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## THE COUNCIL

# COMMITTEE REPORT OF THE HUMAN SERVICES Division

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**COMMITTEE ON HEALTH**

*Hon. Mark Levine, Chair*

#### November 25, 2019

**Proposed Int. No. 1362-A:** By Council Members Levine, Cohen, Powers, Lander, Rosenthal, Rivera, Ayala, Chin, Cabrera, Gibson, Reynoso, King, Brannan, Koo, Rodriguez, Koslowitz, Dromm, Espinal, Grodenchik, Menchaca, Adams, Constantinides, Maisel, Holden, Louis, Treyger, Moya, Van Bramer, Kallos and Torres

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the sale of flavored electronic cigarettes and flavored e-liquids and conducting outreach regarding the availability of smoking cessation services

**Administrative Code:** Amends sections 11-4024, 17-176.1, 17-702, 17-713 and 17-715, 17-716, 20-560, and the heading of subchapter 2 of chapter 7 of title 17.

**Introduction**

 On November 25, 2019, the Committee on Health, chaired by Council Member Mark Levine, will hold a hearing on Proposed Introduction Number 1362-A (Proposed Int. 1362-A), a Local Law to amend the administrative code of the city of New York, in relation to prohibiting the sale of flavored electronic cigarettes and flavored e-liquids and conducting outreach regarding the availability of smoking cessation services. This legislation was originally heard at a hearing of this Committee on January 30, 2019, at which the Committee received testimony from the New York City Department of Health and Mental Hygiene (DOHMH), advocates, and other interested parties.

**Background**

**Flavored Electronic Cigarettes**

Electronic cigarettes (e-cigarettes) are electronic devices that deliver nicotine, flavor, and other chemicals through vaporization or aerosolization.[[1]](#footnote-1) The use of electronic cigarettes in the U.S., commonly referred to as “vaping,” has grown at a rapid pace, with sales skyrocketing by 132 percent,[[2]](#footnote-2) while prices fell substantially, between 2012 and 2016.[[3]](#footnote-3) Average monthly sales for rechargeable devices and accompanying cartridges, which have become the product of choice among individuals who vape, increased 154 percent between 2012 and 2016 according to the Centers for Disease Control (CDC), while their prices fell by nearly half.[[4]](#footnote-4)

*E-Cigarettes as Smoking Cessation Devices*

Manufacturers and proponents of electronic cigarettes claim that the devices offer users a safer alternative to smoking cigarettes, as electronic cigarettes can deliver nicotine without combusting tobacco and producing smoke, and can also offer nicotine-free vapor.[[5]](#footnote-5) While the CDC acknowledges that e-cigarettes may have the potential to benefit adult smokers who are not pregnant – if they are used as a *complete* substitute for regular cigarettes and other smoked tobacco products – it also notes that scientists still haven’t determined whether this is the case, and that e-cigarettes are not currently approved by the United States Food and Drug Administration (FDA) as a quit smoking aid.[[6]](#footnote-6) Moreover, a recent CDC study found that “most adult e-cigarette users do not stop smoking cigarettes and are instead continuing to use both tobacco and non-tobacco products (known as ‘dual use’).”[[7]](#footnote-7)

*Health Effects of Using E-Cigarettes*

Given that e-cigarettes have not been around for a significant amount of time from a scientific and medical research perspective, scientists are still learning about their long-term health effects.[[8]](#footnote-8) Still, most e-cigarettes contain nicotine, which has well-known health effects.[[9]](#footnote-9) According to the CDC, nicotine is highly addictive, toxic to developing fetuses, can harm adolescent brain development (which continues into the early- to mid-20s), and is a health danger for pregnant women and developing babies.[[10]](#footnote-10) Recent research has also shown that vaping e-cigarettes deliver cancer-causing chemicals into the body, and that popular fruity flavors appear to have the worst carcinogenic effect.[[11]](#footnote-11)

*Use of E-Cigarettes among Young People*

The CDC has expressed serious concern about youth exposure to the highly addictive nicotine contained in most electronic cigarettes.[[12]](#footnote-12) Teenagers’ brains are still developing, and require less exposure to nicotine than adults to become addicted.[[13]](#footnote-13) Research cited by the National Institute of Drug Abuse (NIDA) has shown the highly addictive nicotine content in e-cigarette products serves to activate the brain’s reward circuitry by increasing dopamine levels, which motivates teens “to use again and again despite risks to their health and well-being.”[[14]](#footnote-14) While the prevalence of adults who tried e-cigarettes rose significantly between 2014 and 2016, it skyrocketed by more than 900 percent between 2011 and 2015 among high school students according to the CDC, and vaping is now more popular among teens than combustible cigarettes.[[15]](#footnote-15) According to the FDA, from 2017 to 2018 e-cigarette use increased by 78 percent among high school students, and 48 percent among middle school students.[[16]](#footnote-16) In a statement issued on September 12, 2018, FDA Commissioner Scott Gottlieb, M.D., declared that e-cigarette use among teenagers had reached “nothing short of an epidemic proportion of growth,”[[17]](#footnote-17) and called for makers of the most popular e-cigarettes to keep their products away from minors.[[18]](#footnote-18) According to a survey cited by the FDA, “81 percent of current youth e-cigarette users cited the availability of appealing flavors as the primary reason for use.”[[19]](#footnote-19) A 2015 survey of youth funded by the National Institute on Drug Abuse, the National Institutes of Health, and the FDA’s Department of Health and Human Services found that the majority of respondents who self-reported ever experimenting with tobacco started with a flavored product, including 81 percent of respondents who had ever used an e-cigarette, indicating that flavoring is the enticing factor of e-cigarettes among youth.[[20]](#footnote-20)

According to NIDA, repeated exposure to the highly addictive nicotine content in “e-cigarettes may actually encourage cigarette smoking in adolescents.”[[21]](#footnote-21) A RAND Corporation study also recently concluded that “adolescents who use vaping products are not only more likely to smoke cigarettes, but are also likely to increase their use of both products over time.”[[22]](#footnote-22) Advocates concerned about teen use of e-cigarettes as a pathway to combustible cigarettes expressed alarm[[23]](#footnote-23) when, in December 2018, Juul Labs – which has more than 70 percent of the e-cigarette market share in the United States – received a $12.8 Billion investment from Altria, the leading U.S. cigarette manufacturer.[[24]](#footnote-24)

**regulatory and legislative action**

**Flavored Electronic Cigarettes**

*Federal Action*

In September 2018, the FDA declared that teenage use of electronic cigarettes has reached “an epidemic proportion,” and put the makers of the most popular devices – primarily tobacco company giants – on notice that “they have just 60 days to prove they can keep their devices away from minors” or face steep fines and possible removal from the market altogether.[[25]](#footnote-25)

In November, FDA Commissioner Scott Gottlieb, M.D. proposed new steps to prevent youth access to flavored e-cigarettes by requiring that they be sold in age-restricted, in-person locations, and requiring heightened age-verification practices for online sales.[[26]](#footnote-26) These measures effectively stopped short of a ban that the FDA had previously threatened in order to persuade e-cigarette makers to drop marketing strategies that might appeal to minors.[[27]](#footnote-27) The proposed measures would allow stores to continue selling flavored e-cigarettes, but only from closed-off areas that would be inaccessible to minors.[[28]](#footnote-28)

*State Action*

On November 7th, the New York State Department of Health (NYSDOH) proposed a rule that would ban the sale of flavored e-cigarettes in New York State.[[29]](#footnote-29) On November 9th, the agency withdrew the announced regulations to allow more time for legal review.[[30]](#footnote-30) On January 12th, Governor Cuomo announced that he will include a proposal raising the State’s minimum age to buy tobacco and e-cigarette products from 18 to 21. He also called for an end to the sale of tobacco and e-cigarette products in pharmacies and to require that e-cigarettes are sold only through licensed retailers.[[31]](#footnote-31) On September 17, 2019, New York implemented a statewide ban on most flavored nicotine vaping products, although this ban excluded menthol-flavored products.[[32]](#footnote-32) The ban was challenged in court by an industry trade group, the Vapor Technology Association, and the New York State Appellate Division temporarily halted the implementation of the ban on October 3rd, 2019.[[33]](#footnote-33)

*City Action*

In 2013, the Council passed and the Mayor signed Local Law 94 of 2013, which established the sales age for electronic cigarettes at 21.[[34]](#footnote-34) In 2013, the Council also passed and the Mayor signed Local Law 152 of 2013, which extends the NYC Smoke-Free Air Act to include e-cigarettes.[[35]](#footnote-35)

*Corporate Action*

On November 13th, Juul announced plans to temporarily eliminate some of its social media accounts and halt retail sales of most of its flavor products and restrict flavor sales to adults 21 and older on its secure website as part of a plan to restrict access to minors.[[36]](#footnote-36) In November 2019, Juul stopped selling its mint-flavored pods, which have been shown to be very popular among children who use Juul products.[[37]](#footnote-37)

**Bill analysis**

**Proposed Int. 1362-A:**

Proposed Int. 1362-A would ban the sale of flavored electronic cigarettes and flavored e-liquids in New York City, including mint, menthol and wintergreen electronic cigarettes and e-liquids. This bill also creates a presumption that an electronic cigarette retail dealer in possession of six or more flavored electronic cigarettes, or more than 12 fluid ounces (or 354.882 mL) of e-liquids, has intent to sell or offer for sale these flavored products.

The bill also requires DOHMH to conduct a public information and awareness campaign to educate the public regarding the availability of smoking cessation medication and services.

The bill has been amended to explicitly include an outreach component and expressly refer to the sale of e-liquids. The bill was also amended the create a presumption that a retail dealer intends to sell or offer for sale flavored electronic cigarettes when such retail dealer possesses six or more flavored electronic cigarettes, rather than four flavored electronic cigarettes.

The legislation would take effect on the first day of the month next succeeding the one hundred eightieth day after it becomes law, except that the outreach component of this legislation would take effect 90 days after the bill becomes law.

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Proposed Int. No. 1362-A

By Council Members Levine, Cohen, Powers, Lander, Rosenthal, Rivera, Ayala, Chin, Cabrera, Gibson, Reynoso, King, Brannan, Koo, Rodriguez, Koslowitz, Dromm, Espinal, Grodenchik, Menchaca, Adams, Constantinides, Maisel, Holden, Louis, Treyger, Moya, Van Bramer, Kallos and Torres

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to prohibiting the sale of flavored electronic cigarettes and flavored e-liquids and conducting outreach regarding the availability of smoking cessation services

Be it enacted by the Council as follows:

Section 1. The heading of section 11-4024 of the administrative code of the city of New York, as added by local law number 97 for the year 2013, is amended to read as follows:

§ 11-4024 Seizure and forfeiture of taxed and lawfully stamped cigarettes sold or possessed by unlicensed retail or wholesale dealers [and], flavored tobacco products, flavored electronic cigarettes and flavored e-liquid.

§ 2. Section 11-4024 of the administrative code of the city of New York is amended by adding a new subdivision e to read as follows:

(e) For purposes of this section, a flavored tobacco product means a flavored tobacco product, flavored electronic cigarette or flavored e-liquid.

§ 3. Paragraph (6) of subdivision a of section 17-176, as amended by local law number 97 for the year 2013, is amended to read as follows:

(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, electronic cigarettes or e-liquid 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.

§ 4. The definition of “tobacco product” in subdivision a of section 17-176.1, as amended by local law number 145 for the year 2017, is amended to read as follows:

"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, shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes, electronic cigarettes or e-liquid 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.

§ 5. Subdivisions r and bb of section 17-702 of the administrative code of the city of New York, subdivision r as amended by local law number 97 for the year 2013, and subdivision bb as amended by local law number 144 for the year 2017, is amended to read as follows:

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, electronic cigarettes or e-liquid 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.

bb. "Electronic cigarette" [means a battery-operated device that heats a liquid, gel, herb, or other substance and delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette] has the same meaning as such term is defined in section 20-560.

§ 6. The heading of subchapter 2 of chapter 7 of title 17 of the administrative code of the city of New York, as amended by local law number 187 for the year 2017 and by local law number 69 for the year 2009, is amended to read as follows:

REGULATION OF THE SALE OF [HERBAL CIGARETTES AND] FLAVORED TOBACCO PRODUCTS, FLAVORED ELECTRONIC CIGARETTES AND FLAVORED E-LIQUID, AND REGULATION OF AGE OF ENTRY TO NON-TOBACCO HOOKAH ESTABLISHMENTS

§ 7. Section 17-713 of the administrative code of the city of New York, as amended by local law number 69 for the year 2009, and subdivisions a and j of such section as amended by local law number 97 for the year 2013, is amended to read 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"] 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], electronic cigarette or e-liquid, including, but not limited to, tastes or aromas relating to any menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb [or], spice, or any “concept flavor” that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor; provided, however, that no tobacco product, electronic cigarette or e-liquid shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

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.

[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.]

Electronic cigarette. The term “electronic cigarette” has the same meaning as such term is defined in section 20-560.

E-liquid. The term “e-liquid” has the same meaning as such term is defined in section 20-560.

Flavored electronic cigarette. The term "flavored electronic cigarette" means any electronic cigarette 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 such electronic cigarette is a flavored electronic cigarette.

Flavored e-liquid. The term “flavored e-liquid” means any e-liquid that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of an e-liquid, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such e-liquid, that such e-liquid has or produces a characterizing flavor shall constitute presumptive evidence that such e-liquid is a flavored e-liquid.

[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 other than menthol, mint and wintergreen. 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, other than menthol, mint and wintergreen, shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

[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" 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, electronic cigarettes or e-liquid 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.

§ 8. Section 17-715 of the administrative code of the city of New York, as amended by local law 97 for the year 2013, is amended to read as follows:

§ 17-715 Sale of flavored tobacco products, flavored electronic cigarettes and flavored e-liquid prohibited. a. 1. 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.] 2. There shall be a presumption that a retail dealer, as defined in section 17-702, 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.

b. 1. 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 or flavored e-liquid.

2. There shall be a presumption that an electronic cigarette retail dealer, as defined in section 20-560, in possession of six or more flavored electronic cigarettes, or more than 12 fluid ounces (354.882 mL) of flavored e-liquid, possesses such flavored electronic cigarettes or flavored e-liquid with intent to sell or offer for sale.

§ 9. Section 17-716 of the administrative code of the city of New York, as amended by local law 191 for the year 2017, is amended to read as follows:

§ 17-716 Violations and penalties. a. Any person who violates subdivision a of 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, shall be subject to the mandatory suspension of his or her license, issued pursuant to section 20-202, for such place of business, for a period not to exceed one year. Such 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.

a-1. Any person who violates subdivision b of section 17-715 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 an electronic cigarette retail dealer, as such term is defined in section 20-560, shall be subject to the mandatory suspension of his or her license, issued pursuant to section 20-561, for such place of business, for a period not to exceed one year. Such license shall be suspended at the same hearing at which an electronic cigarette retail dealer is found liable for a third violation or subsequent violations at the same place of business within a three-year period.

b. Any person who violates subdivision a of section 17-719 shall be liable for a civil penalty of two hundred dollars for the first violation, and not more than two hundred dollars for each additional violation found on the same day; and five hundred dollars for the second violation and each subsequent violation at the same place of business. A proceeding to recover any such civil penalty 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 any tribunal established within any agency of the city designated to conduct such proceedings. When a person has been found to be in violation of subdivision a of section 17-719 on two or more occasions at a non-tobacco hookah establishment, the commissioner shall revoke the non-tobacco hookah establishment permit issued to such person pursuant to section 17-513.5.

c. Any person found to be in violation of subdivision b of section 17-719 shall be liable for a civil penalty of one hundred dollars for the first violation and not more than one hundred dollars for each additional violation found on the same day, and two hundred dollars for each subsequent violation at the same place of business. A proceeding to recover any such civil penalty 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 any tribunal established within any agency of the city designated to conduct such proceedings.

§ 10. Section 20-560 of the administrative code of the city of New York, as added by local law 144 for the year 2017, is amended to read as follows:

§ 20-560 Definitions. As used in this subchapter, the following terms have the following meanings:

Electronic cigarette. The term "electronic cigarette" means [a] an electronic or battery-operated device that [heats a liquid, gel, herb, and/or other substance and] delivers [vapor] an aerosol or emission for inhalation. Electronic cigarette [shall include] also means any refill, cartridge, [and] any other component of an electronic cigarette and any e-liquid. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.

Electronic cigarette retail dealer. The term "electronic cigarette retail dealer" means any person engaged in the retail sale of electronic cigarettes. For the purposes of this subchapter and title 17 of this code, the possession or transportation at any one time of more than 20 electronic cigarettes or more than 12 fluid ounces (354.882 mL) of e-liquid by any person other than a manufacturer or a person delivering electronic cigarettes or e-liquids in the regular course of business for a manufacturer or electronic cigarette retail dealer, shall be presumptive evidence that such person is an electronic cigarette retail dealer.

E-liquid. The term “e-liquid” means a solution, substance or material used in an electronic cigarette to produce an aerosol or emission to be inhaled by the user, whether or not the solution, substance or material contains nicotine.

Good standing. The term "good standing" means any electronic cigarette retail dealer that has not been found to have violated subdivision b of section 17-704.1 or subdivision a-1 of section 17-706 on more than one day during the previous three consecutive years.

Person. Notwithstanding sections 1-112 and 20-102 of the code, the term "person" means 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.

Pharmacy. 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.

Retail store. The term "retail store" means any place that, in the regular course of business, sells or rents goods directly to the public.

§ 11. Outreach and education regarding the availability of smoking cessation services. The department of health and mental hygiene shall conduct a public information and outreach campaign to educate the public regarding the availability of smoking cessation services in New York city. Such campaign shall be conducted in conjunction with other agencies, including but not limited to the department of education and the department of consumer affairs, and shall include, but not be limited to, information regarding the availability of free or low-cost smoking cessation medication and services.

§ 12. This local law takes effect on the first day of the month next succeeding the one hundred eightieth day after it becomes law, provided that the department of consumer affairs, the department of finance and the department of health and mental hygiene may take such measures as are necessary for implementation of this local law, including the promulgation of rules, prior to such date, and except that section eleven of this local law shall take effect 90 days after it becomes law.

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1. U.S. Food and Drug Administration, Public Health Focus > Electronic Cigarettes (e-Cigarettes), http://www.fda.gov/newsevents/publichealthfocus/ucm172906.htm (*last accessed* Feb. 14, 2017). [↑](#footnote-ref-1)
2. This figure does not include online sales or vape shop sales. *See* US News, E-Cigarette Sales Have Surged Immensely in the U.S., Aug. 2, 2018, <https://www.usnews.com/news/healthiest-communities/articles/2018-08-02/e-cigarette-sales-have-surged-immensely-in-the-us-cdc-study-shows>. [↑](#footnote-ref-2)
3. US News, E-Cigarette Sales Have Surged Immensely in the U.S., Aug. 2, 2018, <https://www.usnews.com/news/healthiest-communities/articles/2018-08-02/e-cigarette-sales-have-surged-immensely-in-the-us-cdc-study-shows>. [↑](#footnote-ref-3)
4. US News, E-Cigarette Sales Have Surged Immensely in the U.S., Aug. 2, 2018, <https://www.usnews.com/news/healthiest-communities/articles/2018-08-02/e-cigarette-sales-have-surged-immensely-in-the-us-cdc-study-shows>. [↑](#footnote-ref-4)
5. Matt Richtel, *The E-Cigarette Industry, Waiting to Exhale*, N.Y. Times, Oct. 26, 2013, *available at* http://www.nytimes.com/2013/10/27/business/the-e-cigarette-industry-waiting-to-exhale.html. [↑](#footnote-ref-5)
6. CDC, About Electronic Cigarettes (E-Cigarettes), <https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html>. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. *Id* . [↑](#footnote-ref-8)
9. *Id* . [↑](#footnote-ref-9)
10. *Id* . [↑](#footnote-ref-10)
11. Today, Teens inhale cancer-causing chemicals in e-cigarettes, March 6, 2018, <https://www.today.com/health/teens-inhale-cancer-causing-chemicals-e-cigarettes-t124540>. [↑](#footnote-ref-11)
12. CDC Office on Smoking and Health*, E-cigarette Information*, November 2015, <https://www.cdc.gov/tobacco/stateandcommunity/pdfs/cdc-osh-information-on-e-cigarettes-november-2015.pdf>. [↑](#footnote-ref-12)
13. New York Times, Juul Suspends Selling Most E-Cigarette Flavors in Stores, Nov. 13, 2018, <https://www.nytimes.com/2018/11/13/health/juul-ecigarettes-vaping-teenagers.html>. [↑](#footnote-ref-13)
14. National Institute on Drug Abuse (NIDA), Electronic Cigarettes (E-cigarettes), <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>. [↑](#footnote-ref-14)
15. According to the [National Institute of Drug Abuse](https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes#ref) (NIDA) e-cigarettes are “now the most commonly used form of tobacco among youth in the United States.” *See* National Institute on Drug Abuse (NIDA), Electronic Cigarettes (E-cigarettes), <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>. *See also* US News, E-Cigarette Sales Have Surged Immensely in the U.S., Aug. 2, 2018, <https://www.usnews.com/news/healthiest-communities/articles/2018-08-02/e-cigarette-sales-have-surged-immensely-in-the-us-cdc-study-shows>. [↑](#footnote-ref-15)
16. U.S. Food & Drug Administration (FDA), Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS), <https://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm456610.htm>. [↑](#footnote-ref-16)
17. FDA, Statement from FDA Commissioner Scott Gottlieb, M.D., on new steps to address epidemic of youth e-cigarette use, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>. [↑](#footnote-ref-17)
18. RAND Corporation, Youth Who Use Vaping Products Are More Likely to Smoke Cigarettes, Increase Use of Both Over Time, <https://www.rand.org/news/press/2018/10/02.html>. [↑](#footnote-ref-18)
19. U.S. Food & Drug Administration (FDA), Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS), <https://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm456610.htm>. [↑](#footnote-ref-19)
20. JAMA Network, Survey of Youth Finds That Majority Who Used Tobacco Started with Flavored Product, <https://media.jamanetwork.com/news-item/survey-of-youth-finds-that-majority-who-used-tobacco-started-with-flavored-product/>. [↑](#footnote-ref-20)
21. National Institute on Drug Abuse (NIDA), Electronic Cigarettes (E-cigarettes), <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>. [↑](#footnote-ref-21)
22. RAND Corporation, Youth Who Use Vaping Products Are More Likely to Smoke Cigarettes, Increase Use of Both Over Time, <https://www.rand.org/news/press/2018/10/02.html>. [↑](#footnote-ref-22)
23. Campaign for Tobacco Free Kids, Altria-Juul Deal Is Alarming Development for Public Health and Shows Need for Strong FDA Regulation, <https://www.tobaccofreekids.org/press-releases/2018_12_20_altria_juul>. [↑](#footnote-ref-23)
24. National Public Radio, Altria Buys 35 Percent Stake in E-Cigarette Maker Juul, Dec. 20, 2018, <https://www.npr.org/2018/12/20/678915071/altria-buys-35-percent-stake-in-e-cigarette-maker-juul>. [↑](#footnote-ref-24)
25. New York Times, F.D.A. Targets Vaping, Alarmed by Teenage Use, Sept. 12, 2018, <https://www.nytimes.com/2018/09/12/health/juul-fda-vaping-ecigarettes.html>. [↑](#footnote-ref-25)
26. These restrictions will not apply to tobacco, mint, and menthol-flavored e-cigarettes. *See* FDA, Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes, Nov. 15, 2018, <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm625884.htm>. [↑](#footnote-ref-26)
27. New York Times, FDA Seeks Restrictions on Teens’ Access to Flavored E-Cigarettes and a Ban on Menthol Cigarettes, Nov. 15, 2018, <https://www.nytimes.com/2018/11/15/health/ecigarettes-fda-flavors-ban.html>. [↑](#footnote-ref-27)
28. New York Times, FDA Seeks Restrictions on Teens’ Access to Flavored E-Cigarettes and a Ban on Menthol Cigarettes, Nov. 15, 2018, <https://www.nytimes.com/2018/11/15/health/ecigarettes-fda-flavors-ban.html>. [↑](#footnote-ref-28)
29. CBSNewYork, Report: New York State Considers Ban On Flavored E-Cigarettes, Nov. 9, 2018, <https://newyork.cbslocal.com/2018/11/09/ny-considers-banning-flavored-e-cigarettes/>. [↑](#footnote-ref-29)
30. Adirondack Daily Enterprise, NY eyes plan to be first state to ban flavored e-cigarettes, Jan. 24, 2019, <http://www.adirondackdailyenterprise.com/news/local-news/2018/11/ny-eyes-plan-to-be-first-state-to-ban-flavored-e-cigarettes/>. [↑](#footnote-ref-30)
31. Bloomberg, New York Governor Cuomo Proposes to Raise E-Cig Sales Age to 21, Jan. 12, 2019, <https://www.bloomberg.com/news/articles/2019-01-12/n-y-governor-cuomo-proposes-to-raise-e-cig-sales-age-to-21>. [↑](#footnote-ref-31)
32. Time, As the Number of Vaping-Related Deaths Climbs, These States Have Implemented E-Cigarette Bans, October 15, 2019, <https://time.com/5685936/state-vaping-bans/>. [↑](#footnote-ref-32)
33. Reuters, New York court blocks state ban on flavored e-cigarettes, October 4, 2019, <https://www.reuters.com/article/us-health-vaping-new-york/new-york-court-blocks-state-ban-on-flavored-e-cigarettes-idUSKBN1WJ0IK>. *See also* In the Matter of Vapor Technology Association et al. v. Andrew M. Cuomo, Decision and Order on Motion, <https://drive.google.com/file/d/1aPybhHRXS_fER-51p0fuF_wTHEmDGbHW/view>. [↑](#footnote-ref-33)
34. New York City Council, Int 0250-2010, *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=664290&GUID=4223E26A-7F3F-4B7D-9E3A-0E3F7B850155&Options=ID|Text|&Search=%22electronic+cigarettes%22>. [↑](#footnote-ref-34)
35. New York City Council, Int 1210-2013, *available at* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1526765&GUID=15D04C6D-C760-40EA-88A4-2E40C0374E43&Options=ID|Text|&Search=%22electronic+cigarettes%22>. [↑](#footnote-ref-35)
36. *See* CNBC, Juul halts flavored e-cigarette sales to retailers – for now, Nov. 13, 2018, <https://www.cnbc.com/2018/11/13/juul-temporarily-suspends-retail-sales-of-most-flavored-e-cigarettes.html>. *See also* CNN, Juul to eliminate social media accounts, stop retail sales of flavors, Nov. 15, 2018, <https://www.cnn.com/2018/11/13/health/juul-flavor-social-media-fda-bn/index.html>. [↑](#footnote-ref-36)
37. NBC News, Juul stops selling mint ahead of anticipated federal ban on most e-cigarette flavors, November 7, 2019, <https://www.nbcnews.com/health/vaping/juul-stops-selling-mint-ahead-anticipated-federal-ban-most-e-n1077211>. [↑](#footnote-ref-37)