



Legislation Text

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Int. No. 223

By Council Members Hanks, Zhuang, Louis, Banks, Wong, Nurse, Schulman, Gutiérrez, Hankerson, Salaam, Williams, Epstein, Morano and Ariola

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the sale of electronic cigarettes that resemble school supplies

Be it enacted by the Council as follows:

Section 1. 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]

PROHIBITED ELECTRONIC CIGARETTES AND FLAVORED E-LIQUID, AND REGULATION OF AGE
OF ENTRY TO NON-TOBACCO HOOKAH ESTABLISHMENTS

§ 2. Section 17-715 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:

§ 17-715 Sale of flavored tobacco products, flavored electronic cigarettes [and], flavored e-liquid, and electronic cigarettes resembling school supplies prohibited.

a. 1. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product except in a tobacco bar.

2. There shall be a presumption that a retail dealer, as defined in section 17-702, in possession of [four] 4 or more flavored tobacco products, which shall include individual tobacco products, packages of tobacco products, or any combination thereof, possesses such tobacco products with intent to sell or offer for sale.

b. 1. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette or flavored e-liquid.

2. There shall be a presumption that an electronic cigarette retail dealer, as defined in section 20-560, in possession of [six] 6 or more flavored electronic cigarettes, or more than 12 fluid ounces (354.882 mL) of flavored e-liquid, possesses such flavored electronic cigarettes or flavored e-liquid with intent to sell or offer for sale.

c. 1. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any electronic cigarette that resembles a school supply, including, but not limited to, an electronic cigarette designed to resemble or be disguised as a highlighter, stapler, eraser, writing pen, or pencil.

2. There shall be a presumption that an electronic cigarette retail dealer, as defined in section 20-560, in possession of 6 or more electronic cigarettes prohibited by paragraph 1 of this subdivision, possesses such electronic cigarettes with intent to sell or offer for sale.

§ 3. Subdivision a-1 of section 17-716 of the administrative code of the city of New York, as added by local law number 228 for the year 2019, is amended to read as follows:

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

at the same hearing at which an electronic cigarette retail dealer is found liable for a third violation or subsequent violations at the same place of business within a three-year period.

§ 4. Section 11-4024 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:

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

[(a)] 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 subdivision a or b of section 17-715 [of this code], or (3) any electronic cigarette that is sold, offered for sale, or possessed with intent to sell in violation of subdivision c of section 17-715, he or she is hereby authorized and empowered forthwith to seize and take possession of such cigarettes [or], flavored tobacco product, or electronic cigarettes prohibited pursuant to subdivision c of section 17-715, together with any vending machine or receptacle in which such cigarettes [or], flavored tobacco product, or electronic cigarettes prohibited pursuant to subdivision c of section 17-715 are held for sale. Such cigarettes [or], flavored tobacco product, electronic cigarettes prohibited pursuant to subdivision c of section 17-715, vending machine or receptacle seized by such police officer or such peace officer shall be turned over to the commissioner of finance.

[(b)] b. The seized cigarettes [or], flavored tobacco product, or electronic cigarettes prohibited pursuant to subdivision c of section 17-715, 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, electronic cigarettes prohibited pursuant to subdivision c of section 17-715, 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, electronic cigarettes prohibited pursuant to subdivision c of section 17-715, 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)] 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, or electronic cigarettes prohibited pursuant to subdivision c of section 17-715 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)] 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, or electronic cigarettes

prohibited pursuant to subdivision c of section 17-715 under this section was made, to redeem any vending machine or receptacle seized with such cigarettes [or], flavored tobacco product, or electronic cigarettes prohibited pursuant to subdivision c of section 17-715, 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.

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

§ 5. The definition of “good standing” set forth in section 20-560 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:

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, or subdivision b or c of section 17-715 on more than one day during the previous three consecutive years.

§ 6. This local law takes effect 60 days after it becomes law.

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