



## City targets another roll-your-own spot

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Michael McGowan, the owner of Victory Smoke Shop, said, "If there was anything illegal in this thing, they wouldn't have let me open."

STATEN ISLAND, N.Y. -- It's round two of Mayor Michael Bloomberg versus the city's roll-your-own cigarette stores, with the city announcing yesterday that they've filed a lawsuit seeking to close yet another store on Staten Island.

The city Law Department filed suit yesterday against Victory Smoke Shop at 1765 Victory Blvd. in Castleton Corners, as well as another store in Manhattan, alleging that the shop evades cigarette taxes by providing its customers with loose tobacco, paper tubes, and access to a machine where they can make their own cigarettes.

Customers at Victory Smoke Shop can buy what amounts to a carton of cigarettes, or 10 packs, for roughly \$30. A store-bought pack would otherwise cost \$10 to \$14 for a pack of 20 cigarettes, after customers pay the \$1.50 city tax and \$4.35 state tax.

The federal lawsuit comes just weeks after a similar store, Island Smokes in Great Kills, signed a consent degree to shut its

business down in the face of a similar lawsuit.

"We'll keep filing suit until these stores recognize it's illegal and they stop opening," said Eric Proshansky,

the deputy chief of the law department's Affirmative Litigation Division. "Since Island Smokes, additional stores have opened, so they're not getting the message."

Proshansky said another Island roll-your-own store, New York Smokes at 1250 Hylan Blvd. in Grasmere, entered into a settlement with the city agreeing to shut down by the end of the month.

"The whole business model is illegal, and we believe that we can prove that in court," Proshansky said. "People who are thinking of getting into this business really need to think twice."

Michael McGowan, the owner of Victory Smoke Shop, said yesterday he's violating no laws in the way he's doing business.

"I sell loose tobacco, I sell tubes, and they rent the machine," he said, showing off an itemized customer's receipt. "If there was anything illegal in this thing, they wouldn't have let me open."

Still, he said, "I knew they were coming after me," stating that he got a notice from the city almost immediately after opening his doors in December.

The lawsuit alleges that a store clerk made eight finished cigarettes while showing an undercover investigator how to operate the roll-your-own machine, and that the owner "assisted the investigator by packing the tobacco in the ends of all 200 cigarettes."

McGowan said the clerk removed the cigarettes created while demonstrating the machine. As for packing the ends of the cigarettes the investigator made, he said he wouldn't admit to anything, but the investigator told him a "sob story" about not having time to pack them herself because she was late to pick up her child.

McGowan insists that he's not evading the tax law, but rather he's operating within a legal loophole, one he contends Gov. Andrew Cuomo acknowledged by announcing a plan to raise taxes on loose tobacco as part of the state budget last month.

So far, he said, he's planning to meet his lawyer, Duane Felton, to weigh his options.

The city contends that stores like Island Smokes and Victory Smoke Shop violate Federal Contraband Cigarette Trafficking Act and the New York State Cigarette Marketing Standards Act by selling cigarettes on which the required taxes have not been paid. The city also calls the stores a public nuisance, alleging that the cigarettes have not been certified as "fire-safe."

Jonathan Behrins, the lawyer for Island Smokes, said in December that the store agreed to shut down because its owners wouldn't have been able to afford a six-figure legal battle with the city.

"We do not have the money to fight City Hall," he told the Advance in December.

Proshansky said yesterday, though, that the city isn't trying to financially muscle a small business into taking a settlement.

"The city brings lots of lawsuits, and people defend them," he said. "The reason we're proceeding against them is that they're violating the law."

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