

Proposed Local Law Number 14 Of 2014

County Of Ulster

A Local Law Establishing a Tobacco Retail License and Reducing Youth Exposure to Tobacco

BE IT ENACTED, by the County Legislature of the County of Ulster, New York, as follows:

SECTION 1. TITLE.

This Local Law shall be known as the “Ulster County Tobacco Licensing and Reduced Youth Exposure to Tobacco Law.”

SECTION 2. LEGISLATIVE INTENT.

The Ulster County Legislature hereby finds and determines that Ulster County has a substantial interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use.

Tobacco companies sell products that are addictive and inherently dangerous, causing cancer, heart disease, and other serious illnesses.

An overwhelming majority of Americans who use tobacco products begin using such products while they are adolescents and become addicted before reaching the age of eighteen (18). The Surgeon General of the United States has concluded that if young people don't start using tobacco by age 26, they almost certainly will never start.

Studies have found higher rates of smoking at schools with more tobacco retailers within walking distance. Researchers suggest that limiting the proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates.

Although it is unlawful to sell tobacco products to minors, 5.9% of New York retailers surveyed do sell to minors (New York State Department of Health, 2010 Youth Access Tobacco Enforcement Program Annual report); and 20% of underage smokers in New York report that they usually purchase their cigarettes from a retail store (New York Youth Tobacco Survey 2008).

A local licensing system for tobacco retailers will provide a local enforcement mechanism to allow Ulster County to monitor and increase Tobacco Retailers' compliance with state and federal laws that prohibit sales of tobacco products to

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minors by requiring compliance with these laws as a condition for obtaining and maintaining a local Tobacco Retail License. A local licensing system for Tobacco Retailers is consistent with the County's power pursuant to General Municipal Law to protect and promote the health of its youth. Moreover, the Family Smoking Prevention and Control Act of 2009 provides local governments with the freedom to implement tobacco control policy options, including tobacco licensing and reducing the number of tobacco retailers in heavily youth populated areas.

A recent survey by the Baruch College School of Public Affairs found that 78% of Ulster County residents surveyed opposed tobacco sales at stores near schools and 61% percent favored an outright ban on the sale of tobacco products nears schools.

Therefore, it is the intent of Ulster County to reduce youth smoking rates by implementing effective measures through this Local Law to license all tobacco retail outlets, restrict the establishment of new tobacco retail outlets near schools, provide locally enforceable penalties, and increase education and awareness of the harm associated with tobacco use in youth populations.

SECTION 3. DEFINITIONS.

ADMINISTRATIVE HEARING means a hearing administered by the Ulster County Department of Health as allowed by New York Public Health Law Section 309 and according to regulations adopted by the Ulster County Department of Health.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking an Ulster County Tobacco Retail License.

DEPARTMENT means the Ulster County Department of Health.

EXISTING TOBACCO RETAILER means any Person who is lawfully engaged in the retail sale of Tobacco Products and possesses a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance on the effective enforcement date of this Article.

LEGAL AGE means the minimum age at which individuals are permitted to legally purchase tobacco products.

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NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business organization, or other legal entity.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant previously possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public or private kindergarten, elementary, middle, junior high, or high school; or a Board of Cooperative Educational Services Center.

TOBACCO PRODUCT means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products and electronic cigarette cartridges.

TOBACCO RETAIL LICENSE means a license issued by the Ulster County Department of Health to a Person engaged in the sale of Tobacco Products in Ulster County.

TOBACCO RETAILER means any Person who sells or offers for sale any Tobacco Product, or any employee of such a person.

SECTION 4. TOBACCO RETAIL LICENSE.

- (A) Effective January 1, 2016, no Person shall sell, offer for sale, or permit the sale of Tobacco Products to consumers in Ulster County, without possessing a valid Tobacco Retail License issued by the Ulster County Department of Health. A Tobacco Retail License is not required for a wholesale dealer who sells Tobacco Products to retail dealers for the purpose of resale only and does not sell any Tobacco Products directly to consumers.

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- (B) All Tobacco Retail Licenses issued pursuant to this Local Law are nontransferable and non-assignable and are valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address at which Tobacco Products are sold or offered for sale.
- (C) All Tobacco Retail Licenses issued pursuant to this Local Law are valid for no more than one (1) year and expire on the next occurring December 31st following the effective date of the Tobacco Retail License. As set forth in Section 9, a Tobacco Retail License may be revoked by the Department prior to its expiration date for cause.
- (D) No Tobacco Retail Licenses shall be issued to an Applicant who does not have a fixed, permanent retail location.
- (E) With the exception of the first year subsequent to this Local Law's effective date, no New Tobacco Retail License shall be issued to any establishment located within 1000 feet of the nearest point of the property line of a School. Renewed Tobacco Retail License(s) shall be issued to Person(s) located within 1000 feet of a School which have previously held a Tobacco Retail License. A new Applicant who purchases a business located within 1000 feet of a School may apply for a New Tobacco Retail License only if the previous owner held a valid and current Tobacco Retail License and the operations of the business are staying at the same location and within the same scope.
- (F) Existing Tobacco Retailers shall submit applications for a New Tobacco Retail License to the Department in writing upon a form provided by the Department at least thirty (30) days prior to January 1, 2016. Thereafter, all applications for a Renewed Tobacco Retail License shall be submitted to the Department in writing upon a form provided by the Department at least thirty (30) days prior to the expiration of the current Tobacco Retail License.
- (G) Tobacco Retailers not in existence prior to January 1, 2016 shall submit an application for a New Tobacco Retail License at least thirty (30) days prior to opening and may not sell tobacco products until such a license is issued.

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- (H) The Department may require all forms and the documentation therefor to be signed and/or verified by the Applicant or an authorized agent thereof.
- (I) Within thirty (30) days of receiving a completed application and supporting documentation, if any, the Commissioner must either grant or deny the applicant's request for a Tobacco Retail License and must notify the applicant of his or her determination. If the applicant is an Existing Tobacco Retailer, the retailer may continue to engage in the sale of Tobacco Products until such time as a determination is made by the Commissioner and the retailer receives notification of such determination. If the applicant is applying for a New Tobacco Retail License and was not in existence prior to January 1, 2016, the applicant may not begin selling Tobacco Products until he or she receives notification of the Commissioner's determination.

SECTION 5. NOTICE.

- (A) The Commissioner shall, at least forty-five (45) days prior to the effective date of this Local Law, send to each Existing Tobacco Retailer in Ulster County a Tobacco Retail License application and a copy of this Local Law. The Commissioner shall, as part of the application process, identify and notify any Existing Tobacco Retailer in Ulster County that is located within 1000 feet from the nearest point of the property line of a School.
- (B) Any Existing Tobacco Retailer identified as being located within 1000 feet of the nearest point of the property line of a School, may dispute such designation. Any such dispute must be made in writing to the Commissioner within fifteen (15) days of receipt of the notice provided for in Section 5(A) above and include any and all evidence the retailer relies on to support its claim that its business is not located within 1000 feet of the nearest point of the property line of a School. The Commissioner shall consider such evidence as part of the application. The Commissioner shall have final authority to determine whether the retailer is located within 1000 feet of a School.

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SECTION 6. ISSUANCE OF LICENSES.

- (A) Upon the receipt of a fully completed application for a New or Renewed Tobacco Retail License, and any additional documents as may be required by the Department, the Department shall inspect the location at which tobacco sales are to be permitted. The Department may also require the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.
- (B) The Department may refuse to issue a Tobacco Retail License to an Applicant if it finds that one or more of the following bases for denial exists:
 - (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
 - (2) The Applicant does not possess a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance;
 - (3) The application seeks a New Tobacco Retail License at a location for which this Local Law prohibits the issuance of a New Tobacco Retail License;
 - (4) A Tobacco Retail License issued under this Local Law was previously revoked;
 - (5) The Applicant has been found by a court of law or administrative body to have violated any federal, state, or local laws pertaining to (a) trafficking in contraband Tobacco Products, (b) the payment or collection of taxes on Tobacco Products, (c) the display of Tobacco Products, or (d) the sale of Tobacco Products;
 - (6) The Applicant has not paid to the Department outstanding fees, fines, penalties, or other charges owed to Ulster County; or

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- (7) The Department determines in accordance with written criteria established by the Department to further the purposes of this Local Law, that a Tobacco Retail License should not be issued to the Applicant.

SECTION 7. TRAINING AND EDUCATION

The Department shall create appropriate training materials and programs that shall be made available to any Existing Tobacco Retailer.

SECTION 8. DISPLAY OF LICENSE REQUIRED.

- (A) Any Tobacco Retail License issued pursuant to this Local Law shall be displayed prominently at the location where the Tobacco Products are sold so that it is readily visible to customers.
- (B) Selling, offering for sale, or permitting the sale of any Tobacco Product without a valid Tobacco Retail License displayed in accordance with Section 8(A) constitutes a violation of this Local Law.

SECTION 9. SUSPENSION AND REVOCATION OF LICENSES.

- (A) Any Existing Tobacco Retailer who is found to be in violation of the terms and conditions of this Local Law or for violation of any federal, state, or local law pertaining to (a) the display of Tobacco Products or of health warnings pertaining to Tobacco Products, or (b) the sale of Tobacco Products, shall have their Tobacco Retail License suspended for up to three (3) months for a first offense; up to six (6) months for a second offense within a two (2) year period; or revoked for a third offense within a two (2) year period, after notice and an opportunity to be heard at an Administrative Hearing. Any such violator may also be required to complete a training program designated by the Department prior to reinstatement of such license.

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SECTION 10. VIOLATIONS AND ENFORCEMENT.

- (A) The Department or its authorized designee(s) shall enforce this Local Law's provisions. The Department may conduct periodic inspections in order to ensure compliance with this Local law.
- (B) In addition to the penalties provided for in Section 9, any Person found to be in violation of this Local Law, after notice and an opportunity to be heard at an Administrative Hearing, shall be liable for a civil penalty of not more than \$250 for the first violation, not more than \$500 for the second violation within a two (2) year period, and not more than \$1,000 for the third and each subsequent violation within a two (2) year period.

SECTION 11. ADMINISTRATION.

- (A) The Commissioner of the Ulster County Health Department, in consultation with the Ulster County Board of Health, is hereby authorized to develop rules, regulations, and procedures necessary to implement this Local Law.
- (B) The Commissioner shall have the authority to waive the distance requirement of Section 4(E) for any new Applicant who did not previously possess a valid Tobacco Retail License, only if it can be shown by clear and convincing evidence by the Applicant that a waiver of such distance requirement will not compromise the aforestated purpose and the general intent of this Local Law.

SECTION 12. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section, or part of this regulation or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this regulation, or its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order of judgment shall be rendered.

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SECTION 13. EFFECTIVE DATE.

The effective date of this Local Law shall be on January 1, 2016.