

**Testimony of Deputy Commissioner Amit S. Bagga
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Health**

**Hearing on
Introductions 1131-A, 1471, 1532, 1544 and 1547
in relation to tobacco product and electronic cigarette licensing and enforcement and other
tobacco product price floors**

April 27, 2017

Good morning, Chairman Johnson and members of the committee. My name is Amit S. Bagga and I am the Deputy Commissioner for External Affairs at the New York City Department of Consumer Affairs (“DCA”). I am joined today by several of my colleagues from the agency. We are pleased to be here today to support Introductions 1131-A, 1471, 1532, 1544, and 1547, which would prohibit pharmacies from selling tobacco products, expand the scope of the existing cigarette retail dealer license, create a new licensing category for the sale of electronic cigarettes, increase and establish price floors for cigarettes and other tobacco products, and establish a system by which the number of tobacco retail dealer licenses can be reduced over time.

As our colleagues from the Health Department have shared, the Administration believes that too many New Yorkers are still smokers, and for the sake of their health, as well as the public health of the City, it is critical that we take action to reduce tobacco use. We thank the Council for prioritizing this issue and look forward to working closely together on finalizing this legislative package, one that is strongly supported by Mayor de Blasio and First Lady McCray.

Licensing

I will begin my testimony by offering a brief overview of DCA’s mission and licensing work. DCA’s mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. DCA enforces a variety of licensing laws across over 80,000 businesses in 57 categories of industries, as well as the City’s Consumer Protection Law and certain State business laws.

There are currently more than 8,000 licensed cigarette retail dealers across the five boroughs. DCA licenses businesses that sell cigarettes directly to the public, and every location of any businesses must obtain its own license. The application process includes a basic license application, documentation relevant to the business’s legal structure, and copies of their registration with the New York State Department of Taxation and Finance. DCA also often reviews applications to determine their overall veracity. In many instances, cigarette retail dealers who have received violations on multiple occasions, aware that recidivist penalties are higher and could lead to revocation, “sell” the ownership of their business as a way of avoiding enforcement. Through our process, we often attempt to identify whether or not this has been the

case when a new applicant is applying for a license at a particular physical location where a different business previously held a license.

Licenses are renewed every two years on a staggered basis; licenses with even-numbered license numbers expiring on December 31 of even years and licenses with odd-numbered licenses expiring on December 31. Staggering renewals in this way allows our licensing staff the ability to better manage the high volume of renewal applications.

We note that Intro 1471 would increase the cost of the new tobacco retail license fee from \$110 to \$340. Our initial analysis has yielded that the likely cost of administering this license will be between \$400 and \$500. We will gladly share our final analysis with the Council when it is complete.

Additionally, we seek to work with the Council and our sister agencies to standardize certain license requirements laid out in Intro. 1547. Certain new requirements posed by this bill, which DCA strongly supports, would ensure that the practice of sometimes “selling” a business for the sake of avoiding license revocation when one has received multiple violations would become more difficult. This critical update to existing law only applies to a certain subset of businesses in this bill; for the sake of consistency and ease of compliance, we would recommend it apply to a larger universe of businesses. I will now provide a brief overview of our enforcement efforts.

Enforcement

Given the City’s commitment to reducing tobacco use and ensuring compliance with the law, DCA is proud to partner with the Departments of Health and Finance to enforce our tobacco laws. We inspect for unlicensed activity, the sale of cigarettes and liquid nicotine to anyone under 21, the sale of cigarettes to anyone under 18, the possession or sale of flavored tobacco, and for the provision of unlawful discounts. We also inspect businesses to ensure that they’re not selling tobacco products below the legal price floor, and that cigarettes and cigars are being sold in a manner that complies with the minimum “package requirements.” Cigarettes are required to be sold in a pack of no fewer than 20 and cigars in a pack of no fewer than four. There are two primary reasons why these requirements exist. First, the sale of individual cigarettes or cigars is likely an “untaxed” sale, which is unlawful and allows businesses to sell cigarettes for less than the legally-mandated minimum amount. Second, research has shown that the sale of cigarettes in packs with small amounts is more likely to result in continued smoking.

Beyond our inspections in the field, DCA attorneys review new and renewal license applications and pursue suspensions and revocations where appropriate.

We would like to note that the New York City Department of Finance plays a robust role in enforcing several tobacco-related laws; in particular, those that govern the sale of untaxed or out-of-state cigarettes. I will now speak briefly about the impact the bills would have on DCA in terms of licensing, enforcement, and legal review.

Impact on DCA

In terms of licensing, the agency would now have to track and implement licensing caps on a community district basis, which is neither an existing function nor capability. Additionally, the new electronic cigarette license category will result in what we believe is a large volume of work, as electronic cigarettes are often sold in the same stores as cigarettes, indicating that there could be thousands of potential licensees. DCA's legal division would see its work increase, as well, as the volume of "arm's length" transaction assessment would grow, as would the potential number of violations that might result in a revocation or suspension.

In terms of patrol enforcement, our inspectors would be enforcing new minimum price floors and license requirements for a new licensing category. Inspection times will likely increase, as our inspectors will have to check for compliance with several additional requirements, such as price floors for other tobacco products and requirements related to the sale of electronic cigarettes. DCA inspectors will require handhelds in order to enforce the new package of bills, as enforcement history would need to be known in the field in real time to enable inspectors to issue correct violations.

Conclusion

In closing, we want to reiterate our strong support for the bills before us today and our commitment to implementing these important policies effectively and as quickly as possible. Thank you again for your commitment to this important public health initiative; we would be happy to take any questions.