laws of 2014, is amended to read as follows:

a. Any person operating a place of business wherein cigarettes, tobacco products, or liquid nicotine[, or electronic cigarettes] are sold or offered for sale is prohibited from selling such cigarettes, tobacco products, or liquid nicotine[, or electronic cigarettes] to individuals under twenty-one years of age. Sale of cigarettes,

tobacco products, or liquid nicotine[, or electronic cigarettes] in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of cigarettes, tobacco products, or liquid nicotine[, or electronic cigarettes] to an individual under twenty-one years of age.

§ 4. Section 17-706 of the administrative code of the city of New York is amended by adding a new subdivision a-1 to read as follows:

a-1. Any person operating a place of business wherein electronic cigarettes are sold or offered for sale is prohibited from selling such electronic cigarettes to individuals under twenty-one years of age. Sales of electronic cigarettes in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution, that the individual is at least twenty-one years of age. Such identification need not be required of any individual who reasonably appears to be at least thirty years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of electronic cigarettes to an individual under twenty-one years of age.

§ 5. Paragraph 4 of subdivision a of section 17-710 of the administrative code of the city of New York, as amended by a local law for the year 2017 amending the administrative code of the city of New York relating to the regulation of retail dealers of tobacco products and of electronic cigarettes, the establishment of price floors and minimum package sizes for tobacco products and shisha, and the establishment of a tax on tobacco products other than cigarettes, as proposed in introduction number 1544 for the year 2017, is amended to read as follows:

(4) Any person found to be in violation of section 17-704, 17-704.1, 17-705 or subdivision a, a-1 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 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.

§ 6. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 35 to read as follows:

SUBCHAPTER 35

ELECTRONIC CIGARETTE RETAIL DEALERS

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

Electronic cigarette. The term “electronic cigarette” means a battery-operated device that heats a liquid, gel, herb, and/or other substance and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette.

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, the possession or transportation at any one time of more than 20 electronic cigarettes by any person other than a manufacturer or a person delivering electronic cigarettes 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.

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.

§ 20-561 License. a. License required of electronic cigarette retail dealers.

1. It shall be unlawful for any person to engage in business as an electronic cigarette retail dealer without first having obtained a license as hereinafter prescribed for each place of business wherein such person engages in the retail sale of electronic cigarettes in the city.

2. It shall be unlawful for a person to permit any premises under such person's control to be used by any other person in violation of paragraph 1 of subdivision a of this section.

3. It shall be unlawful for a pharmacy to obtain a license to engage in business as an electronic cigarette retail dealer.

b. License application.

1. In order to obtain a license to engage in business as an electronic cigarette retail dealer, a person shall file an application with the commissioner for a license for each place of business that such person desires to have for the retail sale of electronic cigarettes in the city. The application for each license or renewal thereof shall be made upon such form as prescribed by the commissioner and shall contain such information as the commissioner shall require.

2. The commissioner shall commence accepting applications for licenses to engage in business as an electronic cigarette retail dealer on the effective date of the local law that added this section, and shall continue accepting applications for 90 days following such commencement.

(a) During the 90 day application period, the commissioner shall only accept applications for licenses to engage in business as an electronic cigarette retail dealer from persons who have been engaged in the retail sale of electronic cigarettes as of the date of enactment of this subchapter.

(b) The commissioner may require proof of such engagement from applicants during the 90 day application period.

3. The commissioner shall not accept applications after the expiration of the 90 day application period unless the commissioner determines that acceptance of such applications would not result in the issuance of a license in excess of the community district electronic cigarette retail dealer cap established pursuant to paragraph 1 of subdivision e of this section.

c. Fee and license term.

1. There shall be a biennial fee of \$200 for a license to engage in the business of an electronic cigarette retail dealer at each place of business where electronic cigarettes are sold in the city.

2. All even-numbered licenses shall expire on November 30 of the even-numbered year, and all odd-numbered licenses shall expire on November 30 of the odd-numbered year, next succeeding the year in which the license is issued.

d. Issuance of license and renewal of such license.

1. A license or renewal thereof shall be issued to a person to conduct the business of an electronic cigarette retail dealer for each place of business where such person engages in the retail sale of electronic 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 deemed 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 an electronic cigarette retail dealer;

(c) the commissioner has not received notification from the commissioner of health and mental hygiene that the applicant is not in full compliance with any provision of chapter 7 of title 17 of this code or any rules promulgated by the commissioner of health and mental hygiene to effectuate the purposes of such provisions;

and

(d) the number of licenses in the community district in which the place of business of such applicant is located is lower than the community district electronic cigarette retail dealer cap.

2. An electronic cigarette 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 of business designated therein and shall at all times be conspicuously displayed at the place of business for which it is issued.

e. Community district electronic cigarette retail dealer cap.

1. After the expiration of the 90 day application period described in paragraph 2 of subdivision b of this section, the department may process applications for up to 120 days. After such 120 days, the commissioner shall establish a community district electronic cigarette retail dealer cap for each community district in the city. The initial community district electronic cigarette retail dealer cap shall be 50 percent of the total number of licenses issued to electronic cigarette retail dealers in the community district as determined by the department.

2. The department, in conjunction with the department of health and mental hygiene, shall evaluate community district electronic cigarette retail dealer caps every two years and any time community district boundaries change. Such evaluation shall include consideration of the number of electronic cigarette retail dealers and the prevalence of electronic cigarette use. If, based on the evaluation, the department of health and mental hygiene recommends further reductions to the community district electronic cigarette retail dealer cap, the department of health and mental hygiene shall advise the speaker of the city council of such recommendation.

3. Notwithstanding paragraph 3 of subdivision b, and subparagraph d of paragraph 1 of subdivision d, of this section, if:

(a) a license of an electronic cigarette retail dealer expires at the end of a license term, such retail dealer may apply for renewal of such license;

(b) a business whose owner has been issued an electronic cigarette retail dealer is sold, the succeeding

owner may apply for a license for use at the same location, provided that the electronic cigarette retail dealer selling such business was in good standing at the time of such sale, and the application is received within thirty days of the applicable change of ownership;

(c) an electronic cigarette retail dealer license becomes void pursuant to section 20-110, the succeeding beneficial owners of 10 percent or more of the stock of the organization to which a license had been granted may apply for a license provided that such electronic cigarette retail dealer was in good standing at the time the license became void, and the application is received within thirty days of the change of ownership; and

(d) an electronic cigarette retail dealer license becomes void pursuant to section 20-111, the succeeding partnership may apply for a license, provided that such retail dealer was in good standing at the time the license became void and the application is received within thirty days of the change in ownership.

§ 20-562 Violations. a. In addition to the civil penalties authorized by section 17-710 for a violation of subdivision b of section 17-704.1 or of subdivision a-1 of section 17-706, an electronic cigarette retail dealer license shall be revoked for a second violation of subdivision b of section 17-704.1 or subdivision a-1 of section 17-706 involving the unlawful delivery or sale of electronic cigarettes occurring on different days at the same place of business within a three-year period. Any violation of subdivision b of section 17-704.1 or subdivision a-1 of section 17-706 involving the unlawful delivery or sale of electronic cigarettes 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 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. An electronic cigarette retail dealer license shall be revoked at the same hearing at which an electronic cigarette retail dealer is found liable for a second violation or subsequent violations at the same place of business within a three-year period.

b. For the purposes of this subdivision, the term “arm’s length transaction” shall have the same definition as contained in subdivision d of section 20-202.

§ 7. The commissioner of consumer affairs shall publicize the application period for the electronic cigarette retail dealer license so as to maximize awareness of the 90 day application for such license.

§ 8. The department of consumer affairs shall have the authority to promulgate any rules necessary for the implementation of this local law.

§ 9. This local law takes effect 150 days after it becomes law, except that:

(i) the department of consumer affairs and the department of health and mental hygiene may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such date;

(ii) section seven of this local law takes effect immediately;

(iii) paragraph 1 of subdivision a, and subparagraph (d) of paragraph 1 of subdivision d, of section 20-561, as added by section six of this local law, takes effect 360 days after it becomes law; and

(iv) paragraph 4 of subdivision a of section 17-710 of the administrative code of the city of New York, as added by section five of this local law, takes effect on the same day that a local law for the year 2017 amending the administrative code of the city of New York relating to the regulation of retail dealers of tobacco products and of electronic cigarettes, the establishment of price floors and minimum package sizes for tobacco products and shisha, and the establishment of a tax on tobacco products other than cigarettes, as proposed in introduction number 1544 for the year 2017, takes effect.

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