

By Council Members Levine and Cohen

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the sale of flavored electronic cigarettes

Be it enacted by the Council as follows:

Section 1. Section 17-713 of title 7 of the administrative code of the city of New York is amended to read as follows:

[a. "Cigarette"] Cigarette. The term "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"] Characterizing flavor. The term "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"] Component part. The term "component part" means any element of a tobacco product or electronic cigarette, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

[d. "Constituent"] Constituent. The term "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 or electronic cigarette during the processing, manufacture or packing of the tobacco product or electronic cigarette. Such term shall include a smoke or vapor constituent.

Electronic cigarette. The term "electronic cigarette" means an electronic or battery-operated device that delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.

Flavored electronic cigarette. The term "flavored electronic cigarette" means any electronic cigarette 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 an electronic cigarette, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such electronic cigarette, that such electronic cigarette has or produces a characterizing flavor shall constitute presumptive evidence that the electronic cigarette is a flavored electronic cigarette. Flavored electronic cigarette shall not include tobacco-flavored or flavorless electronic cigarettes.

[e. "Flavored tobacco product"] Flavored tobacco product. The term "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. [Repealed.]]

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

[h. "Smoke constituent"] Smoke constituent. The term "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"] Tobacco bar. The term "tobacco bar" has the meaning as such term is defined in subdivision jj of section 17-502 of this code.

[j. "Tobacco product"] Tobacco product. The term "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.

§ 2. Section 17-715 of the administrative code of the city of New York is amended to read as follows:

§ 17-715 Sale of flavored tobacco products and flavored electronic cigarettes 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. It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette.

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 or electronic cigarettes, packages of tobacco products or electronic cigarettes, or any combination thereof, possesses such tobacco products or electronic cigarettes with intent to sell or offer for sale.

§ 3. This local law shall take effect 90 days after its enactment into law, provided that the commissioner shall promulgate any rules necessary for implementing and carrying out the provisions of this local law prior to its effective date.