

## **New York City Department of Consumer and Worker Protection**

### **Notice of Adoption**

Notice of Adoption to add new rules that prohibit the issuance of a tobacco retail dealer license or electronic cigarette retail dealer license for use at any residential location.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Consumer and Worker Protection by sections 1043 and 2203(f) of the New York City Charter and sections 20-104, 20-202(d), and 20-561(d) of Title 20 of the Administrative Code of the City of New York, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends chapter 2 of Title 6 of the Rules of the City of New York.

This rule was proposed and published on October 4, 2021. A public hearing was held on November 5, 2021. The Department received comments from the public.

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

DCWP is adding a new section 2-14 and section 2-453 to chapter 2 of Title 6 of the Rules of the City of New York to prohibit the issuance or use of tobacco retail dealer and electronic cigarette retail dealer licenses at any residential location, including any dwelling unit. A dwelling unit, as defined by the Housing Maintenance Code, means any residential accommodation in a multiple dwelling or private dwelling. In other words, this rule prohibits a business from receiving a tobacco retail dealer license or electronic cigarette retail dealer license for use at a private residence.

Section 20-104(a) of the New York City Administrative Code grants DCWP the authority to control the granting, issuance, transfer, renewal, denial, revocation, suspension, and cancellation of all licenses issued under chapter 2 of Title 20 of the New York Administrative Code. Sections 202(d) and 20-561(d) permit the Commissioner to set additional criteria for the issuance of a license to conduct the business of a tobacco retail dealer or an electronic cigarette retail dealer. Section 20-104(b)(6) gives the Commissioner authority to, with respect to licensed activities, protect the health, safety, convenience, and welfare of the general public. DCWP is required to inspect tobacco retail dealers and electronic cigarette retail dealers, and enforce various laws and rules, including that a business not sell tobacco products or electronic cigarettes to minors and young adults (section 17-706), that the business charge certain minimum prices for tobacco products (section 17-176.1), that the business refrain from selling flavored tobacco (section 17-715), and that it conspicuously post its license (section 20-114).

DCWP has encountered businesses that have received tobacco and electronic cigarette retail dealer licenses for use at residential locations, including apartments and single-family homes. Unlike commercial establishments open to the public, at which DCWP inspectors are able to enter and conduct inspections, residential locations are inaccessible to DCWP inspectors. DCWP is thus unable to effectively enforce the important public health provisions if tobacco retail dealer and electronic cigarette retail dealer licenses are issued for use at a residential location.

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.

### **Rule Amendment**

Section 1. Section 2-14 of subchapter B of chapter 2 of title 6 of the Rules of the City of New York is added to read as follows:

**§ 2-14 Licensing of Tobacco Retail Dealers at Residential Locations.**

(a) A Tobacco Retail Dealer license will not be issued for use at any residential location, including any location considered a dwelling unit as that term is defined in the Housing Maintenance Code, Title 27, Section 27-2004 of the New York City Administrative Code.

§ 2. Section 2-453 of subchapter JJ of chapter 2 of title 6 of the Rules of the City of New York is added to read as follows:

**§ 2-453 Licensing of Electronic Cigarette Retail Dealers at Residential Locations.**

(a) An Electronic Cigarette Retail Dealer license will not be issued for use at any residential location, including any location considered a dwelling unit as that term is defined in the Housing Maintenance Code, Title 27, Section 27-2004 of the New York City Administrative Code.