

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

CURRENT AS OF APRIL 2016

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TITLE 17. HEALTH
CHAPTER 1. DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

§ 17-176 Prohibitions on the distribution of tobacco products.

a. Definitions. For purposes of this section:

(1) "Distribute" means to give, sell, deliver, offer to give, sell or deliver, or cause or hire any person to give, sell, deliver or offer to give, sell or deliver.

(2) "Less than basic cost" means free of charge, a nominal or discount price, or any other price less than the distributor's cost, to which shall be added the full value of any stamps or taxes which may be required by law.

(3) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

(4) "Public event" means any event to which the general public is invited or permitted, including but not limited to musical concerts or performances, athletic competitions, public fairs, carnivals, flea markets, bazaars and artistic or cultural performances or exhibitions. A private function such as a wedding, party, testimonial dinner or other similar gathering in which the seating arrangements are under the control of the organizer or sponsor of the event, and not the person who owns, manages, operates or otherwise controls the use of the place in which the function is held, is not a public event within the meaning of this paragraph.

(5) "Public place" means any area to which the general public is invited or permitted, including but not limited to parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions, gymnasiums, public malls and property owned, occupied or operated by the city of New York or an agency thereof.

(6) "Tobacco product" means any product which contains tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco- containing shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

b. Distribution of tobacco products to the general public at less than basic cost prohibited in public places and at public events. No persons shall distribute a tobacco product for commercial purposes at less than the basic cost of such product to members of the general public in public places or at public events.

d. Penalties.

(1) Any person found to be in violation of this section shall be guilty of a misdemeanor and liable for a civil penalty of not more than five hundred dollars for the first violation and not more than one thousand dollars for the second and each subsequent violation.

(2) A proceeding to recover any civil penalty authorized pursuant to the provisions of this section shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health or to any body succeeding the administrative tribunal. Such tribunal or its successor shall have the power to impose the civil penalties prescribed by this section.

(3) The corporation counsel may make an application to the supreme court for an order restraining the continued violation of this section or enjoining the future commission of such practice.

§ 17-176.1 Prohibition on the sale of discounted cigarettes and tobacco products.

a. Definitions. For purposes of this section:

"Cigar" means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

"Cigarette" means any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

"Cigarette price floor" means the minimum price, including all applicable taxes, for which one package of twenty cigarettes or more may be sold by a retail dealer.

"Listed price" means the price listed for cigarettes or tobacco products on their packages or on any related shelving, posting, advertising or display at the place where the cigarettes or tobacco products are sold or offered for sale, including all applicable taxes.

"Little cigar" means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

"Little cigar price floor" means the minimum price, including all applicable taxes, for which one package of twenty little cigars or more may be sold by a retail dealer.

"Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

"Price reduction instrument" means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

"Retail dealer" means retail dealer as defined in section 11-1301 of the code, and any employee or other agent of such retail dealer.

"Tobacco product" means any product which contains tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco-containing shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

b. Prohibition on the sale of cigarettes for less than the listed price. No person shall:

(1) honor or accept a price reduction instrument in any transaction related to the sale of cigarettes to a consumer;

(2) sell or offer for sale cigarettes to a consumer through any multi-package discount or otherwise provide to a consumer any cigarettes for less than the listed price in exchange for the purchase of any other cigarettes by the consumer;

(3) sell, offer for sale, or otherwise provide any product other than cigarettes to a consumer for less than the listed price in exchange for the purchase of cigarettes by the consumer; or

(4) sell, offer for sale, or otherwise provide cigarettes to a consumer for less than the listed price.

c. Prohibition on the sale of tobacco products for less than the listed price. No person shall:

(1) honor or accept a price reduction instrument in any transaction related to the sale of tobacco products to a consumer;

(2) sell or offer for sale tobacco products to a consumer through any multi-package discount or otherwise provide to a consumer any tobacco product for less than the listed price in exchange for the purchase of any other tobacco product by the consumer;

(3) sell, offer for sale, or otherwise provide any product other than a tobacco product to a consumer for less than the listed price in exchange for the purchase of a tobacco product by the consumer; or

(4) sell, offer for sale, or otherwise provide tobacco products to a consumer for less than the listed price.

d. Price floor for cigarettes and little cigars.

(1) Prohibition on the sale of cigarettes below the cigarette price floor. No person shall sell or offer for sale a package of cigarettes to a consumer for a price less than the cigarette price floor. The cigarette price floor shall be \$10.50 per package of cigarettes, provided that the cigarette price floor may be modified pursuant to paragraph three of this subdivision.

(2) Prohibition on the sale of little cigars below the little cigar price floor. No person shall sell or offer for sale a package of little cigars for a price less than the little cigar price floor. The little cigar price floor shall be equal to the cigarette price floor.

(3) The department may modify by rule the cigarette price floor and little cigar price floor to account for changes in the New York - northern New Jersey - Long Island consumer price index, adjusted for inflation, or changes in taxes for cigarettes or little cigars.

e. The department shall promulgate any rules as may be necessary for the purpose of carrying out this section.

f. Penalties.

(1) Any person who violates subdivision b, c, or d of this section or any rule promulgated pursuant to any of such subdivisions shall be liable for a civil penalty in the following amounts:

(i) one thousand dollars for a first violation within a five-year period;

(ii) two thousand dollars for a second violation within a five-year period; and,

(iii) five thousand dollars for a third violation within a five-year period.

(2) No person shall be liable under this section for more than one violation of any of subdivisions b, c, or d during a single day.

(3) A violation of subdivision b, c, or d of this section by a retail dealer shall constitute a basis, pursuant to section 20-206 of the code, for the suspension or revocation of the license issued to such retail dealer for the place of business where such violation occurred.

g. Enforcement. The department, the department of consumer affairs, and the department of finance shall enforce the provisions of this section at the tribunals that are authorized to hear violations issued by such departments.

§ 17-177. Prohibition on the distribution of tobacco products through vending machines.

a. Definitions. For purposes of this section:

(1) "Distribution" means to give, sell, deliver, dispense, issue, offer to give, sell, deliver, dispense or issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

(2) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

(3) "Public place" means any area to which the public is invited or permitted.

(4) "Retail dealer" means "retail dealer" as defined in section 11-1301 of the administrative code.

(5) "Tavern" means an establishment where alcoholic beverages are sold and served for on-site consumption and in which the service of food, if served at all, is incidental to the sale of such beverages. Service of food shall be considered incidental if the food service generates less than forty percent of total annual gross sales. As used herein, the term "tavern" shall not be deemed to include a bar located in a public place in which the sale of alcoholic beverages is incidental to the primary purpose of the business or establishment conducted therein, except for a bar located in a public place which offers overnight accommodations. Examples of public places not deemed to be taverns within the definition of this paragraph include, but are not limited to, restaurants, catering halls, bowling alleys, billiard parlors, discotheques, theatres and arenas.

(6) "Tobacco product" means any substance which contains tobacco, including but not limited to cigarettes, cigars, smoking tobacco and smokeless tobacco.

(7) "Wholesale dealer" means "wholesale dealer" as defined in section 11-1301 of the administrative code.

(8) "Vending machine" means any mechanical, electronic or other similar device which dispenses tobacco products.

b. Distribution of tobacco products through vending machines prohibited. No person shall permit the distribution of a tobacco product through the operation of a vending machine in a public place. This prohibition shall not apply to the distribution of tobacco products in a tavern.

c. Distribution of tobacco products in a tavern. Tobacco products may be distributed in a tavern only in the following ways:

(1) through a vending machine which must be (i) placed at a distance of a minimum of 25 feet from any entrance to the premises; and (ii) directly visible by the owner of the premises, or his or her employee or agent, during the operation of such vending machine; or

(2) directly by the owner of the premises, or his or her employee or agent.

d. Identification of vending machines. A wholesale dealer or retail dealer shall post a durable sign on any vending machine which such dealer is licensed to own, operate or maintain. Such sign shall be visible to the general public and provide the applicable cigarette license number and expiration date and the license holder's name, place of business and phone number.

e. Enforcement. The department shall enforce the provisions of this section. In addition, designated enforcement employees of the department of buildings, the department of consumer affairs, the department of environmental protection, the fire department and the department of sanitation shall have the power to enforce the provisions of this section.

f. Violations and penalties.

(1) Any person found to be in violation of this section shall be liable for a civil penalty of not more than three hundred dollars for the first violation; not more than five hundred dollars for the second violation; and not more than one thousand dollars for the third and all subsequent violations. In addition, for a third and subsequent violations, any person who engages in business as a wholesale dealer or retail dealer shall be subject to the suspension of his or her cigarette license, for a period not to exceed one year, after notice and the opportunity for a hearing before the commissioner of finance or his or her designee. A wholesale dealer who owns, operates or maintains a vending machine placed in violation of subdivision b or paragraph (1) of subdivision c of this section shall be liable only if he or she has knowledge of the violation. The department shall promptly give written notice to the wholesale dealer identified on the sign required by subdivision d of this section of any such violation by an owner of the

premises, or his or her employee or agent. For purposes of this section, such notice shall be prima facie evidence that the wholesale dealer has knowledge of future violations of subdivision b or paragraph (1) of subdivision c of this section.

(2) A proceeding to recover any civil penalty authorized pursuant to the provisions of this subdivision shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health or to any body succeeding the administrative tribunal. Such tribunal or its successor shall have the power to impose the civil penalties prescribed by this section.

(3) The penalties provided by this subdivision shall be in addition to any other penalty imposed by any other provision of law or regulation thereunder.

g. Construction. Nothing in this section shall be construed to prohibit the following:

(1) the transfer of an existing vending machine from placement in a premises prohibited pursuant to subdivision b of this section to placement in a tavern; or

(2) the initial placement of a vending machine in a tavern.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 17. HEALTH
CHAPTER 7. REGULATION OF TOBACCO PRODUCTS

Chapter 7: Regulation of Tobacco Products

Subchapter 1: Tobacco Product Regulation Act

Section 17-701: Short title.

Section 17-702: Definitions.

Section 17-703: License Required.

Section 17-703.1: Sign Required

Section 17-703.2: Requirements for retail dealers concerning cigarette tax

Section 17-704: Out-of-package sales prohibited.

Section 17-705: Age restriction on handling.

Section 17-706: Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.

Section 17-707: Public health messages required where tobacco advertisements appear on certain properties. [REPEALED]

Section 17-708: Use of tobacco products on school premises prohibited.

Section 17-709: Enforcement.

Section 17-709.1: Rules

Section 17-710: Violations and penalties.

Section 17-711: Report.

Section 17-712: Construction.

Subchapter 2: Regulation of the Sale Of Herbal Cigarettes and Flavored Tobacco Products

Section 17-713: Definitions.

Section 17-714: Sale of herbal cigarettes to minors prohibited.

Section 17-715: Sale of flavored tobacco products prohibited.

Section 17-716: Violations and penalties.

Section 17-717: Enforcement.

Section 17-718: Rules.

Chapter 7: Regulation of Tobacco Products

Subchapter 1: Tobacco Product Regulation Act

§ 17–701 Short title. This subchapter shall be known and may be cited as the "Tobacco Product Regulation Act."

§ 17–702 Definitions. For purposes of this subchapter, the following terms shall be defined as follows:

a. "Affiliated company" means any business entity which is the holder of a right to place or display advertisements in or on a unit of advertising space and which has a relationship with a holder of a right to place or display advertisements in or on another unit of advertising space; such relationship shall be an identity of all principal owners or all directors; provided, however, that only entities which are holders of a right to place or display advertisements on the same type of units of advertising space shall be considered affiliated companies for purposes of this subchapter.

b. "Authorizing agency" means the agency or other unit of local government of the city of New York which is (i) acting on behalf of the city with respect to a written agreement between the city and a private party which allows the placement or display of advertisements in or on a unit of advertising space; (ii) any agency designated by the mayor as having responsibility for a unit of advertising space that is the subject of a written agreement with the city which allows the placement or display of advertisements in or on such unit; or (iii) the issuer of a license or permit that expressly grants the right to place or display advertisements in or on a unit of advertising space. In the event that there is no authorizing agency as defined by this subdivision for a unit of advertising space, the authorizing agency for such unit shall be the agency with the primary expertise in the subject area covered by the written agreement with the city which allows the placement or display of advertisements in or on such unit.

c. "Cigarette license" means the license issued pursuant to section 11–1303 or 20–202 of the code.

d. "City of New York" or "city" means the city of New York or any of its agencies or other unit of local government.

e. "Employee" means any person who provides services for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services without monetary compensation.

f. "For-hire vehicle" means "for-hire vehicle" as defined in section 19–502 of the code.

g. "For-hire vehicle base" means a place of business from which for-hire vehicles are dispatched.

h. "Instrumentality of public transportation" means buses operated pursuant to a franchise or consent issued by or from the city of New York, ferries and ferry terminals owned or operated by the city of New York, trams and their appurtenances, bus stop shelters and licensed vehicles as defined in section 19–502 of the code.

i. "Person" means any natural person, partnership, corporation, government agency, association or other legal entity.

j. "Public health message" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, the primary purpose of which is to communicate the health risks of tobacco product use or the health benefits of not using tobacco products.

k. "Retail dealer" means "retail dealer" as defined in section 11–1301 of the code, and any employee or other agent of such retail dealer.

l. "School premises" means the buildings, grounds or facilities, or any portion thereof, owned or

occupied by public or private institutions for the primary purpose of providing educational instruction to students at or below the twelfth grade level.

m. "Special event" means an event (i) for which a permit has been issued by the city of New York; (ii) which has a duration of no longer than seven days; and (iii) for which an agreement has been entered into with the city that provides for the placement or display of signage intended to discourage the use of tobacco products.

n. "Taxicab" means "taxicab" as defined in section 19–502 of the code.

o. "Taxicab fleet" means a corporate entity organized for the ownership or operation of twenty-five or more taxicabs, which taxicabs are dispatched from a single location serving as both garage and office of record, which location has been approved by the taxi and limousine commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs, and which location has a dispatcher on the premises at least eighteen hours every day who is responsible for assigning drivers to fleet taxicabs.

p. "Taxicab minifleet" means a corporation licensed by the taxi and limousine commission to own and operate two or more taxicabs.

q. "Tobacco advertisement" means words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, which bear a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

r. "Tobacco product" means any product which contains tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco-containing shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

s. "Trademark" means any word, name, symbol, logo, emblem or device, or any combination thereof, used by a person to identify and distinguish his or her goods from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

t. "Trade name" means any name used by a person to identify his or her business or vocation

u. "Unit of advertising space" means any real property, space, facility or instrumentality of public transportation, or any portion thereof, (i) owned or operated by, or leased from or to the city, or which is located or operates on real property owned or operated by or leased from or to the city, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency; or (ii) with respect to which a license or permit has been issued by the city that expressly grants the right to place or display advertisements, but not including licenses or permits issued pursuant to the building code.

v. "Wholesale dealer" means "wholesale dealer" as defined in section 11–1301 of the code, and any employee or other agent of such wholesale dealer.

w. "Cigarette" means any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

x. "Cigar" means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

y. "Little cigar" means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

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.

aa. "Herbal cigarette" means a product that is meant to be smoked like a cigarette but is composed of one or more herbs and does not contain tobacco.

bb. "Electronic cigarette" means a battery-operated device that contains nicotine and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette.

§ 17-703 License Required. It shall be unlawful for a person to engage in any act as a wholesale dealer without a license as prescribed in section 11-1303 of the code, or engage in any act as a retail dealer without a license as prescribed in section 20-202 of the code.

§ 17-703.1 Sign required. A retail dealer shall post a sign in a conspicuous place at the point of sale of cigarettes or at the place where cigarettes are displayed or offered for sale stating that cigarettes sold in the city of New York must be in packages bearing valid tax stamps.

§ 17-703.2 Requirements for retail dealers concerning cigarette tax.

a. Any package containing cigarettes sold or offered for sale by a retail dealer shall bear a valid tax stamp as required by section 11-1302 of the code. Except as provided in subdivision b of section 11-1305 of the code, any cigarettes possessed or transported in the city by a retail dealer shall be in a package bearing a valid tax stamp.

b. No retail dealer shall engage in a sale or purchase prohibited by subdivision e of section 11-1303 or section 20-205 of the code.

c. No retail dealer shall sell, offer for sale, possess or transport any affixed or unaffixed false, altered or counterfeit cigarette tax stamp, imprint or impression.

d. No retail dealer shall engage in any act to hide or conceal:

(1) any cigarettes in unstamped or unlawfully stamped packages;

(2) any affixed or unaffixed false, altered or counterfeit cigarette tax stamp, imprint or impression; or

(3) any cigarettes that are outside of a package in violation of subdivision a of this section.

§ 17-704 Out-of-package sales prohibited.

a. All cigarettes and tobacco products sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer or packager which bears a health warning required by federal statute.

b. No retail dealer shall sell or offer for sale a cigar unless the cigar is sold in a package of at least four cigars, provided that this subdivision shall not apply to the sale or distribution of an individual cigar whose listed price, as defined in section 17-176.1 of this code, is greater than three dollars.

c. No retail dealer shall sell or offer for sale a little cigar unless the little cigar is sold in a package of at least twenty little cigars.

§ 17-705 Age restriction on handling. It shall be unlawful for a retail dealer to permit an employee or other agent of the retail dealer to sell, dispense or otherwise handle cigarettes or a tobacco product unless such employee or other agent is (1) at least eighteen years of age; or (2) under the direct supervision of the retail dealer or an employee or other agent of the retail dealer who is at least eighteen years of age, and who is present on the premises.

§ 17-706 Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.

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

b. Any person operating a place of business wherein non-tobacco shisha, pipes, or rolling papers are sold or offered for sale is prohibited from selling such non-tobacco shisha, pipes, or rolling papers to individuals under eighteen years of age. Sale of non-tobacco shisha, pipes, or rolling papers 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 eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of non-tobacco shisha, pipes, or rolling papers to an individual under eighteen years of age.

c. Any person operating a place of business wherein cigarettes, tobacco products, liquid nicotine, electronic cigarettes, herbal cigarettes, non-tobacco shisha, pipes, or rolling papers are sold or offered for sale shall post in a conspicuous place a sign, in accordance with the rules of the department, advising persons about the minimum age requirements for the purchase of such items.

§ 17-707 Public health messages required where tobacco advertisements appear on certain properties. Repealed

§ 17-708 Use of tobacco products on school premises prohibited. It shall be unlawful for any person to use a tobacco product, including chewing tobacco, on school premises at any time.

§ 17-709 Enforcement. The department of health and mental hygiene and the department of finance shall enforce the provisions of this subchapter. The department of consumer affairs shall enforce sections 17-703, 17-703.1, 17-704, 17-705 and 17-706 of this subchapter. In addition, designated enforcement employees of any authorizing agency shall have the power to enforce the provisions of this subchapter.

§ 17-709.1 Rules. The commissioner of the department and the commissioner of finance shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this subchapter.

§ 17-710 Violations and penalties.

a. Civil penalties and license revocation for a person found to be in violation of the provisions of this subchapter shall be as follows:

(1) Any person found to be in violation of section 17-703 shall be liable for a civil penalty of not more than five thousand dollars for the first violation, and not more than five thousand dollars for each additional violation found on that day; and not more than ten thousand dollars for the second violation and each subsequent violation by that person.

(2) Any person found to be in violation of section 17-703.1 shall be liable for a civil penalty of not more than five hundred dollars in any single day.

(3) In addition to any penalty that may be imposed pursuant to subdivision b of section 11-1317 of the code, any person found to be in violation of section 17-703.2 of the code shall be liable for a civil penalty of not more than two thousand dollars for the first violation, and not more than two thousand dollars for each additional violation found on that day, and not more than five thousand dollars for the second violation and each subsequent violation at the same place of business within a three-year period.

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

(5) In addition, for a second violation of any of sections 17-703, 17-703.2, 17-704, 17-705 or subdivision a or b of section 17-706 occurring on a different day and any subsequent violations occurring on different days at the same place of business within a three-year period, any person who engages in business as a retail dealer shall be subject to the mandatory revocation of his or her cigarette license for such place of business. Any violation of section 17-703, 17-703.2, 17-704, 17-705 or subdivision a or b of section 17-706 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 of the department that has commenced the proceeding to recover a civil penalty pursuant to subdivision b of this section with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision e of this section 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. A cigarette license shall be revoked at the same hearing at which a retail dealer is found liable for a second violation or subsequent violations at the same place of business within a three-year period.

(6) Any person who violates section 17-708 shall be liable for a civil penalty of not more than fifty dollars for each violation.

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 of this subchapter shall be commenced by the service of a notice of violation which shall be returnable to the health tribunal at the office of administrative trials and hearings where the department of health and

mental hygiene issues such notice, the adjudication division of the department of consumer affairs where that department or a designated employee of any authorizing agency issues such notice, or an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. Such notice shall contain a statement that any hearing for a second violation or subsequent violation of any of such sections at the same place of business within a three-year period shall also constitute a hearing for the revocation of a retail dealer's cigarette license where the retail dealer is found to be in violation of any such sections. The department of health and mental hygiene, the department of consumer affairs and the department of finance shall notify each other within thirty days of a final determination that a retail dealer has been found to be in violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 of this subchapter. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-708 shall be returnable to the health tribunal at the office of administrative trials and hearings. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section. The adjudication division of the department of consumer affairs, the health tribunal at the office of administrative trials and hearings and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-705 or 17-706 of this subchapter.

c. The penalties provided by subdivision a of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

d. Whenever any person has engaged in any acts or practices which constitute a violation of any provision of this subchapter or of any rule promulgated thereunder, the city may make application to a court of competent jurisdiction for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order or other order enjoining such acts or practices.

e. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating 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:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises, such as a sale or lease entered into while there are violations pending against the original licensee that could result in revocation or suspension of the license.

f. Notwithstanding the provisions of subdivision a of this section, the mandatory revocation of a license for a second offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the mandatory revocation acted against the licensee's will in committing such violations, the licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-704, 17-705 and 17-706 of this code, and the licensee has terminated any financial or employment relationship with each person who committed the violations which are the basis of the mandatory revocation of its

license or has taken other significant disciplinary action against such persons. The commissioner shall not determine that a licensee utilized extensive precautionary measures to prevent violations of the provisions of sections 17-704, 17-705 and 17-706 of this code unless the licensee submits satisfactory proof demonstrating that the licensee had, prior to the second violation which is the basis for the mandatory revocation of its license, done the following:

(1) implemented a clear policy requiring all persons working in the place of business to strictly comply with the provisions of sections 17-704, 17-705 and 17-706 of this code and permitting persons working in the place of business to complete a tobacco product sales transaction only after establishing the age of a prospective purchaser of tobacco products through identification that has been verified for authenticity or through photographic identification as required by section 17-706 of this code; and

(2) trained all persons working in the place of business to comply with any such policy before they are allowed to sell tobacco products to the public; and

(3) monitored the performance of persons working in the place of business to ensure that they adhere to such policy, or, in accordance with rules promulgated by the commissioner, conducted periodic retraining of persons working in the place of business.

g. Any retail dealer who fails to pay (1) any civil penalty imposed under chapter thirteen of title eleven of the code for the violation of any provision thereunder, or (2) any civil penalty imposed under this chapter for any violation thereof or under section 17-176.1 or section 17-177 of this title for any violation of such sections, shall be subject to suspension of his or her retail dealer license for the place of business where the violation occurred until such retail dealer pays all such civil penalties. Such retail dealer license shall not be renewed until such retail dealer pays all such civil penalties. A proceeding to suspend a retail dealer license pursuant to this subdivision may be commenced by the department to which payment of the penalty is due, in the same manner as a proceeding pursuant to subdivision b of this section to recover a civil penalty. The adjudication division of the department of consumer affairs, the health tribunal at the office of administrative trials and hearings and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to suspend a retail dealer's license pursuant to this subdivision.

§ 17-711 Report. Not later than twelve months after the effective date of the local law that added this section and each year thereafter, the department shall submit a report to the mayor and the city council concerning the administration and enforcement of this subchapter.

§ 17-712 Construction. Nothing contained in this subchapter shall be construed to preclude the city of New York from prohibiting the placement or display of tobacco advertisements in or on units of advertising space.

Subchapter 2: Regulation of the Sale Of Herbal Cigarettes and Flavored Tobacco Products

§ 17-713 Definitions. Whenever used in this subchapter, the following terms shall be defined as follows:

a. "Cigarette" means any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

b. "Characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma

of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

c. "Component part" means any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

d. "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

e. "Flavored tobacco product" means any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

f. "Herbal cigarette" means a product that is meant to be smoked like a cigarette but is composed of one or more herbs and does not contain tobacco.

g. "Person" means any natural person, partnership, firm, joint stock company, corporation, or employee thereof, or other legal entity.

h. "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

i. "Tobacco bar" has the meaning as such term is defined in subdivision jj of section 17-502 of this code.

j. "Tobacco product" means any product which contains tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, tobacco-containing shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

§ 17-714 Sale of herbal cigarettes to minors prohibited. It shall be unlawful for any person to sell or offer for sale herbal cigarettes to an individual under eighteen years of age.

§ 17-715 Sale of flavored tobacco products prohibited.

a. 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.

b. There shall be a presumption that a retail dealer in possession of four 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.

§ 17-716 Violations and penalties.

a. Any person who violates section 17-714 of this subchapter or any rules promulgated hereunder

shall be liable for a civil penalty of not less than five hundred dollars, nor more than two thousand dollars for each violation.

b. Any person who violates section 17-715 of this subchapter 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 a retail dealer, as such term is defined in section 20-201 of the code, shall be subject to the mandatory suspension of his or her cigarette license, issued pursuant to section 20-202 of the code, for such place of business, for a period not to exceed one year. A cigarette license shall be suspended at the same hearing at which a retail dealer is found liable for a third violation or subsequent violations at the same place of business within a three-year period.

§ 17-717 Enforcement. The department, the department of consumer affairs and the department of finance shall enforce the provisions of this subchapter. A proceeding to recover any civil penalty authorized pursuant to section 17-716 of this subchapter shall be commenced by the service of a notice of violation returnable to the health tribunal at the office of administrative trials and hearings where the department issues such a notice or to the adjudication division of the department of consumer affairs where such department issues such a notice or to an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged. Such notice shall contain a statement that any hearing for a third violation or subsequent violation of section 17-715 of this subchapter at the same place of business within a three-year period shall also constitute a hearing for the suspension of a retail dealer's cigarette license where the retail dealer is found to be in violation of such section. The health tribunal at the office of administrative trials and hearings, the adjudication division of the department of consumer affairs and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to render decisions and to impose the remedies and penalties provided for in section 17-716 of this subchapter, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings. The department, the department of consumer affairs and the department of finance shall notify each other within thirty days of finding that a retail dealer has been found liable for any section of this subchapter.

§ 17-718 Rules. The commissioner of the department, the commissioner of consumer affairs and the commissioner of finance shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this subchapter.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20. CONSUMER AFFAIRS
CHAPTER 2. LICENSES
SUBCHAPTER 1: RETAIL CIGARETTE DEALERS

Chapter 2: Licenses

Subchapter 1: Retail Cigarette Dealers

Section 20-201: Definitions.

Section 20-202: License.

Section 20-203: Recordkeeping and examination.

Section 20-204: Duplicate licenses.

Section 20-205: Prohibited sales and purchases.

Section 20-206: Renewal, suspension and revocation of licenses.

Section 20-207: Violations.

§ 20-201. Definitions.

Whenever used in this subchapter:

a. "Agent" means any person authorized to purchase and affix adhesive or meter stamps under chapter thirteen of title eleven of this code who is designated as an agent by the commissioner of finance.

b. "Cigarette" shall mean any roll for smoking made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco.

c. "Commissioner of finance" means the commissioner of finance of the City of New York.

d. "Dealer" shall mean any wholesale dealer or retail dealer as hereinafter defined.

e. "Person" shall mean 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.

f. "Retail dealer" shall mean any person other than a wholesale dealer engaged in selling cigarettes. For the purposes of this chapter, the possession or transportation at any one time of more than four hundred cigarettes by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

g. "Sale or purchase" shall mean any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever or any agreement therefor.

h. "Wholesale dealer" shall mean any person who sells cigarettes to retail dealers or other persons for purposes of resale only, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

§ 20-202. License.

a. License required of retail dealers.

1. It shall be unlawful for any person to engage in business as a retail dealer without first having obtained a license as hereinafter prescribed for each place of business wherein such person sells 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 one of subdivision a of this section.

b. License application. In order to obtain a license to engage in business as a retail dealer, a person shall file an application with the commissioner for a license for each place of business that he or she desires to have for the retail sale of 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.

c. Fee and license term.

1. There shall be a biennial fee of one hundred ten dollars for a license to engage in the business of a retail dealer at each place of business where cigarettes are sold in the city.

2. All even-numbered licenses shall expire on December 31 of the even-numbered year, and all odd-numbered licenses shall expire on December 31 of the odd-numbered year, next succeeding the year in which the license is issued.

d. Issuance of license.

1. A license shall be issued to a person to conduct the business of a retail dealer for each place of business where such person engages in selling 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 he or she deems 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 a retail dealer; and

(C) the commissioner has not received notification from the commissioner of finance or the commissioner of the department of health and mental hygiene that such applicant is not in full compliance with any provisions of chapter thirteen of title eleven of this code, or chapter forty of title eleven of this code relating to the sale of cigarettes, or chapter seven of title seventeen of this code, or any rules promulgated by the commissioner of finance or the commissioner of the department of health and mental hygiene to effectuate the purposes of such chapters.

2. A 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 designated therein and shall at all times be conspicuously displayed at the place for which it is issued.

3. Where a license for any place of business licensed pursuant to this subchapter has been revoked, the commissioner shall refuse to issue a license required under this subchapter, for a period of two years after such revocation, for such place of business or for any part of the building that had contained such place of business and was connected therewith, unless the applicant for such license demonstrates with documentary proof, to the satisfaction of the commissioner, that the applicant acquired the premises or business through an arm's length transaction.

4. For purposes of revocation of retail dealer licenses pursuant to section 17-710 of the code, any violation of section 17-703, 17-703.2, 17-704, 17-705 or subdivision a or b of section 17-706, or for purposes of suspension of retail dealer licenses pursuant to section 17-716 of the code, any violation of section 17-715, by any license holder at a place of business shall be included in determining the number of violations 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.

5. For purposes of paragraphs 3 and 4 of section 20-202, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating 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:

(1) a sale between relatives; or

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises, or revocation of a license, such as a sale or lease entered into while there are violations pending against the original licensee that could result in revocation or suspension of the license.

§ 20-203. Recordkeeping and examination.

a. A retail dealer shall make and maintain such records of cigarette sales and purchases as are prescribed by the commissioner of finance pursuant to chapter thirteen of title eleven of this code.

b. Such records as are required to be kept shall be available for inspection at the place of business for which a retail dealer license is issued and such records shall be available for inspection by the commissioner of finance or such commissioner's duly authorized representatives as to the extent necessary to ascertain whether such retail dealer is in compliance with the purposes and requirements of chapter thirteen of title eleven of this code.

§ 20-204. Duplicate licenses.

Whenever any license issued under the provisions of this subchapter is defaced, destroyed or lost, the commissioner shall issue a duplicate license to the holder of the defaced, destroyed or lost license upon the payment of a fee of fifteen dollars.

§ 20-205. Prohibited sales and purchases.

No agent or dealer shall sell cigarettes to an unlicensed dealer, or to a dealer whose license has been suspended or revoked. No dealer shall purchase cigarettes from any person other than a manufacturer or a licensed wholesale dealer.

§ 20-206. Renewal, suspension and revocation of licenses.

a. In addition to any other powers of the commissioner, and not in limitation thereof, the commissioner may, after due notice and opportunity to be heard, refuse to renew any license required under this subchapter and may suspend or revoke such license if the person holding such license, or, where applicable, any of its officers, principals, directors, members, managers, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been found

to have:

1. made a material false statement or concealed a material fact in connection with the filing of any application pursuant to this subchapter; or
2. not paid, within the time permitted by law, any civil penalty or judgment duly imposed pursuant to the provisions of this subchapter or any rules promulgated thereunder or pursuant to chapter thirteen of title eleven of this code, or chapter forty of title eleven of this code relating to cigarette sales; or
3. violated the provisions of section 17-714 of this code or any rules promulgated thereunder; or
4. violated any provision of section 10-203 of this code or any rules promulgated thereunder.

b. In addition to the commissioner's power to refuse to renew, suspend or revoke a license as provided in subdivision a of this section, the commissioner shall be authorized to refuse to renew any license required under this subchapter and may suspend or revoke such license upon the notification by the commissioner of finance that the person holding such license, or, where applicable, any of its officers, principals, directors, employees, members, managers, or stockholders owning more than ten percent of the outstanding stock of the corporation, has been found to have violated any provision of chapter thirteen of title eleven of this code, or of chapter forty of title eleven of this code relating to cigarette sales.

c. Upon suspending or revoking any retail cigarette license, the commissioner shall direct the holder thereof to surrender to the commissioner immediately any cigarette retail license or duplicates thereof issued to such holder for such place of business and the holder shall surrender promptly all such licenses to the commissioner as directed.

§ 20-207. Violations.

a. The civil penalties imposed pursuant to this section shall be in addition to any other sanctions and orders which may be imposed by the commissioner pursuant to this title including, but not limited to, such sanctions and orders which may be imposed pursuant to section 20-105 or to title 11 or title 17 of this code or pursuant to such other law the commissioner is authorized to enforce under this code. The civil penalties imposed pursuant to this section for a violation of subdivision a of section 20-202 shall be in lieu of the civil penalties imposed pursuant to section 17-703 of this code, and the civil penalties imposed pursuant to this section for a violation of section 20-205 shall be in lieu of the civil penalties imposed pursuant to subdivision b of section 17-703.2 of this code.

b. Notwithstanding the provisions of subdivision a and b of section 20-106 of this code, any person who violates any provision of this subchapter or any rules promulgated thereunder shall be subject to a civil penalty of not less than two hundred and fifty dollars but not more than two thousand dollars for each violation, to be recovered in a civil action or in an administrative tribunal with jurisdiction.

c. The commissioner, after notice and hearing, shall be authorized to order the sealing of any premises where any person has been found:

1. to have engaged in unlicensed activities in violation of this subchapter on at least two occasions within a three-year period; or
2. to have violated any of sections 17-704, 17-705, subdivision a or b of section 17-706 or 17-715 on at least three occasions within a three-year period.

RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER B: RETAIL CIGARETTE DEALERS

§2-11. Required Periodic Retraining Programs and Proof of Satisfactory Completion of Such Program.

A periodic retraining program qualifies as an alternative for the monitoring of the performance of persons working in a retail cigarette dealer licensee's place of business as provided in section 17-624(f)(3) of the Administrative Code of the City of New York only if it is conducted by a tobacco sales training program certified by the New York State Department of Health in accordance with subsection 6 of section 1399-ee of the Public Health Law. Such a training program must issue a certificate of completion to each person who successfully completed training. The retail dealer also must demonstrate that the person who committed the violation held a valid certificate of completion from the state certified sales training program at the time of the violation.

**RULES OF THE CITY OF NEW YORK
TITLE 24: DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

CHAPTER 13

CIGARETTE AND TOBACCO PRODUCT SALES

§13-01. Scope and applicability.

§13-02. Prohibition on the sale of cigarettes or tobacco products for less than the listed price.

§13-03. Price floor for cigarettes and little cigars.

§13-04. Out-of-package sales prohibited

§13-05. Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.

§13-06. Signage.

§13-01. Scope and applicability.

This chapter applies to sales of cigarettes and tobacco products in the City of New York pursuant to section 17-176.1 and Chapter 7 of Title 17 of the Administrative Code of the City of New York (“Administrative Code”).

§13-02. Prohibition on the sale of cigarettes or tobacco products for less than the listed price.

(a) Pursuant to subdivision (a) of §17-176.1 of the Administrative Code, the listed price is the price listed for cigarettes or tobacco products on their packages or on any related shelving, posting, advertising or display at the place where the cigarettes or tobacco products are sold or offered for sale, including all applicable taxes.

(b) “All applicable taxes” includes excise taxes and sales taxes.

(c) For cigarettes and tobacco products subject to §20-708 of the Administrative Code, the listed price must specify the price exclusive of sales tax and the amount of sales tax to be charged.

(d) Paragraph four of subdivision (b) and paragraph four of subdivision (c) of §17-176.1 of the Administrative Code prohibit the sale of cigarettes or tobacco products to a consumer for less than the listed price, but does not prohibit a person from:

(i) changing the listed price; or

(ii) informing customers that the listed price has changed.

§13-03. Price floor for cigarettes and little cigars.

Pursuant to subdivision (d) of §17-176.1 of the Administrative Code, the price floor for a package of cigarettes and little cigars is \$10.50 including sales tax and \$9.65 excluding sales tax.

§13-04. Out-of-package sales prohibited.

Pursuant to subdivision (b) of §17-704 of the Administrative Code, retail dealers are prohibited from selling a cigar for \$3.00 or less including sales tax, or \$2.76 or less excluding sales tax, unless it is sold in a package of at least four cigars.

§13-05. Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.

(a) Pursuant to subdivision (a) of §17-706 of the Administrative Code, any individual purchasing cigarettes, tobacco products, or electronic cigarettes must be at least twenty-one years of age.

(b) Pursuant to subdivision (b) of §§17-706 and 17-714 of the Administrative Code, any individual purchasing non-tobacco shisha, herbal cigarettes, pipes, or rolling papers must be at least eighteen years of age.

§13-06. Signage.

(a) Age restriction sign. Pursuant to subdivision (c) of §17-706 of the Administrative Code, any person operating a place of business where cigarettes, tobacco products, electronic cigarettes, herbal cigarettes, non-tobacco shisha, pipes, or rolling papers are sold or offered for sale must post in a conspicuous place a sign, printed on a white card in bold red letters that are at least one-half inch in height and capitalized as indicated below, which states:

**“PROHIBITED for SALE to persons UNDER 21:
Cigarettes, cigars, chewing tobacco, powdered tobacco,
other tobacco products, or electronic cigarettes,
and
“PROHIBITED for SALE to persons UNDER 18:
Non-tobacco shisha, herbal cigarettes,
pipes, rolling papers, or smoking paraphernalia”**

(b) Cigarette tax stamp sign. Pursuant to §17-703.1 of the Administrative Code, a retail dealer must post, in a conspicuous place at the point of sale of cigarettes or at the place where cigarettes are displayed or offered for sale, a sign that complies with the requirements of this subdivision. The sign must be printed on a white card in bold red letters that are at least one-half inch in height and capitalized as indicated below. The sign must include images of the current New York City and New York State tax stamp and a pack of cigarettes with a New York City and New York State tax stamp on the bottom of the pack, and must state:

**“ALL CIGARETTES MUST HAVE
A NEW YORK CITY AND
NEW YORK STATE TAX STAMP”**

The sign must also include the contact number for the Sheriff’s hotline for reporting potential violations, available on the New York City Department of Consumer Affairs website.

RULES OF THE CITY OF NEW YORK
TITLE 24: DEPARTMENT OF HEALTH AND MENTAL HYGIENE

CHAPTER 28
RESTRICTION ON THE SALE OF CERTAIN FLAVORED TOBACCO PRODUCTS

§ 28-01. Definitions and Construction of Words and Terms.

- (a) Act. “Act” shall mean the Regulation of the Sale of Herbal Cigarettes and Flavored Tobacco Products, as provided in Chapter 7, Title 17 of the New York City Administrative Code (“the Administrative Code”), as amended by Local Law 69 of 2009.
- (b) Aroma. “Aroma” shall mean a quality that can be perceived by the sense of smell.
- (c) ASTM. “ASTM” shall mean the American Society for Testing and Materials: www.astm.org
- (d) Characterizing Flavor. “Characterizing Flavor” shall have the meaning set forth in § 17-713(b) of the Act.
- (e) Commissioner. “Commissioner” shall mean the Commissioner of the New York City Department of Health and Mental Hygiene.
- (f) Department. “Department” shall mean the New York City Department of Health and Mental Hygiene.
- (g) Department of Consumer Affairs. “Department of Consumer Affairs” shall mean the New York City Department of Consumer Affairs.
- (h) Distinguishable. “Distinguishable” shall mean clearly perceivable by either the sense of smell or taste.
- (i) Flavored tobacco product. “Flavored tobacco product” shall have the meaning set forth in § 17-713(e) of the Act.
- (j) Label. “Label” shall mean a display of written, printed, or graphic matter upon the immediate container of any tobacco product.
- (k) Labeling. “Labeling” shall mean all labels and other written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
- (l) Manufacturer. “Manufacturer” shall mean any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- (m) Packaging. “Packaging” shall mean a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a product is offered for sale, sold, or otherwise distributed to consumers.
- (n) Rules. “Rules” shall mean Chapter 28 of Title 24 of the Rules of the City of New York.
- (o) Tobacco bar. “Tobacco bar” shall have the meaning set forth in subdivision jj of § 17-502 of the Administrative Code.
- (p) Tobacco products. “Tobacco product” shall have the meaning set forth in § 17-713(j) of the Act. Tobacco products shall include, but not be limited to: cigars, pipe tobacco, smokeless tobacco, dissolvable tobacco, snuff, shisha, blunts, and blunt wraps. For purposes of this chapter, tobacco products shall not include cigarettes.

§ 28-02. Sale or Offer for Sale of Flavored Tobacco Products Restricted.

- (a) Only the following entities may sell or offer for sale flavored tobacco products:
- (1) Tobacco bars; and
 - (2) Tobacco wholesalers, but only where the sale or offer of sale is made to a tobacco bar or to an entity located outside the City of New York.
- (b) Tobacco products that impart a distinguishable taste or aroma of menthol, mint, wintergreen or tobacco, and do not also impart a characterizing flavor, are not subject to the restriction on sale set forth

in § 17-715 of the Administrative Code or these rules, and may lawfully be sold by any retail dealer or wholesale dealer licensed to sell tobacco products, regardless of whether such sale occurs to or in a tobacco bar.

§ 28-03. Presumptively Flavored Tobacco Products.

(a) A tobacco product is presumed to be flavored if its manufacturer, or any person authorized or permitted by its manufacturer to make or disseminate public statements or claims concerning such tobacco product, has made a statement or claim on the tobacco product's label, labeling or packaging that such tobacco product has or produces a characterizing flavor.

(b) As used in § 17-713(e) of the Act and these rules, a "public statement or claim" includes text and/or images used to communicate information about the flavor, taste or aroma of a tobacco product.

(c) Any tobacco product for which the label, labeling, or packaging of such product includes a public statement or claim that such product has or produces a taste or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice, or any other flavor other than menthol, mint, wintergreen or tobacco, shall be presumed to be a flavored tobacco product subject to the restrictions on sale set forth in § 17-715 of the Act.

§ 28-04. Restricted Flavored Tobacco Product List.

(a) A tobacco product that is not presumed to be flavored because of a statement or claim on its product label, labeling or packaging may nevertheless be a flavored tobacco product if it has or imparts a characterizing flavor. The Department shall establish a list of such tobacco products, entitled the "Restricted Flavored Tobacco Product List," set forth as Appendix A of these rules. The Restricted Flavored Tobacco Product List shall also be posted on the Department's website. Determinations about whether tobacco products are flavored within the meaning of the Act and subject to inclusion on the Restricted Flavored Tobacco List shall be made by the Department following the testing of such products by a panel of trained sensory testers consistent with ASTM standards. Products on the Restricted Flavored Tobacco Product List shall only be sold or offered for sale to a tobacco bar or in a tobacco bar, or by tobacco wholesalers to entities located outside the city of New York.

(b) The Department shall develop the Restricted Flavored Tobacco Product List as follows:

(1) If the Department determines that a tobacco product has or imparts a characterizing flavor, it shall in writing notify the tobacco product's manufacturer of such determination and of its intent to include the product on the Restricted Flavored Tobacco Product List. The Department's notification shall include: (i) a description of the testing protocol used to determine whether the tobacco product has a characterizing flavor within the meaning of the Act; (ii) the identity of the entity that tested the product to determine if it has or produces a characterizing flavor; and (iii) any findings of fact developed by the testing entity.

(2) A manufacturer may within sixty (60) days of service of the notification described in § 28-04(b)(1) of these rules object to the inclusion of its product on the Restricted Flavored Tobacco Product List. An objection shall be in writing, and shall include all information and evidence a manufacturer deems relevant to a determination of whether the tobacco product has or imparts a characterizing flavor. Manufacturers that fail to submit an objection within sixty (60) days of service of the notification described in § 28-04(b)(1) of these rules shall be deemed to have waived their right to do so and the Department may immediately commence rule making to add the tobacco product(s) to the Restricted Flavored Tobacco Product List.

(3) Upon notice by a manufacturer that the Department intends to include a tobacco product on the Restricted Flavored Tobacco Product List, any third party may submit to the Department information relevant to a determination of whether the tobacco product has or imparts a characterizing flavor. Such submissions shall be subject to the deadlines set forth in § 28-04(a)(2) of these rules.

(4) Subject to the provisions of the Freedom of Information Law, N.Y. Pub. Off. Law § 87, a

manufacturer or other party may request that any information it submits to the Department pursuant to § 28-04(b)(2) or § 28-04(b)(3) of these rules be designated as exempt from disclosure because it includes trade secrets, or for any other applicable reason set forth in the Freedom of Information Law. Any portion of a submission for which a privilege is asserted shall be treated as confidential until such times as a request is made for that information. If a request is made for information under the Freedom of Information Law and such information is designated as confidential pursuant to such law, the Department shall promptly notify the entity that submitted the information of the request.

(5) Within sixty (60) days of receipt of a manufacturer's submission pursuant to § 28-04(b)(2) or 28-04(b)(3) of these rules, the Department shall either grant or deny the manufacturer's objection making findings of fact in support of its determination. If the Department denies the objection, it shall commence rule making to add the product(s) to the Restricted Flavored Tobacco Product List.

§ 28-05. Enforcement.

(a) The Department and the Department of Consumer Affairs shall enforce the provisions of the Act and these rules.

(b) Violations of this Act shall be punishable as provided by the Act. Violations of these rules which are not also violations of the Act shall be subject to a penalty not to exceed one thousand dollars (\$1,000), in accordance with § 555(b)(2) of the New York City Charter.

(c) Where a person is found to have violated the Act or these rules, the Department or the Department of Consumer Affairs shall commence a proceeding to recover any civil penalty authorized pursuant to § 17-716 of the Act by the service of a notice of violation returnable to the Administrative Tribunal established by the Board of Health where the Department issues such a notice or to the adjudication division of the Department of Consumer Affairs where such department issues such notice.

(d) In any administrative hearing conducted pursuant to § 17-716 of the Act, a manufacturer shall be permitted to intervene in order to present evidence relevant to the adjudication of the notice of violation.

§ 28-06. Original Labels, Labeling and Packaging of Out-of-Package Sales Required.

Every owner, operator, manager or other person in control of an establishment that sells or offers for sale tobacco products, or non-tobacco products designed for consumption through the inhalation of smoke, shall maintain on site the original labels, labeling and packaging provided by the manufacturer for all such products that are sold or offered for sale by the establishment separately from its original packaging. The original labels, labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

§ 28-07. Construction.

If any provision of this Chapter is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this chapter.

NEW YORK PUBLIC HEALTH LAW

ARTICLE 13-F

REGULATION OF TOBACCO PRODUCTS, HERBAL CIGARETTES AND SMOKING PARAPHERNALIA; DISTRIBUTION TO MINORS

SELECTED STATUTES ONLY

- Public Health Law § 1399-aa. Definitions
- Public Health Law § 1399-bb. Distribution of tobacco products or herbal cigarettes without charge
- Public Health Law § 1399-cc. Sale of tobacco products, herbal cigarettes, shisha, rolling papers or smoking paraphernalia to minors prohibited
- Public Health Law § 1399-dd. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines
- Public Health Law § 1399-ee. Hearings; penalties
- Public Health Law § 1399-gg. Out-of-package sales and minimum package sizes
- Public Health Law § 1399-ll. Sale of bidis prohibited
- Public Health Law § 1399-mm. Sale of gutka prohibited
- General Business Law § 399-gg. Packaging of electronic liquid.

Public Health Law § 1399-aa. Definitions

As used in this article:

1. “Enforcement officer” means the enforcement officer designated pursuant to article thirteen-E of this chapter to enforce such article and hold hearings pursuant thereto; provided that in a city with a population of more than one million it shall also mean an officer or employee or any agency of such city that is authorized to enforce any local law of such city related to the regulation of the sale of tobacco products to minors.
2. “Food service establishment” means any area, including outdoor seating areas, in which the business is the sale of food for on-premises consumption.
3. “Person” means a person, firm, company, corporation, partnership, sole proprietor, limited partnership or association.
4. “Private club” means an organization with no more than an insignificant portion of its membership comprised of people under the age of eighteen years that regularly receives dues and/or payments from its members for the use of space, facilities and services.
5. “Tobacco products” means one or more cigarettes or cigars, bidis, chewing tobacco, powdered tobacco, nicotine water or any other tobacco products.
6. “Herbal cigarette” means any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a

cigarette, cigar or pipe filler.

7. “Bidis” means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendra leaf (*diospyros exculpra*), or any other product offered to consumers as “beedies” or “bidis”.

8. “Tobacco business” means a sole proprietorship, corporation, limited liability company, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

9. “Factory” means any mill or other manufacturing establishment where one or more persons are employed in manufacturing including making, altering, repairing, finishing, bottling, canning, cleaning or laundering any article or thing.

10. “Gutka” means a product containing lime paste, spices, areca and tobacco.

11. “Nicotine water” means bottled water that is laced with nicotine.

12. “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.

13. “Electronic cigarette” or “e-cigarette” means an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such a device.

Public Health Law § 1399-bb. Distribution of tobacco products or herbal cigarettes without charge

1. No person engaged in the business of selling or otherwise distributing tobacco products or herbal cigarettes for commercial purposes, or any agent or employee of such person, shall knowingly, in furtherance of such business:

(a) distribute without charge any tobacco products or herbal cigarettes to any individual, provided that the distribution of a package containing tobacco products or herbal cigarettes in violation of this subdivision shall constitute a single violation without regard to the number of items in the package; or

(b) distribute coupons which are redeemable for tobacco products or herbal cigarettes to any individual, provided that this subdivision shall not apply to coupons contained in newspapers, magazines or other types of publications, coupons obtained through the purchase of tobacco products or herbal cigarettes or obtained at locations which sell tobacco products or herbal cigarettes provided that such distribution is confined to a designated area or to coupons sent through the mail.

2. The prohibitions contained in subdivision one of this section shall not apply to the following locations:

(a) private social functions when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

(b) conventions and trade shows; provided that the distribution is confined to designated areas generally accessible only to persons over the age of eighteen;

(c) events sponsored by tobacco or herbal cigarette manufacturers provided that the distribution is confined to designated areas generally accessible only to persons over the age of eighteen;

(d) bars as defined in subdivision one of section thirteen hundred ninety-nine-n of this chapter;

(e) tobacco businesses as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article;

(f) factories as defined in subdivision nine of section thirteen hundred ninety-nine-aa of this article and construction sites; provided that the distribution is confined to designated areas generally accessible only to persons over the age of eighteen.

3. No person shall distribute tobacco products or herbal cigarettes at the locations set forth in paragraphs (b), (c) and (f) of subdivision two of this section unless such person gives five days written notice to the enforcement officer.

4. The distribution of tobacco products or herbal cigarettes pursuant to subdivision two of this section 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 indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product or herbal cigarette to an individual.

Public Health Law § 1399-cc. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha, rolling papers or smoking paraphernalia to minors prohibited

1. As used in this section:

(a) "A device capable of deciphering any electronically readable format" or "device" shall mean any commercial device or combination of devices used at a point of sale or entry that is capable of reading the information encoded on the bar code or magnetic strip of a driver's license or non-driver identification card issued by the state commissioner of motor vehicles;

(b) "Card holder" means any person presenting a driver's license or non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter;

(c) "Smoking paraphernalia" means any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco;

(d) "Transaction scan" means the process involving an automated bar code reader by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of a tobacco product or herbal cigarettes pursuant to subdivision three of this section; and

(e) "Liquid nicotine", "electronic liquid" or "e-liquid" means a liquid composed of nicotine and other chemicals, and which is sold as a product that may be used in an electronic cigarette.

2. Any person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes, are sold or offered for sale is prohibited from selling such products, herbal cigarettes, liquid nicotine, shisha, electronic cigarettes or smoking paraphernalia to individuals

under eighteen years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

3. Sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates, through (a) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (b) a valid passport issued by the United States government or any other country, or (c) an identification card issued by the armed forces of the United States, indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes to an individual under eighteen years of age.

4. (a) Any person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold or offered for sale may perform a transaction scan as a precondition for such purchases.

(b) In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied.

(c) In any proceeding pursuant to section thirteen hundred ninety-nine-ee of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the tobacco product, herbal cigarettes, or liquid nicotine had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

5. A licensee or agent or employee of such licensee shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in subdivision four of this section. No licensee or agent or employee of a licensee shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this subdivision, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this subdivision shall be punishable by a civil penalty of not more than one thousand dollars.

6. A licensee or agent or employee of such a licensee may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (a) name, (b) date of birth, (c) driver's license or non-driver identification number, and (d) expiration date. The commissioner and state commissioner of motor vehicles shall jointly promulgate any regulations necessary to govern the recording and maintenance of these records by a licensee under this chapter. The commissioner and the state liquor authority shall jointly promulgate any regulation necessary to ensure quality control in the use of the transaction scan devices under this chapter and article five of the alcoholic beverage control law.

7. No person operating a place of business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes in any manner, unless such products and cigarettes are stored for sale (a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container; provided, however, such restriction shall not apply to tobacco businesses, as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article, and to places to which admission is restricted to persons eighteen years of age or older.

Public Health Law § 1399-dd. Sale of tobacco products, herbal cigarettes or electronic cigarettes in vending machines

No person, firm, partnership, company or corporation shall operate a vending machine which dispenses tobacco products, herbal cigarettes or electronic cigarettes unless such machine is located: (a) in a bar as defined in subdivision one of section thirteen hundred ninety-nine-n of this chapter, or the bar area of a food service establishment with a valid, on-premises full liquor license; (b) in a private club; (c) in a tobacco business as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article; or (d) in a place of employment which has an insignificant portion of its regular workforce comprised of people under the age of eighteen years and only in such locations that are not accessible to the general public; provided, however, that in such locations the vending machine is located in plain view and under the direct supervision and control of the person in charge of the location or his or her designated agent or employee.

Public Health Law § 1399-ee. Hearings; penalties

1. Hearings with respect to violation of this article shall be conducted in the same manner as hearings conducted under article thirteen-E of this chapter.

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, he or she shall impose a civil penalty of a minimum of three hundred dollars, but not to exceed one thousand dollars for a first violation, and a minimum of five hundred dollars, but not to exceed one thousand five hundred dollars for each subsequent violation, unless a different penalty is otherwise provided in this article. The enforcement officer shall advise the retail dealer that upon the accumulation of three or more points pursuant to this section the department of taxation and finance shall suspend the dealer's registration. If the enforcement officer determines after a hearing that a retail dealer was selling tobacco products while their registration was suspended or permanently revoked pursuant to subdivision three or four of this section, he or she shall impose a civil penalty of twenty-five hundred dollars.

3. (a) Imposition of points. If the enforcement officer determines, after a hearing, that the retail dealer violated subdivision one of section thirteen hundred ninety-nine-cc of this article with respect to a prohibited sale to a minor, he or she shall, in addition to imposing any other penalty required or

permitted pursuant to this section, assign two points to the retail dealer's record where the individual who committed the violation did not hold a certificate of completion from a state certified tobacco sales training program and one point where the retail dealer demonstrates that the person who committed the violation held a certificate of completion from a state certified tobacco sales training program.

(b) Revocation. If the enforcement officer determines, after a hearing, that a retail dealer has violated this article four times within a three year time frame he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to revoke the dealer's registration for one year.

(c) Duration of points. Points assigned to a retail dealer's record shall be assessed for a period of thirty-six months beginning on the first day of the month following the assignment of points.

(d) Reinspection. Any retail dealer who is assigned points pursuant to paragraph (a) of this subdivision shall be reinspected at least two times a year by the enforcement officer until points assessed are removed from the retail dealer's record.

(e) Suspension. If the department determines that a retail dealer has accumulated three points or more, the department shall direct the commissioner of taxation and finance to suspend such dealer's registration for six months. The three points serving as the basis for a suspension shall be erased upon the completion of the six month penalty.

(f) Surcharge. A fifty dollar surcharge to be assessed for every violation will be made available to enforcement officers and shall be used solely for compliance checks to be conducted to determine compliance with this section.

4. (a) If the enforcement officer determines, after a hearing, that a retail dealer has violated this article while their registration was suspended pursuant to subdivision three of this section, he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to permanently revoke the dealer's registration and not permit the dealer to obtain a new registration.

(b) If the enforcement officer determines, after a hearing, that a vending machine operator has violated this article three times within a two year period, or four or more times cumulatively he or she shall, in addition to imposing any other penalty required or permitted by this section, direct the commissioner of taxation and finance to suspend the vendor's registration for one year and not permit the vendor to obtain a new registration for such period.

5. The department shall publish a notification of the name and address of any retailer violating the provisions of this section and indicate the number of times the dealer has violated the provisions of this section. The notification shall be published in a newspaper of general circulation in the locality in which the retailer is located.

6. (a) In any proceeding pursuant to subdivision three of this section to assign points to a retail dealer's record, the retail dealer shall be assigned one point instead of two points where the retail dealer demonstrates that the person who committed the violation of section thirteen hundred ninety-nine-cc of this article held a valid certificate of completion from a state certified tobacco sales training program.

(b) A state certified tobacco sales training program shall include instruction in the following elements:

(1) the health effects of tobacco use, especially at a young age;

(2) the legal purchase age and the additional requirements of section thirteen hundred ninety-nine-cc of this article;

(3) legal forms of identification and the key features thereof;

(4) reliance upon legal forms of identification and the right to refuse sales when acting in good faith;

(5) means of identifying fraudulent identification of attempted underage purchasers;

(6) techniques used to refuse a sale;

(7) the penalties arising out of unlawful sales to underage individuals; and

(8) the significant disciplinary action or loss of employment that may be imposed by the retail dealer for a violation of the law or a deviation from the policies of the retail dealer in respect to compliance with such law.

(c) A tobacco sales training program may be given and administered by a retail dealer duly registered under section four hundred eighty-a of the tax law which operates five or more registered locations, by a trade association whose members are registered as retail dealers, by national and regional franchisors who have granted at least five franchises in the state to persons who are registered as such retail dealers by a cooperative corporation with five or more members who are registered as retail dealers and are operating in this state, and by a wholesaler supplying fifty or more retail dealers. A person or entity administering such training program shall issue certificates of completion to persons successfully completing such a training program. Such certificates shall be prima facie evidence of the completion of such a training program by the person named therein.

(d) A certificate of completion may be issued for a period of three years, however such certificate shall be invalidated by a change in employment.

(e) Entities authorized pursuant to paragraph (c) of this subdivision to give and administer a tobacco sales training program may submit a proposed curriculum, a facsimile of any training aids and materials, and a list of training locations to the department for review. Training aids may include the use of video, computer based instruction, printed materials and other formats deemed acceptable to the department. The department shall certify programs which provide instruction in the elements set forth in paragraph (b) of this subdivision in a clear and meaningful fashion. Programs approved by the department shall be certified for a period of three years at which time an entity may reapply for certification. A non-refundable fee in the amount of three hundred dollars shall be paid to the department with each application.

Public Health Law § 1399-gg. Out-of-package sales and minimum package sizes

1. All tobacco cigarettes sold or offered for sale by a retail dealer shall be sold or offered for sale in the package, box, carton or other container provided by the manufacturer, importer, or packager which bears all health warnings required by applicable law.

2. No person engaged in the business of manufacturing, selling or otherwise distributing tobacco products, herbal cigarettes, cigarette wrapping papers, wrapping leaves or tubes, or any agent or employee of such person, shall manufacture or cause to be manufactured for sale in this state, or sell or distribute in this state: (a) any package or other container of cigarettes containing fewer than twenty cigarettes; (b) any package of roll-your-own tobacco containing less than six-tenths of an ounce of

tobacco; or (c) any package or other container of cigarette wrapping papers, wrapping leaves or tubes, that are or are held out to be suitable for use or used as devices to wrap tobacco for smoking, containing fewer than twenty sheets, leaves or tubes.

Public Health Law § 1399-ll. Sale of bidis prohibited

1. No person shall knowingly sell or provide bidis to any other person. Notwithstanding that bidis is a tobacco product, no other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of bidis. Any person who violates the provisions of this subdivision shall be subject to a civil fine of not more than five hundred dollars.

2. (a) The provisions of subdivision one of this section shall not apply to a tobacco business, as defined in subdivision eight of section thirteen hundred ninety-nine-aa of this article.

(b) Any person operating a tobacco business wherein bidis is sold or offered for sale is prohibited from selling such bidis to individuals under eighteen years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF BIDIS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

(c) Sales of bidis by a tobacco business 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 indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under eighteen years of age.

(d) (i) Any person operating a tobacco business wherein bidis is sold or offered for sale may perform a transaction scan as a precondition for such purchases.

(ii) In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied.

(iii) In any proceeding pursuant to section thirteen hundred ninety-nine-ee of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the bidis had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a tobacco business wherein bidis is sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

(e) A tobacco business or agent or employee of such business shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in paragraph (d) of this subdivision. No tobacco business or agent or employee of such business shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination

includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this paragraph, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by section thirteen hundred ninety-nine-cc of this article.

Public Health Law § 1399-mm. Sale of gutka prohibited

1. No person shall knowingly sell or provide gutka to any other person under eighteen years of age. No other provision of law authorizing the sale of tobacco products, other than subdivision two of this section, shall authorize the sale of gutka. Any person who violates the provisions of this subdivision shall be subject to a civil penalty of not more than five hundred dollars.

2. (a) The provisions of subdivision one of this section shall not apply to a tobacco business, as defined in section thirteen hundred ninety-nine-n of this chapter.

(b) Any person operating a tobacco business wherein gutka is sold or offered for sale is prohibited from selling such gutka to individuals under eighteen years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF GUTKA TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height.

(c) Sales of gutka by a tobacco business 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 indicating that the individual is at least eighteen years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product to an individual under eighteen years of age.

(d) (i) Any person operating a tobacco business wherein gutka is sold or offered for sale may perform a transaction scan as a precondition for such purchases.

(ii) In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied.

(iii) In any proceeding pursuant to section thirteen hundred ninety-nine-ee of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the gutka had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense the commissioner shall

take into consideration any written policy adopted and implemented by the seller to effectuate the provisions of this chapter. Use of a transaction scan shall not excuse any person operating a tobacco business wherein gutka is sold, or the agent or employee of such person, from the exercise of reasonable diligence otherwise required by this chapter. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

(e) A tobacco business or agent or employee of such business shall only use a device capable of deciphering any electronically readable format, and shall only use the information recorded and maintained through the use of such devices, for the purposes contained in paragraph (d) of this subdivision. No tobacco business or agent or employee of such business shall resell or disseminate the information recorded during such a scan to any third person. Such prohibited resale or dissemination includes but is not limited to any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this paragraph, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this paragraph shall be punishable by a civil penalty of not more than one thousand dollars.

(f) A tobacco business or agent or employee of such business may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date.

(g) As used in this subdivision, "a device capable of deciphering any electronically readable format", "card holder" and "transaction scan" shall have the same meanings as are ascribed to such terms by section thirteen hundred ninety-nine-cc of this article.

General Business Law § 399-gg. Packaging of electronic liquid.

1. No person, firm or corporation shall sell or offer for sale any electronic liquid, as defined in paragraph (e) of subdivision one of section thirteen hundred ninety-nine-cc of the public health law, unless the electronic liquid is sold or offered for sale in a child resistant bottle which is designed to prevent accidental exposure of children to electronic liquids.

2. Any violation of this section shall be punishable by a civil penalty not to exceed one thousand dollars.

K2 LAWS
TITLE 7. LEGAL AFFAIRS
CHAPTER 7. NUISANCE ABATEMENT LAW
SUBCHAPTER 1.

§ 7-703 Public nuisance defined.

The following are declared to be public nuisances:

[a-f omitted]

g. Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of one or any combination of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law, or section 10-203 of this code;

[h-r omitted]

**TITLE 10. PUBLIC SAFETY
CHAPTER 2.**

§ 10-203 Unlawful manufacture, distribution or sale of a synthetic cannabinoid or synthetic phenethylamine.

a. No person or entity shall knowingly manufacture, sell, offer for sale, display for sale, distribute for sale, or possess with intent to sell:

1. Any synthetic cannabinoid or synthetic phenethylamine, as such terms are defined by part 9 of title 10 of the New York codes, rules and regulations as of the date of the violation, or as included in schedule I of the federal drug enforcement administration schedules of controlled substances, as listed in section 1308.11 of title 21 of the code of federal regulations, or successor regulation, as of the date of the violation, or any cannabimimetic agent, as defined in section 812 of title 21 of the United States code, as of the date of the violation; or

2. Any analogue of a synthetic cannabinoid, synthetic phenethylamine or cannabimimetic agent. For the purposes of this paragraph, "analogue of a synthetic cannabinoid, synthetic phenethylamines or cannabimimetic agent" means a substance that has a chemical structure that is substantially similar to the chemical structure of a substance described in paragraph 1 of this subdivision and has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of such a substance described in paragraph 1 of this subdivision; or

3. Any substance commonly known as synthetic marijuana, K-2 or bath salts, including but not limited to a substance so identified as an embargoed product by order of the commissioner of the department of health and mental hygiene, that is represented as being intended for human consumption. Evidence of representations that a substance commonly known as synthetic marijuana, K-2 or bath salts is intended for human consumption may include, but is not limited to, oral, visual or written representations by the manufacturer, distributor or seller about the substance with regard to its nature, use or effect; or

4. Any purported synthetic drug. In any proceeding commenced in connection with an alleged violation of this paragraph, it shall be necessary to prove that the purported synthetic drug was represented to be a substance described in paragraph 1, 2 or 3 of this subdivision; provided, however, that it shall not be a defense to prosecution under this section that the accused believed the purported synthetic drug to be such a substance. For the purposes of this subdivision, the term "purported synthetic drug" means a substance that, by dosage unit appearance, including color, shape and size, and by a representation, is represented to be a substance described in paragraph 1, 2 or 3 of this subdivision. Evidence of such a representation may include, but is not limited to, oral, visual or written representations by the manufacturer, distributor or seller about the substance with regard to:

(a) Its price, nature, use or effect as a substance described in paragraph 1, 2 or 3 of this subdivision; or

(b) Its packaging in a manner normally used for substances described in paragraph 1, 2 or 3 of this subdivision.

b. Possession of ten or more packets, individual containers or other separate units of a substance described in subdivision a of this section is presumptive evidence that the possessing person or entity is distributing such substance for sale or possesses such substances with intent to sell.

c. Any person or entity that violates subdivision a of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 or imprisonment of up to one year, or both.

d. In addition to the penalties prescribed in subdivision c of this section, any person or entity that

violates subdivision a of this section shall be liable for a civil penalty of not less than \$1,000 and not more than \$10,000 recoverable in a proceeding before any tribunal established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings, provided that upon the first such violation, and any other such violations by the same person or entity on the same day as such first violation, such person or entity shall be liable for a civil penalty of not less than \$500 and not more than \$5,000 if such violation is not in conjunction with the commission of any crime other than possession, manufacture, distribution or sale of any synthetic cannabinoid, synthetic phenethylamine, or other substance described in subdivision a of this section. The manufacture, distribution, sale, offer for sale, display for sale, or possession with intent to sell of each packet, individual container or other separate unit of substance described in subdivision a of this section shall constitute a separate violation under this subdivision, with a maximum civil liability of \$50,000 for violations in a day for a single person or entity under this subdivision.

e. Any police officer, or sheriff, undersheriff, or deputy sheriff of the city of New York, or any peace officer acting pursuant to his or her special duties may enforce the provisions of this section. A proceeding to recover any civil penalty authorized pursuant to subdivision d of this section shall be commenced by the service of a notice of violation returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged.

f. Whenever a police officer, or sheriff, undersheriff, or deputy sheriff of the city of New York, or any peace officer acting pursuant to his or her special duties, discovers any substance described in subdivision a being possessed in a manner that violates such subdivision, such officer is authorized and empowered to seize and take possession of such substance, which shall be destroyed or used either for law enforcement purposes or for evidentiary purposes in connection with any enforcement proceeding conducted pursuant to this section.

g. In any proceeding commenced pursuant to this section, it shall be no defense that the substance's packaging or other representation states or indicates that the substance is not intended for human consumption.

h. Any person who engages in business as a retail dealer pursuant to section 20-202 of the code shall be subject to:

1. A mandatory suspension of his or her retail dealer license for a period of thirty days for a violation of this section; or

2. A mandatory revocation of his or her retail dealer license, or of any subsequent license holder, for a second or subsequent violation of this section occurring on a different day at the same place of business within a three-year period, unless the subsequent license holder provides the commissioner of the agency that has commenced the proceeding to recover a civil penalty pursuant to subdivision d of this section with adequate documentation demonstrating that such subsequent license holder acquired the premises or business through an arm's length transaction, as defined in paragraph 5 of subdivision d of section 20-202 of the code, 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.

TITLE 11. TAXATION AND FINANCE

CHAPTER 40. CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4023 Authority to seal premises.

a. If any person has been finally determined to have engaged in the acts described in subdivision b of this section, the commissioner of finance shall be authorized to order:

(1) The sealing of any premises operated by such person where such acts occurred; and

(2) The removal, sealing or making inoperable of any devices, items or goods used in connection with any of such acts.

b. The following acts shall serve as the basis for a sealing order pursuant to this section:

(1) The violation of subdivisions a or b of section 11-1303 of this title or section 17-703 or 20-202 of the code on at least two occasions within a three-year period; or

(2) The violation of any provision of chapter 13 of this title or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivisions a or b of section 17-706, 17-715 or 20-202 of the code on at least three occasions within a three-year period; or

(3) The violation of any provision of section 10-203 of the code on at least two occasions within a three-year period.

c. Orders of the commissioner to seal premises.

(1) Orders of the commissioner issued pursuant to this section shall be posted at the premise at which the acts described in subdivision b of this section have occurred.

(2) Ten days after the date of such posting, and upon the written directive of the commissioner, police officers designated in section 1.20 of the criminal procedure law and peace officers employed by the department of finance, including but not limited to the sheriff, undersheriff and deputy sheriffs of the city of New York designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, are authorized to act upon and enforce such orders.

(3) Any devices, items or goods removed pursuant to this section, shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such devices, items or goods may be charged with reasonable costs for removal and storage payable prior to the release of such devices, items or goods to such owner or such other person.

(4) The owner or other person lawfully entitled to reclaim the devices, items or goods described in paragraph three of this subdivision shall reclaim such devices, items or goods. If such owner or such other person does not reclaim such devices, items or goods within ninety days of their removal, such devices, items or goods shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture the department shall, upon a public notice of at least five days, sell such forfeited devices, items or goods at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

d. Unsealing of premises. The commissioner shall order that any premises which are sealed pursuant to this section shall be unsealed and that any devices, items or goods removed, sealed or otherwise made inoperable pursuant to this section shall be released, unsealed or made operable upon:

(1) Payment of all outstanding cigarette taxes and civil penalties and all reasonable costs for removal and storage; and

(2) The expiration of a period of time from the date of enforcement of the order to be determined by the commissioner not to exceed sixty days.

e. Any person aggrieved by an order issued pursuant to this section may seek judicial review of such order through a proceeding pursuant to article seventy-eight of the civil practice law and rules.

f. Removal of seal. Any person who removes the seal on any premises or removes the seal on or makes operable any devices, items or goods sealed or otherwise made inoperable in accordance with an order of the commissioner shall be guilty of a misdemeanor.