

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing new rules that would prohibit the issuance of a Tobacco Retail Dealer license or Electronic Cigarette Retail Dealer license for use at any residential location.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00AM on Friday, November 5, 2021. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial (646) 558-8656
 - Meeting ID: 865 7822 1423
- To participate in the public hearing via videoconference, please follow the online link:
 - <https://us02web.zoom.us/j/86578221423?pwd=UVFXLzJuY3V3N0cwMEdCNkJhR2JCZz09>
 - Meeting ID: 865 7822 1423

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

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **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) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on Friday, November 5, 2021. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 11:00AM on Friday, November 5, 2021.

What if I need assistance to participate in the hearing? You must tell DCWP’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 may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Monday, November 1, 2021.

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 DCWP 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 to make this rule? Sections 1043 and 2203(f) of the 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 authorize the Commissioner of the Department to make this proposed rule. This proposed rule was not included in the regulatory agenda of the Department for this Fiscal Year because it was not contemplated when the Department published the agenda.

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

What rules govern the rulemaking process? DCWP 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(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rules

DCWP is proposing 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 of 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 proposed rule would prohibit a business from receiving a Tobacco Retail Dealer license or Electronic Cigarette Retail Dealer license for use at a private residence. These proposed rules would also deem any license issued for a residential location to be void and provide that the use of any such license be considered unlicensed activity.

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.

“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 Rule

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 shall 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.

(b) Any license issued in violation of subdivision (a) shall be void.

(c) The use of a license in violation of subdivision a of this section shall be considered unlicensed activity pursuant to section 20-202(a) 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 shall 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.

(b) Any license issued in violation of subdivision (a) shall be void.

(c) The use of a license in violation of subdivision a of this section shall be considered unlicensed activity pursuant to section 20-561(a) of the New York City Administrative Code.

**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: Limitations on Issuance of Tobacco Retail Dealer and Electronic Cigarette Retail Dealer Licenses

REFERENCE NUMBER: 2020 RG 051

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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: September 21, 2021

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

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

RULE TITLE: Limitations on Issuance of Tobacco Retail Dealer and Electronic Cigarette Retail Dealer Licenses

REFERENCE NUMBER: DCA-112

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

September 21, 2021
Date