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Int. No. 1432

By Council Members De La Rosa, Stevens and Louis

A Local Law to amend the administrative code of the city of New York, in relation to the licensing and operation of non-tobacco hookah establishments, to repeal subdivision l of section 17-508 of such code, relating to permit revocation for non-tobacco hookah establishments, to repeal subdivision d of section 17-513.1 of such code, relating to the timing of applications for permits for non-tobacco hookah establishments, to repeal section 17-513.5 of such code, relating to a permitting scheme for non-tobacco hookah establishments, to repeal subdivisions b and c of section 17-716 of such code, relating to enforcement of age of entry and cleaning requirements applicable to non-tobacco hookah establishments, to repeal section 17-719 of such code, relating to age of entry and cleaning requirements for non-tobacco hookah establishments, and to amend the New York city fire code, in relation to accounting for the new licensing scheme pertaining to non-tobacco hookah establishments

Be it enacted by the Council as follows:

Section 1. Subdivisions y, zz, and aaa of section 17-502 of the administrative code of the city of New York, subdivision y as amended by local law number 187 for the year 2017 and subdivisions zz and aaa as added by such local law, are amended to read as follows:

y. “Smoking” means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe, herbal cigarette, non-tobacco [smoking product] shisha, or any similar form of lighted object or device designed for human use or consumption by the inhalation of smoke.

zz. “Non-tobacco [smoking product”] shisha means any product that does not contain tobacco or nicotine and [that is designed for human use or consumption by the inhalation of smoke, including but not limited to (i) pipes, water pipes, rolling papers, and any other component, part of accessory of such product and (ii) shisha, as defined in subdivision z of section 17-702, provided that such shisha does not contain tobacco or nicotine] is smoked or intended to be smoked in a hookah or water pipe.

aaa. “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.] means "non-tobacco hookah establishment" as defined in section 20-566.

§ 2. Paragraphs 5, 6, and 20 of subdivision a of section 17-503 of the administrative code of the city of New York, paragraphs 5 and 20 as amended by local law number 152 for the year 2013 and paragraph 6 as amended by local law number 187 for the year 2017, are amended to read as follows:

5. Restaurants; provided however, that the smoking of non-tobacco shisha in a hookah or water pipe shall be permitted in a restaurant licensed to operate as a non-tobacco hookah establishment under subchapter 39 of chapter 2 of title 20 in accordance with such subchapter.

6. Business establishments (other than retail tobacco stores) including, but not limited to, banks and other financial institutions, catering halls, offices where trade or vocational activity occurs or professional or consumer services are rendered and non-profit entities, including religious institutions; provided however, that this paragraph shall not apply to membership associations, and provided further, however, that this paragraph shall not apply to the smoking of non-tobacco [smoking products] shisha in a hookah or water pipe in a non-tobacco hookah [establishments] establishment licensed to operate as such under subchapter 39 of chapter 2 of title 20 in accordance with such subchapter.

20. Bars; provided however, that smoking shall be permitted in tobacco bars, and provided further, however, that the smoking of non-tobacco shisha in a hookah or water pipe shall be permitted in a bar licensed to operate as a non-tobacco hookah establishment under subchapter 39 of chapter 2 of title 20 in accordance with such subchapter.

§ 3. Paragraph 1 of subdivision c of section 17-503 of the administrative code of the city of New York, as amended by local law number 121 for the year 2023, is amended to read as follows:

1. Outdoor dining areas of restaurants including but not limited to any area operated by a restaurant as a

sidewalk cafe, or a roadway cafe, as those terms are defined in section 19-101; provided however, that the smoking of non-tobacco shisha in a hookah or water pipe shall be permitted in outdoor dining areas of a restaurant licensed to operate as a non-tobacco hookah establishment under subchapter 39 of chapter 2 of title 20 in accordance with such subchapter, except where smoking in such areas is otherwise prohibited by this chapter.

§ 4. Paragraph 1 of subdivision e of section 17-504 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

1. The prohibition of smoking, and using electronic cigarettes, except in accordance with the provisions of this chapter, the provisions of subchapter 39 of chapter 2 of title 20, and any rules promulgated pursuant thereto, and a description of the smoking restrictions and restrictions on the use of electronic cigarettes adopted or implemented.

§ 5. Subdivision e of section 17-506 of the administrative code of the city of New York, as added by local law number 190 for the year 2017, is amended to read as follows:

e. A non-tobacco hookah establishment shall prominently and conspicuously display at its entrance, and in any room or area where non-tobacco [smoking products are] shisha is smoked, a sign warning of the health risks associated with smoking non-tobacco [smoking products] shisha. The size, style, and content of such signs shall be determined in accordance with rules promulgated by the commissioner.

§ 6. Subdivisions a and b of section 17-507 of the administrative code of the city of New York, subdivision a as amended by local law number 80 for the year 2020 and subdivision b as added by local law number 2 for the year 1988, are amended to read as follows:

a. The department and the department of consumer and worker protection shall enforce the provisions of this chapter. In addition, designated enforcement employees of the department of buildings, [the department of consumer and worker protection,] the department of environmental protection, the fire department and the department of sanitation shall have the power to enforce the provisions of this chapter.

b. Any person who desires to register a complaint under this chapter may do so with the department. The department shall share the details of any complaint under this chapter that it receives with the department of consumer and worker protection for purposes of enforcement of subchapter 39 of chapter 2 of title 20.

§ 7. Subdivision l of section 17-508 of the administrative code of the city of New York is REPEALED.

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

§ 17-513.1 Effective dates for membership associations, owner operated bars[,] and tobacco bars [and non-tobacco hookah establishments].

§ 9. Subdivision d of section 17-513.1 of the administrative code of the city of New York is REPEALED.

§ 10. Section 17-513.5 of the administrative code of the city of New York is REPEALED.

§ 11. Subdivision z of section 17-702 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:

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.

§ 12. Subdivision e of section 17-704 of the administrative code of the city of New York, as added by local law number 145 for the year 2017, is amended to read as follows:

e. No retail dealer shall sell or offer for sale shisha [or non-tobacco shisha] unless such shisha is sold in a package of at least 3.5 ounces.

§ 13. 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 228 for the year 2019, is amended to read as follows:

SUBCHAPTER 2

REGULATION OF THE SALE OF FLAVORED TOBACCO PRODUCTS, FLAVORED ELECTRONIC CIGARETTES AND FLAVORED E-LIQUID[, AND REGULATION OF AGE OF ENTRY

TO NON-TOBACCO HOOKAH ESTABLISHMENTS]

§ 14. Subdivisions b and c of section 17-716 of the administrative code of the city of New York are REPEALED.

§ 15. Section 17-719 of the administrative code of the city of New York is REPEALED.

§ 16. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 39 to read as follows:

SUBCHAPTER 39

NON-TOBACCO HOOKAH ESTABLISHMENTS

§ 20-566 Definitions.
§ 20-566.1 License required.
§ 20-566.2 License issuance; term; fee; application; denial.
§ 20-566.3 Revocation.
§ 20-566.4 Assignment and transfer.
§ 20-566.5 Permissible hours of service for class B non-tobacco hookah establishments.
§ 20-566.6 Age of entry.
§ 20-566.7 Cleaning paraphernalia.
§ 20-566.8 Violations and penalties.
§ 20-566.9 Enforcement.

§ 20-566 Definitions. As used in this subchapter, the following terms have the following meanings:

Bar. The term "bar" has the same meaning as set forth in subdivision b of section 17-502.

Class A non-tobacco hookah establishment. The term "class A non-tobacco hookah establishment" means an establishment that generates 50 percent or more of its total annual gross sales from non-tobacco shisha smoked in a hookah or water pipe at the establishment.

Class B non-tobacco hookah establishment. The term "class B non-tobacco hookah establishment" means a restaurant or bar that generates less than 50 percent of its total annual gross sales from non-tobacco shisha smoked in a hookah or water pipe at the restaurant or bar.

Non-tobacco hookah establishment. The term "non-tobacco hookah establishment" means a class A non-tobacco hookah establishment or a class B non-tobacco hookah establishment.

Non-tobacco shisha. The term "non-tobacco shisha" means any product that does not contain tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

Restaurant. The term "restaurant" has the same meaning as set forth in subdivision r of section 17-502.

Shisha. The term "shisha" means any product smoked or intended to be smoked in a hookah or water pipe.

§ 20-566.1 License required. a. 1. It shall be unlawful for any person to operate a class A non-tobacco hookah establishment without first having obtained a class A non-tobacco hookah establishment license pursuant to this subchapter.

2. It shall be unlawful for any person to operate a class B non-tobacco hookah establishment without first having obtained a class B non-tobacco hookah establishment license pursuant to this subchapter.

§ 20-566.2 License issuance; term; fee; application; denial. a. Issuance. A license to operate a non-tobacco hookah establishment shall be granted in accordance with the provisions of this title.

b. Term. 1. A class A non-tobacco hookah establishment license issued pursuant to this subchapter shall be valid for 1 year.

2. A class B non-tobacco hookah establishment license issued pursuant to this subchapter shall be valid for 2 years.

c. Fee. There shall be a fee of $200 to apply for or renew a license issued under this subchapter.

d. Application. 1. To obtain a non-tobacco hookah establishment license pursuant to this subchapter, the applicant shall file an application with the commissioner in such form and detail as the commissioner shall prescribe, and shall furnish the commissioner with the following information:

(a) The name, address, contact phone number, and the electronic mail address of the applicant;

(b) If an applicant for a class A non-tobacco hookah establishment license is already operating as a non-tobacco hookah establishment pursuant to a permit issued by the department of health and mental hygiene on the effective date of the local law that added this section, such applicant shall furnish the commissioner with

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records demonstrating that such establishment generated 50 percent or more of its total annual gross sales during the preceding calendar year from non-tobacco shisha smoked in a hookah or water pipe at such establishment;

(c) If an applicant for a class A non-tobacco hookah establishment license is not already operating as a non-tobacco hookah establishment pursuant to a permit issued by the department of health and mental hygiene on the effective date of the local law that added this section, such applicant shall furnish the commissioner with a signed statement that such establishment is expected to generate 50 percent or more of its total annual gross sales from non-tobacco shisha smoked in a hookah or water pipe at such establishment;

(d) A signed statement from an applicant for a class B non-tobacco hookah establishment license that the non-tobacco hookah establishment is expected to generate less than 50 percent of its total annual gross sales from non-tobacco shisha smoked in a hookah or water pipe at such establishment; and

(e) Such other information as the commissioner may require.

2. To renew a non-tobacco hookah establishment license pursuant to this subchapter, the applicant shall file an application with the commissioner in such form and detail as the commissioner shall prescribe, and shall furnish the commissioner with the following information:

(a) The name, address, contact phone number, and the electronic mail address of the applicant;

(b) For an applicant for a class A non-tobacco hookah establishment license, records demonstrating that the non-tobacco hookah establishment generated 50 percent or more of its total annual gross sales during the preceding calendar year from non-tobacco shisha smoked in a hookah or water pipe at such establishment;

(c) For an applicant for a class B non-tobacco hookah establishment license, records demonstrating that the non-tobacco hookah establishment generated less than 50 percent of its total annual gross sales during the preceding two calendar years from non-tobacco shisha smoked in a hookah or water pipe at such establishment; and

(d) Such other information as the commissioner may require.

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e. Denial. The commissioner shall deny issuance or renewal of a non-tobacco hookah establishment license upon a finding that:

1. Such applicant is not in compliance with the public health law, the New York city fire code, the New York city mechanical code, and all other applicable laws, rules, and regulations, as such laws, codes, rules, and regulations relate to the operation of a non-tobacco hookah establishment;

2. Such applicant owes a civil penalty for a violation of any provision of chapter 5 or chapter 7 of title 17; or

3. Such applicant previously possessed a non-tobacco hookah establishment license issued pursuant to this subchapter that was revoked pursuant to section 20-566.3 or a non-tobacco hookah establishment permit issued by the department of health and mental hygiene that was revoked.

§ 20-566.3 Revocation. The commissioner shall revoke a non-tobacco hookah establishment license issued pursuant to this subchapter upon a finding after notice and an opportunity to be heard that such non-tobacco hookah establishment:

1. Filed a license application with the commissioner under subdivision d of section 20-566.2 involving fraud, misrepresentation, or false statements;

2. Served shisha containing tobacco or nicotine;

3. Was otherwise in violation of subdivision a of section 17-508;

4. Was otherwise in violation of subdivision 1 of section 1399-s of the public health law; or

5. Violated section 20-566.6 on 3 or more occasions.

§ 20-566.4 Assignment and transfer. A non-tobacco hookah establishment license issued pursuant to this subchapter is assignable or transferable with the prior written approval of the commissioner.

§ 20-566.5 Permissible hours of service for class B non-tobacco hookah establishments. A class B non-tobacco hookah establishment shall only allow non-tobacco shisha to be purchased or smoked on the premises of such establishment between the hours of 9:00 p.m. and 4:00 a.m.

§ 20-566.6 Age of entry. a. It shall be unlawful for a class A non-tobacco hookah establishment to permit an individual under 21 years of age to enter such establishment during operating hours. Entry into such 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 establishment to an individual under 21 years of age.

b. It shall be unlawful for a class B non-tobacco hookah establishment to permit an individual under 21 years of age to enter such establishment during the permissible hours of service set forth in section 20-566.5 if non-tobacco shisha is available for sale or consumption at such establishment during such hours. Provided that non-tobacco shisha is available for sale or consumption at such establishment during such hours, entry into such establishment during such permissible hours of service 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 establishment to an individual under 21 years of age.

§ 20-566.7 Cleaning paraphernalia. A non-tobacco hookah establishment 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 shisha, in accordance with rules promulgated by the commissioner.

§ 20-566.8 Violations and penalties. a. Any person who violates section 20-566.6 is liable for a civil penalty of $200 for the first violation, and not more than $200 for each additional violation found on the same day; and $500 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.

b. Any person found to be in violation of section 20-566.7 shall be liable for a civil penalty of $100 for the first violation and not more than $100 for each additional violation found on the same day; and $200 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 the office of administrative trials and hearings or any tribunal established within any agency of the city designated to conduct such proceedings.

c. The civil penalties authorized by this section are in addition to penalties imposed under the public health law, chapter 1 of title 20, and chapters 5 and 7 of title 17 or rules or regulations promulgated thereunder, and any other applicable laws, rules, or regulations.

§ 20-566.9 Enforcement. The commissioner, commissioner of health and mental hygiene, commissioner of buildings, commissioner of environmental protection, fire commissioner, commissioner of sanitation, and commissioner of finance shall enforce the provisions of this subchapter.

§ 17. The "non-tobacco hookah establishments" subdivision of section 105.6 of the New York city fire code, as amended by local law number 47 for the year 2022, is amended to read as follows:

Non-tobacco hookah establishments. A permit is required to establish and operate a non-tobacco hookah establishment pursuant to Subchapter 39 of Chapter 2 of Title 20 and Chapter 5 of Title 17 of the Administrative Code and FC310.7.

§ 18. Items 4.2 and 4.3 of section 310.2 of the New York city fire code, as amended by local law number 47 for the year 2022, are amended to read as follows:

4.2. Group A occupancies and public gathering places, except for smoking non-tobacco [smoking products] shisha in a hookah or water pipe in a non-tobacco hookah establishment in accordance with FC310.7.

4.3. Group M occupancies, except for smoking non-tobacco [smoking products] shisha in a hookah or water pipe in a non-tobacco hookah establishment in accordance with FC310.7.

§ 19. Section 310.7 of the New York city fire code, as amended by local law number 47 for the year

2022, is amended to read as follows:

§ 310.7 Non-tobacco hookah establishments. Smoking of non-tobacco [smoking products] shisha in a hookah or water pipe is allowed in non-tobacco hookah establishments lawfully operating pursuant to Subchapter 39 of Title 20 and Chapter 5 of Title 17 of the Administrative Code (as those terms are defined therein), provided that such establishments are designed, installed, operated and maintained in accordance with the following requirements:

§ 20. Section 310.7.3.4 of the New York city fire code, as amended by local law number 47 for the year 2022, is amended to read as follows:

§ 310.7.3.4 Portable fire extinguishers. In addition to complying with the requirements of FC906, a portable fire extinguisher with at least a 2-A:10-B:C rating shall be provided and maintained in a non-tobacco hookah establishment in the charcoal preparation area and in each area in which non-tobacco [smoking products are] shisha is smoked in a hookah or water pipe.

§ 21. Any agency or officer to which are assigned by or pursuant to this local law any functions, powers, and duties shall exercise such functions, powers, and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding, or other matter commenced by the agency or officer by which such functions, powers, and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant, or other document relating to the subject matter of such functions, powers, or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers, and duties are assigned by or pursuant to this local law.

§ 22. Any rule or regulation in force on the effective date of this local law, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede, or repeal such rule or regulation.

§ 23. If any of the functions, powers, or duties of any agency or part thereof is by or pursuant to this local law assigned to another agency, all records, property, and equipment relating to such transferred function,

power, or duty shall be transferred and delivered to the agency to which such function, power or duty is so assigned.

§ 24. No existing right or remedy of any character accruing to the city shall be lost or impaired or affected by reason of the adoption of this local law.

§ 25. No action or proceeding, civil or criminal, pending at the time when this local law takes effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers, and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers, and duties have been assigned or transferred by or pursuant to this local law.

§ 26. Whenever by or pursuant to any provision of this local law, functions, powers, or duties are assigned to any agency or officer which have been heretofore exercised by any other agency or officer, officers and employees in the classified city civil service who are engaged in the performance of such functions, powers, or duties may be transferred to the agency to which such functions, powers, or duties are assigned by or pursuant to this local law.

§ 27. Any license, permit, or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit, or authorization is assigned by or pursuant to this local law to another agency or officer, shall continue in force as the license, permit, or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended, or revoked by the appropriate agency or officer pursuant to law. Such license, permit, or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to this local law.

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

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