

Proposed Local Law Number 14 Of 2014

County Of Ulster

A Local Law Establishing a Tobacco Retail License and Designated Tobacco Free School Zones

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 Free School Zone 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).

Ulster County has a substantial and important interest in reducing the illegal sale of tobacco products to minors.

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 help ensure that retailers comply with the Adolescent Tobacco Use Prevention Act.

Therefore, it is the intent of Ulster County to implement effective measures through this Local Law to license all tobacco retail outlets and reduce youth smoking rates.

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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.

DESIGNATED TOBACCO-FREE SCHOOL ZONE means any area within a 1,000 foot radius of a school, as defined on a map provided by the Department.

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.

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 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.

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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.

(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. However, a valid and current Tobacco Retail License may be transferred from an existing Applicant who owns a business with a valid Tobacco Retail License to a new Applicant who purchases this business, when operations of the business are staying at the same location and within the same scope.

(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 6, a Tobacco Retail License may be revoked by the Department prior to its expiration date for cause.

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(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 in a Designated Tobacco-Free School Zone. Renewed Tobacco Retail License(s) shall be issued to Person(s) in a Designated Tobacco-Free School Zone which have previously held a Tobacco Retail License.

(F) Applications for a New 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 January 1, 2016. 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. The Department may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

SECTION 5. ISSUANCE OF LICENSES.

(A) Upon the receipt of a fully completed application for a New or Renewed Tobacco Retail License, and any additional documents or fees, if any, 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 fee, if any, 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;
- (4) 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;

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(5) The Applicant has previously had a Tobacco Retail License issued under this Local Law revoked;

(6) 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;

(7) The Applicant has not paid to the Department outstanding fees, fines, penalties, or other charges owed to Ulster County; or

(8) The Department determines in accordance with written criteria established by the Department to further the purposes of this Local Law, that the Applicant is not otherwise fit to hold a Tobacco Retail License.

SECTION 6. TRAINING AND EDUCATION

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

SECTION 7. 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 7(A) constitutes a violation of this Local Law.

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SECTION 8. SUSPENSION AND REVOCATION OF LICENSES.

Any Existing Tobacco Retailer who is not situated in a Designated Tobacco School Free Zone, who is found to be in violation of the terms and conditions of this Local Law, after notice and an opportunity to be heard at an Administrative Hearing, 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 six (6) months for a third offense within two (2) years and shall be required to complete a training program designated by the Department prior to reinstatement of such license.

Any Existing Tobacco Retailer who is situated in a Designated Tobacco Free School Zone, who is found to be in violation of the terms and conditions of this Local Law, after notice and an opportunity to be heard at an Administrative Hearing, 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, within two years of a previous finding of such violation, shall have their Tobacco Retail License revoked.

SECTION 9. 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) 1) In addition to the penalties provided for in Section 8, any Person found to be in violation of this Local Law, after notice and an opportunity to be heard at an Administrative Hearing, and who is not situated in a Designated Tobacco Free School Zone, 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.

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2) In addition to the penalties provided for in Section 8, any Person found to be in violation of this Local Law, after notice and an opportunity to be heard at an Administrative Hearing, and who is situated in a Designated Tobacco Free School Zone, shall be required to complete a training program designated by the Department and shall be liable for a civil penalty of not more than \$500 for the first violation, not more than \$1000 for the second violation within a two (2) year period.

SECTION 10. ADMINISTRATION.

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.

SECTION 11. 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.

SECTION 12. EFFECTIVE DATE.

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