

## Frequently Asked Questions: New Tobacco Laws

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### I. General

#### **What's the difference between the Tobacco Retail Dealer and the Electronic Cigarette Retail Dealer licenses?**

You must have a ***Tobacco Retail Dealer license*** to sell any tobacco products directly to consumers, including cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, shisha, or dissolvable tobacco products.

You must have an ***Electronic Cigarette Retail Dealer license*** to sell electronic cigarettes directly to consumers. An electronic cigarette is a battery-operated device that delivers vapor for inhaling by heating a liquid, gel, herb, or other substance, regardless of whether it contains nicotine. Any component part, such as a cartridge or refill, is considered to be an electronic cigarette.

If you want to sell both tobacco products and electronic cigarettes, you must have both licenses.

#### **Do I need to apply separately for an Electronic Cigarette Retail Dealer license and a Tobacco Retail Dealer license?**

Yes. You must apply for a Tobacco Retail Dealer license to sell tobacco products. You must apply for an Electronic Cigarette Retail Dealer license to sell electronic cigarettes.

#### **What is the cost to apply for a Tobacco Retail Dealer and/or Electronic Cigarette Retail Dealer license?**

The application fee for a Tobacco Retail Dealer license is \$200.

The application fee for an Electronic Cigarette Retail Dealer license is also \$200.

You must apply for a license for use at each location where you will sell tobacco products and/or electronic cigarettes.

## II. Tobacco Retail Dealer License

### Can anyone apply for a Tobacco Retail Dealer license?

Community district caps for Tobacco Retail Dealer licenses took effect February 24, 2018. You can submit an application for a Tobacco Retail Dealer license only if one of the below applies:

- A business with a Tobacco Retail Dealer license is sold, someone acquires more than 10% of the shares of the corporation, or there is a change in partnership. You (the new business) may apply for a new license at the same location as long as there is a current, active license in good standing at the address AND *you apply for a new license within 30 days of the sale or change.*\*
- Your business is located in certain airports or parks that are not subject to the community district caps.\*

\*If you meet one of these exceptions to the cap, you must submit the [Tobacco Retail Dealer Cap Exception Certification](#) and supporting documentation. See the form for more information.

Note:

- If the number of licenses in a community district(s) is under the cap, DCA will accept new applications from eligible applicants. Monitor [nyc.gov/dca](http://nyc.gov/dca) for updates about community district caps.

### If I sell my business, will the new owner be able to apply for a Tobacco Retail Dealer license?

To apply for a new Tobacco Retail Dealer license, the new owner must meet one of the cap exceptions, specifically:

- A business with a Tobacco Retail Dealer license is sold, someone acquires more than 10% of the shares of the corporation, or there is a change in partnership. The new owner may apply for a new license at the same location as long as the business has a current, active license in good standing at the address AND the new owner applies for a new license within 30 days of the sale or change.\*
- The business is located in certain airports or parks that are not subject to the community district caps.\*

\*If the new owner meets one of these exceptions to the cap, they must submit the [Tobacco Retail Dealer Cap Exception Certification](#) and supporting documentation. See the form for more information.

If the new owner does not meet these cap exceptions, they must wait until licenses are available in the community district.

### Which airports and parks are not subject to the community district caps?

The table below lists exempt locations.

The Bronx	Brooklyn	Manhattan	Queens	Staten Island
<ul style="list-style-type: none"><li>• Bronx Park</li><li>• Pelham Bay Park</li><li>• Van Cortlandt Park</li></ul>	<ul style="list-style-type: none"><li>• Prospect Park</li><li>• Gateway National Recreation Area</li></ul>	<ul style="list-style-type: none"><li>• Central Park</li></ul>	<ul style="list-style-type: none"><li>• JFK Airport</li><li>• LaGuardia Airport</li><li>• Flushing Meadows Park</li><li>• Forest Park</li><li>• Gateway National Recreation Area</li></ul>	<ul style="list-style-type: none"><li>• Gateway National Recreation Area</li></ul>

### III. Electronic Cigarette Retail Dealer License

#### When can I apply for an Electronic Cigarette Retail Dealer license?

The initial application period closed on April 25, 2018. Community district caps for Electronic Cigarette Retail Dealer licenses took effect April 26, 2018. You can submit an application for an Electronic Cigarette Retail Dealer license only if one of the below applies:

- A business with an Electronic Cigarette Retail Dealer license is sold, someone acquires more than 10% of the shares of the corporation, or there is a change in partnership. You (the new business) may apply for a new license at the same location as long as there is a current, active license in good standing at the address AND *you apply for a new license within 30 days of the sale or change.*\*
- Your business is located in certain airports or parks that are not subject to the community district caps.\*

\*If you meet one of these exceptions to the cap, you must submit the Electronic Cigarette Retail Dealer Cap Exception Certification and supporting documentation. See the form for more information.

Note:

- If the number of licenses in a community district(s) is under the cap, DCA will accept new applications from eligible applicants; applicants can be new to the industry and do not need to certify that they were selling electronic cigarettes as of August 28, 2017. Monitor [nyc.gov/dca](http://nyc.gov/dca) for updates about community district caps.
- Pharmacies and businesses that contain pharmacies are not eligible to apply for the license.

#### When I apply for an Electronic Cigarette Retail Dealer license, what documents do I have to submit?

A complete list of requirements for the Electronic Cigarette Retail Dealer license is available at [nyc.gov/dca](http://nyc.gov/dca).

#### Can I sell flavored liquid nicotine?

You must have an Electronic Cigarette Retail Dealer license to sell liquid nicotine (electronic cigarettes), which can be any flavor.

Note:

- It is *illegal* to sell flavored **tobacco products**, such as those that have or produce a taste or aroma relating to any of the following: fruit, chocolate, honey, vanilla, candy, cocoa, dessert, alcoholic beverage, herb, or spice.
- It is *not illegal* to sell products that have or produce the taste or aroma of menthol, mint, wintergreen, tobacco.

### IV. Community District Caps

#### How do the community district caps work?

By law, DCA will set caps (limits) on the number of Tobacco Retail Dealer and Electronic Cigarette Retail Dealer licenses in each community district established under Chapter 69 of the New York City Charter. The caps will be:

- 50% of the number of active Tobacco Retail Dealer licenses on February 24, 2018
- 50% of the number of licenses issued for Electronic Cigarette Retail Dealers after the initial application period (January 25 – April 25, 2018)

Once the caps are set:

- DCA **will not accept** applications for Electronic Cigarette Retail Dealer or Tobacco Retail Dealer licenses until the number of licenses in a community district is below the cap for that category.
- Regardless of the cap, DCA **will accept a new application** in the following situations:
  - A business with a license is sold, someone acquires more than 10% of the shares of the corporation, or there is a change in partnership. The new business may apply for a new license at the same location as long as there is a current, active license of the same category in good standing at the address AND *the new business applies for a new license within 30 days of the sale or change in ownership/partnership.*
  - The business is located in certain airports or parks that are not subject to the community district caps.
- Regardless of the cap, DCA **will accept renewal applications** from Tobacco Retail Dealers and Electronic Cigarette Retail Dealers.

**Once the cap for Electronic Cigarette Retail Dealer licenses takes effect, will there be a waiting list to apply for an Electronic Cigarette Retail Dealer license?**

No.

DCA will accept new applications **only if** the number of licenses in the applicant's community district is under the cap.

**If I need to move my store within the same community district, do I take my license with me or apply for a new one?**

A license is only valid for a single location and cannot be used at any other location. If you move your store and, therefore, change the location associated with the Tobacco Retail Dealer or Electronic Cigarette Retail Dealer license, you will not be able to apply for a new license until a license becomes available under the new location's community district cap.

**If my license is revoked, can I apply for a new one?**

No.

**If my current license gets suspended due to violations, will the store be eligible to get its license back, or will it be subject to the cap after serving a suspension?**

If a Tobacco Retail Dealer or Electronic Retail Dealer license is suspended, it will not be subject to the cap when it is reinstated. If your license is scheduled to expire while it is suspended, you must submit a renewal application.

## **V. Enforcement**

**When are the City's new tobacco laws effective?**

DCA will continue to enforce existing tobacco and liquid nicotine laws and rules until the new laws go into effect. Effective dates are below:

- **February 24, 2018:** Tobacco Retail Dealer Licensing Law became effective.
- **April 15, 2018:** Ban on selling non-tobacco smoking products to people under 21 began.
- **June 1, 2018:** New package sizes, price floors, and the tax on other tobacco products go into effect.
- **August 23, 2018:** Ban on selling electronic cigarettes without a license begins.

### **Will there be a grace period for enforcement?**

By law, DCA must begin enforcement when the laws go into effect. DCA has been and will continue to do extensive business education both before and after enforcement begins. You and your employees should feel free to ask any questions about how to comply with the law. Contact DCA's Business Compliance Counsel by:

- Calling 311 OR
- Emailing: [BusinessComplianceCounsel@dca.nyc.gov](mailto:BusinessComplianceCounsel@dca.nyc.gov)

## **VI. Pharmacies**

### **What is a pharmacy under the law?**

The term "pharmacy" means "pharmacy" as defined in subdivision 1 of section 6802 of the education law, and any retail store that contains a pharmacy:

"'Pharmacy' means any place in which drugs, prescriptions or poisons are possessed for the purpose of compounding, preserving, dispensing or retailing, or in which drugs, prescriptions or poisons are compounded, preserved, dispensed or retailed, or in which such drugs, prescriptions or poisons are by advertising or otherwise offered for sale at retail."

Any business that must register as a pharmacy with the New York State Department of Education Office of the Professions is a pharmacy.

### **When do pharmacies have to stop selling tobacco products and electronic cigarettes?**

Pharmacies must stop selling electronic cigarettes before August 23, 2018, when it will be illegal to sell electronic cigarettes in NYC without an Electronic Cigarette Retail Dealer license, which pharmacies are prohibited from obtaining.

Pharmacies with a valid Tobacco Retail Dealer license can continue to sell tobacco products until December 31, 2018. After December 31, 2018, pharmacies cannot obtain a license to sell tobacco products in the city.

## **VII. Other**

### **Do you need a license to sell smoking cessation products, and is their sale subject to a cap under the new law?**

No. Neither a Tobacco Retail Dealer license nor an Electronic Cigarette Retail Dealer license is required to sell products approved by the U.S. Food & Drug Administration (FDA) for sale as a smoking cessation product or for other medical purposes and that is being marketed and sold solely for these purposes.

### **What are the new price floor requirements?**

The new price floor and tax on other tobacco products will go into effect on June 1, 2018. DCA will have more information closer to the effective date. Monitor [nyc.gov/dca](http://nyc.gov/dca).

### **Are the signage requirements changing?**

- Effective April 15, 2018, businesses selling tobacco products and non-tobacco smoking products must conspicuously display 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, stating:

PROHIBITED for SALE to persons UNDER 21: Cigarettes, cigars, smokeless tobacco, other tobacco products, electronic cigarettes and component parts, liquid nicotine, non-tobacco shisha, herbal cigarettes, pipes, rolling papers, or smoking paraphernalia

- Businesses selling cigarettes must continue to conspicuously display the tax stamp sign.
- Businesses selling tobacco products must continue to display their New York State Tobacco Registration.
- All businesses must conspicuously display all of their current DCA licenses and any other signs required by law.

The NYC/NYS Tax Stamp Sign is available at [nyc.gov/dca](https://nyc.gov/dca).

Monitor [nyc.gov/dca](https://nyc.gov/dca) for the Age Restriction Sign.