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Sponsors:	Joseph C. Borelli		
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12/31/2021	*	City Council	Filed (End of Session)	

Int. No. 15

By Council Member Borelli

A Local Law to amend the administrative code of the city of New York, in relation to exempting hand-rolled cigars from the price floors established in 2017

Be it enacted by the Council as follows:

Section 1. Section 11-1301 of the administrative code of the city of New York, as amended by local law 145 for the year 2017, is amended to read as follows:

§ 11-1301 Definitions. When used in this chapter the following words shall have the meanings herein indicated:

1. "Cigarette." 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.

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2. "Person." Any individual, partnership, society, association, joint-stock company, corporation, 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.

3. "Sale or purchase." 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.

4. "Use." Any exercise of a right or power, actual or constructive, and shall include but is not limited to the receipt, storage, or any keeping or retention for any length of time, but shall not include possession for sale by a dealer.

5. "Dealer." Any wholesale dealer or retail dealer as hereinafter defined.

6. "Wholesale dealer." Any person who sells cigarettes or tobacco products 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.

7. "Retail dealer." Any person, other than a wholesale dealer, engaged in selling cigarettes or tobacco products. For the purposes of this chapter, the possession or transportation at any one time of more than four hundred cigarettes or little cigars, or more than fifty cigars, or more than one pound of loose tobacco, smokeless tobacco, snus or shisha, or any combination thereof, by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes or tobacco products 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.

8. "Package." The individual package, box or other container in or from which retail sales of cigarettes or tobacco products are normally made or intended to be made.

9. "Agent." Any person authorized to purchase and affix adhesive or meter stamps under this chapter who is designated as an agent by the commissioner of finance.

10. "Comptroller." The comptroller of the city.

11. "Commissioner of finance." The commissioner of finance of the city.

12. "City." The city of New York.

13. "Tax appeals tribunal." The tax appeals tribunal established by 168 of the charter.

14. “Cigar.” 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 or hand-rolled cigar as defined in this section.

15. “Little cigar.” Any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs [no more than] less than four pounds per thousand or has a cellulose acetate or other integrated filter.

16. “Loose tobacco.” Any product that consists of loose leaves or pieces of tobacco that is intended for use by consumers in a pipe, roll-your-own cigarette, or similar product or device.

17. “Smokeless tobacco.” Any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

18. “Snus.” Any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

19. “Tobacco product.” 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, hand-rolled 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 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.

20. “Shisha.” Any product that contains tobacco and is smoked or intended to be smoked in a hookah or water pipe.

21. “Hand-rolled cigar.” Any roll of tobacco for smoking that is hand-constructed and hand-rolled; has a

wrapper made entirely from whole tobacco leaf; is with or without a tip or mouthpiece; and weighs four pounds per thousand or more.

§ 2. Subdivision a of section 11-1302.1 of the administrative code of the city of New York, as amended by local law 145 for the year 2017, is amended to read as follows:

a. In accordance with section 110 of the public housing law, an excise tax on the sale of tobacco products is hereby imposed and shall be paid on all tobacco products possessed in the city for sale, except as hereinafter provided. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer. Any dealer or distributor who pays the tax to the commissioner of finance shall collect the tax from the purchaser or consumer. Such tax shall be at the rate of ten percent of the price floor for a package of the specified category of tobacco product, exclusive of sales tax, set forth in the following table, which shall be consistent with the price floors described in subdivision d of section 17-176.1:

Tobacco Product	Price floor (excluding OTP and sales taxes)	Amount of OTP tax (excluding sales tax)
Cigar	$8.00 per cigar sold individually; for a package, number of cigars multiplied by $1.75 plus $6.25	$0.80 per cigar; for a package, $0.80 for first cigar, plus $0.175 for each additional cigar
Hand-rolled cigar	$3.00 per hand-rolled cigar	$0.30 per hand-rolled cigar
Little cigar	$10.95 per pack of 20 little cigars	$1.09 per pack
Smokeless tobacco	$8.00 per 1.2 oz. package plus $2.00 for each additional 0.3 oz. or any fraction thereof in excess of 1.2 oz.	$0.80 per 1.2 oz. plus an additional $0.20 for each 0.3 oz. or any fraction thereof in excess of 1.2 oz.
Snus	$8.00 per 0.32 oz. package plus $2.00 for each additional 0.08 oz. or any fraction thereof in excess of 0.32 oz.	$0.80 per 0.32 oz. plus an additional $0.20 for each 0.08 oz. or any fraction thereof in excess of 0.32 oz.
Shisha	$17.00 per 3.5 oz. package plus $3.40 for each additional 0.7 oz or any fraction thereof in excess of 3.5 oz.	$1.70 per 3.5 oz. plus an additional $0.34 for each 0.7 oz, or any fraction thereof in excess of 3.5 oz.
Loose tobacco	$2.55 per 1.5 oz. package plus $0.51 for each additional 0.3 oz. or any fraction thereof in excess of 1.5 oz.	$0.25 per 1.5 oz. package plus an additional $0.05 for each 0.3 oz. or any fraction thereof in excess of 1.5 oz.

§ 3. Subdivision a of section 17-176.1 of the administrative code of the city of New York, as amended by local law number 145 for the year 2017, is amended to read as follows:

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 or hand-rolled 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.

"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] less than four pounds per thousand or has a cellulose acetate or other integrated filter.

"Loose tobacco" means any product that consists of loose leaves or pieces of tobacco that is intended for use by consumers in a pipe, roll-your-own cigarette, or similar product or device.

"Non- tobacco shisha" means any product that does not contain tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

"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 20-201 of the code, and any employee or other agent of such retail dealer.

"Shisha" means any product that contains tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

"Smokeless tobacco" means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

"Snus" means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

"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, hand-rolled 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 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.

"Hand-rolled cigar" means any roll of tobacco for smoking that is hand-constructed and hand-rolled, has a wrapper made entirely from whole tobacco leaf; is with or without a tip or mouthpiece, has a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor, and weighs four pounds per thousand or more.

§ 4. Subdivision d of section 17-176.1 of the administrative code of the city of New York, as amended by local law number 145 for the year 2017, is amended to read as follows:

d. Price floors for cigarettes and tobacco products. No person shall sell or offer for sale to a consumer a package of cigarettes, tobacco products, or non-tobacco shisha, as such package is described in section 17-704, for a price less than the applicable price floor described in this subdivision. Any such price floor may be modified pursuant to paragraph 9 of this subdivision.

(1) The cigarette price floor shall be $13 per package of cigarettes, including all applicable taxes.

(2) The little cigar price floor shall be $10.95, excluding all applicable taxes.

(3) The cigar price floor shall be $8 for any cigar sold individually, excluding all applicable taxes. Notwithstanding subdivision c of section 17-176.1, the price floor for any package of cigars that contains more than one cigar and that has been delivered to a retail dealer in a package described by subdivision a of section 17-704 shall be computed by multiplying the number of cigars in the package by $1.75 and adding $6.25 to the total, excluding all applicable taxes.

(4) The smokeless tobacco price floor shall be $8 per 1.2 ounce package, excluding all applicable taxes. The price floor for packages larger than 1.2 ounces shall be computed by adding $2 for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.

(5) The snus price floor shall be $8 per 0.32 ounce package, excluding all applicable taxes. The price floor for packages larger than 0.32 ounces shall be computed by adding $2 for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.

(6) The shisha price floor shall be $17 per 3.5 ounce package, excluding all applicable taxes. The price floor for packages larger than 3.5 ounces shall be computed by adding $3.40 for each 0.7 ounces or any fraction thereof in excess of 3.5 ounces, excluding all applicable taxes.

(7) The non- tobacco shisha price floor shall be $17 per 3.5 ounce package, excluding all applicable taxes. The price floor for packages larger than 3.5 ounces shall be computed by adding $3.40 for each 0.7 or any fraction thereof ounces in excess of 3.5 ounces, excluding all applicable taxes.

(8) The loose tobacco price floor shall be $2.55 per 1.5 ounce package, excluding all applicable taxes. The price floor for packages larger than 1.5 ounces shall be computed by adding $0.51 for each 0.3 ounces or any fraction thereof in excess of 1.5 ounces, excluding all applicable taxes.

(9) The hand-rolled cigar price floor shall be $3, excluding all applicable taxes.

[(9)] (10) The department may modify by rule the price floors described in this subdivision to account for changes in the New York--northern New Jersey--Long Island consumer price index, adjusted for inflation, or changes in taxes for any of these products.

§ 5. This local law takes effect on June 1, 2018.

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