

LOCAL LAW NO. "D" FOR 2015

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, THE KIDS TOBACCO USE PREVENTION AND TOBACCO RETAIL LICENSING ACT

Introduced: 4/13/15

By Mr. Nichols:

BE IT ENACTED, by the Albany County Legislature as follows:

SECTION 1. Title

This Local Law shall be referred to as "A Local Law entitled 'Tobacco Retail License' of the County of Albany".

SECTION 2. Purpose and Intent

Tobacco use is the foremost preventable cause of premature death in the United States, and according to the 2014 Surgeon General Report, causes over 480,000 deaths in the United States each year. Tobacco companies sell products that are addictive and inherently dangerous, causing cancer, heart disease, and other serious illnesses.

The County of Albany 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.

An overwhelming majority of Americans who use tobacco products begin using such products while they are adolescents and become addicted to those products before reaching the age of 18 and the 2014 Surgeon General Report states that more than 3,200 young people under the age of 19 smoke their first cigarette each day in the United States.

The prevention of adolescent tobacco product use is detailed in Article 13-F of the New York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act (ATUPA) which expressly prohibits the sale of tobacco products to minors, and

Research has found that higher tobacco retail outlet density is significantly associated with higher rates of youth smoking initiation and experimentation and that a high concentration of tobacco outlets near schools provides our most vulnerable populations with ready access to tobacco and increases their exposure to tobacco retail marketing, which may increase their uptake of tobacco usage and creates an environment that promotes the social acceptability of tobacco use. Studies have found a higher prevalence of current smoking at schools with more tobacco outlets within walking distance, and researchers suggest that limiting the

proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates.

Licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors. The County of Albany has a substantial and important interest in reducing the illegal sale of tobacco products to minors. Restricting the number and the location of tobacco retailers and the associated marketing of tobacco products within those retail stores in the County is necessary to protect the public health, safety, and welfare of our youth.

A local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of our residents, particularly children, and will help ensure that retailers comply with the ATUPA, other tobacco control laws, and the business standards of the County of Albany.

It is the intent of the County of Albany of to implement effective measures through this Local Law to reduce the number of its tobacco retail outlets, regulate the location of its tobacco retail outlets, stop the sale of tobacco products to its youth, prevent the sale or distribution of contraband tobacco products in the County of Albany, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

SECTION 3 - Definitions.

As used in this Local Law, the following terms shall have the meanings indicated:

Administrative Hearing means a hearing by the County Attorney or his designee.

Adult-Only Establishment means a facility where the operator ensures or has a reasonable basis to believe (such as checking identification of any person appearing to be under the age of 26) that no person under the Legal Age is permitted entrance.

Age-Verified Customer means any individual who has presented a driver's license or other photographic identification card issued by a government entity or educational institution indicating that the individual is of Legal Age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided however that such appearance shall constitute a defense in any proceeding alleging a violation of this Law. It shall be an affirmative defense to a violation of this Law that the Tobacco Retailer successfully performed a Transaction Scan of an individual's identification as defined by New York Public Health Law Section 1399-cc and that a Tobacco Product or Tobacco-Related Product was provided to such individual in reasonable reliance upon such identification and transaction scan.

Applicant means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

County Clerk means the Albany County Clerk or Deputy County Clerk.

Legal Age means the minimum age at which individuals are permitted to legally purchase tobacco products or tobacco-related products.

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.

Health Department means the County of Albany Health Department.

Renewed Tobacco Retail License means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous year.

School means a public or private pre-kindergarten, kindergarten, elementary, middle, junior high or high school or alternative school.

Tobacco Product Or Tobacco-Related 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, shisha, powdered and/or dissolvable tobacco products, liquid nicotine and electronic cigarette cartridges, whether packaged or not; any packaging that indicates it might contain any substance containing tobacco or nicotine; or any object utilized for the purpose of smoking or inhaling tobacco or nicotine products. However, "Tobacco Product" or "Tobacco-Related Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

Tobacco Retailer means any Person who sells or offers for sale any Tobacco Product or Tobacco-Related Product or any employee of such a Person.

Tobacco Retail License means a license issued by the Department to a Person to engage in the retail sale of Tobacco Products or Tobacco-Related Products in the County of Albany.

SECTION 4. Tobacco Retail License

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

B. All Tobacco Retail Licenses issued pursuant to this Section 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 and Tobacco-Related Products are sold or offered for sale. Any change in business ownership or business address requires a new Tobacco Retail License.

C. All Tobacco Retail Licenses issued pursuant to this Section are valid for no more than one year and expire on January 1 following the effective date of the Tobacco Retail License. As set forth in Section 10, a Tobacco Retail License may be revoked by the Sheriff's Department prior to its expiration date for cause.

D. Applications for a New Tobacco Retail License shall be made on a form specified by the County Clerk, at least 30 days prior to February 1, 2015. The County Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

E. Applications for a Renewed Tobacco Retail License shall be made on a form specified by the County Clerk at least 30 days prior to the expiration of the current license. The County Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

F. Applications for a new or renewed Tobacco Retail License shall be accompanied by the fee set forth in Section 9.

G. The issuance of any Tobacco Retail License pursuant to this Local Law is done in the discretion of the County of Albany and shall not confer upon licensee any property rights in the continued possession of such a license.

SECTION 5. Issuance of Licenses

A. Upon the receipt of a completed application for a New or Renewed Tobacco Retail License and the fee required by Section 9, the Sheriff's Department shall inspect the location at which tobacco sales are to be permitted. The Sheriff's Department also may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

B. No Tobacco Retail License shall be issued by the County Clerk to an Applicant if 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 fee for the application has not been paid as required;

(3) 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 at the location for which an application is requested;

- (4) The Applicant seeks a New Tobacco Retail License at a location for which this Law prohibits the issuance of a New Tobacco Retail License;
- (5) The Applicant has previously had a Tobacco Retail License issued under this Law revoked;
- (6) A Tobacco Retail License issued under this Law for the same address or location previously has been revoked;
- (7) 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 or illegal drugs; (b) the payment or collection of taxes on Tobacco Products; (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Products; or (d) the sale of Tobacco Products;
- (8) The Applicant is not in compliance with all applicable New York State Uniform Building Code, Fire Prevention Code, Property Maintenance Code, Electrical Code and Plumbing Code and the Code of Ordinances of the County of Albany; and
- (9) The Applicant has not paid to the County of Albany outstanding fees, fines, penalties, or other charges owed to the County of Albany.

SECTION 6. Limitation on Number of Licenses Issued

- A. In the first year subsequent to the effective date of this Law, a Tobacco Retail License shall only be issued to an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this Law.
- B. Except for the first year subsequent to the effective date of this Law, the total number of New and Renewed Tobacco Retail Licenses issued by the County Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.
- C. Starting on January 1, 2016, the County Clerk shall issue only one New Tobacco Retail License for every two Tobacco Retail Licenses that were revoked during the previous year or for which no renewal application was submitted.
- D. Whenever the number of valid applications for a New Tobacco Retail License exceeds the number of New Tobacco Retail Licenses that may be issued under this Section, licenses shall be granted using the following priorities:
 - (1) New Tobacco Retail Licenses shall be granted, first, to any Applicant who will sell Tobacco Products or Tobacco-Related Products at an Adult-Only Facility.
 - (2) New Tobacco Retail Licenses shall be granted, second, to any Applicant that was

not granted a license in the first year after the effective date of this Law because of an ineligible location for an establishment at different eligible location. If there are more valid applications from such Applicants for New Tobacco Retail Licenses than the number of available New Tobacco Retail Licenses, the New Tobacco Retail Licenses shall be granted to those Applicants by lottery.

(3) Any remaining available New Tobacco Retail Licenses shall be granted to eligible Applicants by lottery.

SECTION 7. Certain Locations

A. No Tobacco Retail License shall be issued to any seller of tobacco products or tobacco-related products that is not in a fixed, permanent location.

B. No Tobacco Retail License shall be issued to any establishment within 1,500 feet of the nearest point of the property line of a School.

SECTION 8. Required License Display

A. Any Tobacco Retail License issued pursuant to this Local Law shall be displayed prominently at the location where the Tobacco Products or Tobacco-Related Products are sold so that it is readily visible to customers.

B. Selling, offering for sale, or permitting the sale of any Tobacco Product or Tobacco-Related Product without a valid Tobacco Retail License displayed in accordance with Section 7(A) constitutes a violation of this Local Law.

SECTION 9. Required Fee

A. Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set forth.

B. Starting two years after the effective date of this Law, the County Legislature may, on an annual basis, modify the fee required pursuant to Section 9(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Law, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Law. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

SECTION 10. Revocation or Suspension of Licenses

Any Person 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 or regulation pertaining to (a) the display of Tobacco Products or Tobacco-Related Products or of health warnings

pertaining to Tobacco Products or Tobacco-Related Products, or (b) the sale of Tobacco Products or Tobacco-Related Products shall have their County of Albany suspended for up to 3 months for a first offense, 6 months for a second offense, or revoked for a third offense, after notice and an opportunity to be heard at an administrative hearing before the County Attorney.

SECTION 11. Violations and Enforcement

A. The County Department of Health shall enforce the provisions of this Local Law. The Sheriff's Department may conduct periodic inspections in order to ensure compliance with this Local Law.

B. In addition to the penalties provided for in Section 10, any Person found to be in violation of this Local Law shall be guilty, upon conviction, of an offense punishable by a fine of not less than \$500.00 for the first violation; not more than \$1,000 for a second violation; and not more than \$2,000.00 for the third and each subsequent violation within a two-year period or by imprisonment for a period not exceeding 1 year, or by both such fine and imprisonment. Each day on which a violation occurs shall be considered a separate and distinct violation.

SECTION 12. Severability

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Local Law is held to be invalid, such invalidity shall not affect the other provisions of this Local Law that can be given effect without the invalidated provision.

SECTION 13. State Environmental Quality Review Act compliance

This County Legislature determines that the adoption of this Local Law constitutes a "Type II action" as said term is defined in the State Environmental Quality Review Act ("SEQRA"), and that no further action with respect to same is required under SEQRA.

SECTION 14. Effective Date

This Local Law shall be effective on January 1, 2016 and upon the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

Referred to Health Committee. 4/13/15