

## New York City Department of Consumer Affairs

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The Department of Consumer Affairs (“DCA” or “Department”) is proposing new rules relating to Tobacco Retail Dealers (“TRDs”) and Electronic Cigarette Retail Dealers (“ECRDs”) to establish procedures for the Department to accept applications for TRD and ECRD licenses under the community district caps created by Local Laws 144 and 146 of 2017.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Thursday, December 13, 2018. The hearing will be in the Department’s hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [rulecomments@dca.nyc.gov](mailto:rulecomments@dca.nyc.gov).
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax comments to Casey Adams, Director of City Legislative Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins on Thursday, December 13, 2018. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes. You must submit any written comments to the proposed rule by 5:00 PM on Thursday, December 13, 2018.

**What if I need assistance to participate in the hearing?** You must tell the Department’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Tuesday, December 11, 2018.

This location has the following accessibility option(s) available: wheelchair accessible.

**Can I review the comments made on the proposed rules? Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

**What authorizes the Department of Consumer Affairs to make this rule?** Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the City Charter, Section 20-104(e) of the Administrative Code of the City of New York, and Section 8 of Local Law 144 of 2017 authorize the Commissioner of the Department to make this proposed rule. This proposed rule was not included in DCA's regulatory agenda for this Fiscal Year because it was not contemplated when DCA published the agenda.

**Where can I find DCA's rules?** The Department's rules are in Title 6 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

## **Statement of Basis and Purpose of Proposed Rule**

DCA proposes to revise its rules to establish the community district caps required by Local Laws 144 and 146 of 2017 and create procedures that DCA would follow to accept applications for Tobacco Retail Dealer (“TRD”) and Electronic Cigarette Retail Dealer (“ECRD”) licenses under the community district caps. Local Law 144 of 2017 requires that ECRD licenses be capped at half the number of such licenses that have been issued on August 23, 2018, by community district. Local Law 146 of 2017 reduces the number of TRDs by capping the TRD licenses in each community district at half of the number of licenses that have been issued as of February 24, 2018. No new ECRD or TRD licenses will be issued in a community district until the total number of licenses decreases through attrition below the respective caps.

DCA’s authority for these rule is found in Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the City Charter, Section 20-104(e) of the Administrative Code of the City of New York, and Section 8 of Local Law 144 of 2017.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

### **Proposed Rules**

Section 1. Subchapter B of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

#### **Subchapter B: Tobacco Retail [Cigarette ]Dealers**

##### **§ 2-11 Definitions.**

Whenever used in this subchapter:

(a) “Community District Cap” means “Community district retail dealer cap” as that term is defined in section 20-201 of the Administrative Code.

(b) “Tobacco Retail Dealer” means a “Retail Dealer” as that term is defined in section 20-201 of the Administrative Code.

##### **§ 2-12 Required Periodic Retraining Programs and Proof of Satisfactory Completion of Such Program.**

A periodic retraining program [qualifies as an alternative for the monitoring of the performance of persons working in a retail cigarette dealer licensee's place of business], as provided in section [17-624(f)(3)] 17-710(f)(3) of the Administrative Code [of the City of New York only if it is conducted by a tobacco sales training program], will only be recognized if it is certified by the

New York State Department of Health in accordance with [subsection] subdivision 6 of section 1399-ee of the Public Health Law. Such a training program must issue a certificate of completion to each person who successfully [completed] completes the training. The [retail dealer] Tobacco Retail Dealer also must demonstrate that the person who committed the violation held a valid certificate of completion from the state certified sales training program at the time of the violation.

### **§ 2-13 Application Process for Available Licenses within Community Districts.**

(a) On April 1, 2019, and on every April 1 thereafter, the Department will publish the following information for each community district in the City: (i) the community district cap; (ii) the number of current Tobacco Retail Dealer licenses; and (iii) the number of available Tobacco Retail Dealer licenses.

(b) Beginning on May 1, 2019, and on every May 1 thereafter, in each community district where Tobacco Retail Dealer licenses are available, the Department shall accept requests to apply for a Tobacco Retail Dealer license until 5:00 p.m. on the last business day in May of such year.

(c) At the close of each request period, in each community district where Tobacco Retail Dealer licenses are available, the Department will randomly select a number of businesses that may apply for a Tobacco Retail Dealer license and invite such businesses to apply for such license. The number of such businesses shall be equal to the number of licenses available in that community district. An invitation to apply is only valid for the business randomly selected by the Department and may not be transferred to another business.

(d) Once notified by the Department, selected businesses will have 65 days from the date of notification to submit a complete application for a Tobacco Retail Dealer license. If a complete application is not received by the Department within 65 days, or the application is otherwise denied, the opportunity to apply will be forfeited, and the Department will offer the opportunity to apply to another business in the same community district that is randomly selected from the pool of requesters, and that business will have 65 days to submit a complete application.

(e) When the Department has issued all available licenses within each community district, the application process will be closed, and the remaining request pool will be voided. A request from any given year will not be valid in a subsequent year.

(f) Any license issued that causes the number of licenses in a community district to exceed the community district's retail dealer cap will be considered to be issued in error and voided.

(g) Any license issued as a result of deceptive or misleading application materials will be considered to be issued in error and voided.

§ 2. Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Subchapter JJ, to read as follows:

### **Subchapter JJ: Electronic Cigarette Retail Dealers**

#### **§ 2-451 Definitions.**

Whenever used in this subchapter:

(a) “Electronic Cigarette Retail Dealer” means an “Electronic Cigarette Retail Dealer” as that term is defined in Section 20-560 of the Administrative Code.

**§ 2-452 Application Process for Available Licenses within Community Districts.**

(a) On April 1, 2019, and on every April 1 thereafter, the Department will publish the following information for each community district in the City: (i) the community district cap; (ii) the number of current Electronic Cigarette Retail Dealer licenses; and (iii) the number of available Electronic Cigarette Retail Dealer licenses.

(b) Beginning on May 1, 2019, and on every May 1 thereafter, in each community district where Electronic Cigarette Retail Dealer licenses are available, the Department shall accept requests to apply for an Electronic Cigarette Retail Dealer license until 5:00 p.m. on the last business day in May of such year.

(c) At the close of each request period, in each community district where Electronic Cigarette Retail Dealer licenses are available, the Department will randomly select a number of businesses that may apply for an Electronic Cigarette Retail Dealer license and invite such businesses to apply for such license. The number of such businesses shall be equal to the number of licenses available in that community district. An invitation to apply is only valid for the business randomly selected by the Department and may not be transferred to another business.

(d) Once notified by the Department, selected businesses will have 65 days from the date of notification to submit a complete application for an Electronic Cigarette Retail Dealer license. If a complete application is not received by the Department within 65 days, or the application is otherwise denied, the opportunity to apply will be forfeited, and the Department will offer the opportunity to apply to another business in the same community district that is randomly selected from the pool of requesters, and that business will have 65 days to submit a complete application.

(e) When the Department has issued all available licenses within each community district, the application process will be closed, and the remaining request pool will be voided. A request from any given year will not be valid in a subsequent year.

(f) Any license issued that causes the number of licenses in a community district to exceed the community district’s retail dealer cap will be considered to be issued in error and voided.

(g) Any license issued as a result of deceptive or misleading application materials will be considered to be issued in error and voided.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Submission of Applications for Tobacco and Electronic Cigarette Retail Dealer Licenses

**REFERENCE NUMBER:** DCA-85

**RULEMAKING AGENCY:** Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Jennifer Baek  
Mayor's Office of Operations

October 30, 2018  
Date

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Submission of Applications for Tobacco and Electronic Cigarette Retail Dealer Licenses

**REFERENCE NUMBER:** 2018 RG 089

**RULEMAKING AGENCY:** Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: October 29, 2018