

NEW YORK CITY
DEPARTMENT OF CONSUMER AND WORKER PROTECTION

Proposed Rules
to Amend the Application Process
for Tobacco Retail Dealers and
Electronic Cigarette Retail Dealer Licenses
That Become Available Within Community Districts

Teleconference
November 3, 2022

INDEX

[All names are listed in order in which they speak]

[Name] [Title]	[Page]
Charlie Driver, Hearing Officer	3
David Schwartz, Lobbyist	4

1 H.O. CHARLIE DRIVER: Good morning. My name
2 is Charlie Driver. I have been designated as the
3 Hearing Officer for this public hearing of the
4 Department of Consumer and Worker Protection on
5 proposed rules -- sorry, just have to get the right
6 rule number -- proposed rules to, to amend the
7 application process for tobacco retail dealers and
8 electronic cigarette retail dealer licenses that
9 become available within community districts.

10 This hearing is being held by teleconference
11 call. It is now 11:03 a.m. on Thursday, November 3,
12 2022, and I am hereby convening the public hearing on
13 this proposed rule.

14 The proposed rule was published in the City
15 record on October 4, 2022. And, the proposed notice
16 and rules are available online on the New York City
17 rules website and the Department's website. The
18 Department has proposed these rules pursuant to the
19 authority vested in the Commissioner of the Department
20 of Consumer and Worker protection by Sections 1043,
21 2203(c) and 2203(f) of the New York City Charter and
22 Sections 20-104(a) and 20-104(b) of the New York City
23 Administrative Code.

24 This hearing affords the public the
25 opportunity to comment on all aspects of the rules the

1 Department has proposed. The Department will
2 carefully review all testimony and written comments
3 received at this hearing and will give due weight and
4 consideration to proposals and recommendations that
5 are submitted for the record.

6 Right now, we are waiting to see if anyone
7 is going to come and testify. I will keep my video,
8 my camera and my mic off. If someone comes on, we
9 will accept their testimony. Otherwise, I will keep
10 the zoom open until noon and then at noon end the
11 call.

12 So, Jamie, you can just hang tight and we'll
13 see if anyone, anyone comes through looking to
14 testify. And if you're interested in, like, seeing
15 comments, there's also comments available at the NYC
16 rules website. We've had one submitted so far.

17 JAMIE: Okay. So, I'll look that one up.

18 H.O. DRIVER: Okay. Thanks.

19 Hi, David, are you looking to testify?

20 MR. DAVID SCHWARTZ: Just, I'm observing the
21 meeting.

22 H.O. DRIVER: Okay. So, we don't have
23 anyone currently with us to testify. But, just hang
24 tight. There might be someone who comes through. The
25 Zoom's going to be open until noon.

1 MR. SCHWARTZ: Okay. I mean, I mean, I
2 wasn't -- let me get my video on. I wasn't planning
3 on testifying. But, certainly, I have a lot to say so
4 maybe I -- what time, when, when is the testimony
5 starting?

6 H.O. DRIVER: Whenever. I mean, if you want
7 to speak, you, you're welcome to.

8 MR. SCHWARTZ: Yeah, I would like to speak.
9 I would speak.

10 H.O. DRIVER: Okay. You'll have three
11 minutes. And, you can start --

12 MR. SCHWARTZ: Okay.

13 H.O. DRIVER: -- start whenever you're
14 ready.

15 MR. SCHWARTZ: Oh, great, great. Well,
16 who's on, who's present in the committee right now?
17 And, and --

18 H.O. DRIVER: So, this is not a City coun-,
19 this, this is not a City Council hearing.

20 MR. SCHWARTZ: Okay. Alright.

21 H.O. DRIVER: This is, this is a New York
22 City Department of Consumer and Worker Protection
23 Rules hearing. We've proposed rules relating to
24 tobacco retail dealer and electronic cigarette dealer
25 license lotteries. And, this is just an opportunity

1 to comment on those specific rules.

2 MR. SCHWARTZ: Okay, okay. I, I would like
3 to say my name is David Schwartz. I wear many hats,
4 but I've been involved in the wholesale business of
5 cigarettes, candy and tobacco items in the City of New
6 York for many, many years. I also represent the
7 association and I'm, and I'm a, I'm a lobbyist.

8 So, bottom line is we've lost thousands of
9 retail cigarette and tobacco licenses in the City of
10 New York. I believe prior to 2020, we had about
11 12,000 of them, and now we're down to about 5,000, I
12 believe. This is an emergency situation because what
13 happens is when you take away brick and mortar
14 licensed establishments in the City of New York, you
15 add to the illegality of illegal tobacco products and
16 illegal cigarettes coming into the marketplace. New
17 York State and New York City is losing \$2.5 billion a
18 year due to untaxed illegal cigarettes entering the
19 marketplace. This is not a smoking issue. This is an
20 issue of how cigarettes should be distributed in the
21 City in New York. We have a great system. Our
22 cigarette tax agents affix the tax stamps onto
23 cigarettes. You get your money up front. It's
24 prepaid tax. It's prepaid sales tax and excise tax.
25 And, the City of New York is losing about \$800 million

1 a year. And, what's adding to the problem is the lack
2 of licenses out there, the lack of licensed tobacco
3 retailers out there, brick and mortar retailers who
4 have to card 21 years old and who have to obey all the
5 rules. They don't obey the rules, then they have
6 their licenses suspended or taken away from them. We
7 have the laws in place. So, any kind of artificial
8 moratorium on cigarette licenses, in particular, is
9 counter intuitive. I know what the opposition is
10 saying, we take away the licenses, less people smoke.
11 No, that's not true. More people turn to the illegal
12 market, which is prevalent. Eighty percent of the
13 cigarettes sold in New York City are illegal, untaxed
14 cigarettes coming up the I-95 corridor from North
15 Carolina, from Virginia, from Georgia. I've met with
16 many, many council members and the Mayor's office on
17 this situation. It is dire.

18 We need to -- and, and we're taking money
19 out of the pockets of the people of the City of New
20 York, and we're taking money out of the pockets from
21 the bodega owners, the, the convenience stores, the
22 small markets, the newsstands. You name it, we're
23 taking money away. We got to open up the market.
24 We've got to allow more retailers who qualify to have
25 cigarette licenses and, and, and and e-cigarette

1 licenses so we could stop this illegal market. Eighty
2 percent is illegal coming into the marketplace.

3 I don't have a timer in front of me, so you
4 could just put up your hand when I'm, when I'm out of
5 time.

6 H.O. DRIVER: You're right about three
7 minutes.

8 MR. SCHWARTZ: Alright. And that, and
9 that's my point. So, I plead with the City Council
10 and, and, and all the agencies, especially Consumer
11 Affairs, to open up this process and to allow more
12 cigarette licenses. More cigarette licenses will
13 fight off the black market. Thank you very much.

14 H.O. DRIVER: Great. Thank you so much for,
15 for those comments. Appreciate you participating in
16 the process.

17 MR. SCHWARTZ: I appreciate it. And, call
18 upon me anytime. I appreciate it. Thank you.

19 H.O. DRIVER: Sure. Thanks. So, we'll just
20 hang tight and see if anyone else joins to deliver
21 comments. Someone is coming in. Hi, Caroline, are
22 you looking to offer testimony at this hearing?

23 CAROLINE: No. I was just hoping to listen.

24 H.O. DRIVER: Okay. So, we're just waiting
25 for anyone else who's joining to offer testimony. I'm

1 going to leave the Zoom room open until noon.

2 CAROLINE: Thank you.

3 H.O. DRIVER: Yep.

4 JAMIE: Hi. Yeah, so --

5 H.O. DRIVER: Hi.

6 JAMIE: Yeah, so, since we're at the 11:30
7 mark, I guess I'll cut out now.

8 H.O. DRIVER: Sure. We'll, we'll post a
9 transcript if we receive, you know, regardless, but
10 including if we receive additional stuff. So, you can
11 always check that after. That's on our website.

12 JAMIE: Okay. Well, thanks for hosting
13 this. I know it it can be a bit of a grind, but it
14 is --

15 H.O. DRIVER: No worries.

16 JAMIE: -- what it is.

17 H.O. DRIVER: Thanks for tuning in.

18 JAMIE: Alright. Have a good one.

19 H.O. DRIVER: Yeah, you too. Bye-bye.

20 JAMIE: Bye.

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CERTIFICATE OF ACCURACY

I, Juliana Castano, certify that the foregoing transcript of Proposed Rules to Amend the Application Process for Tobacco Retail Dealers and Electronic Cigarette Retail Dealer Licenses that Become Available Within Community Districts on November 3, 2022 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Juliana Castano

Date: December 7, 2022

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