

Proposed Local Law Number 7 Of 2018

County Of Ulster

A Local Law To Reduce Addiction To Tobacco Products By Raising The Minimum Age For Their Purchase To 21

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

SECTION 1. LEGISLATIVE FINDINGS AND INTENT.

The Ulster County Legislature hereby finds and determines that Ulster County has a substantial interest in preventing children and adolescents from becoming addicted adult smokers, and in avoiding the associated serious health consequences and healthcare costs, by increasing the minimum age for the purchase of tobacco products from eighteen (18) to twenty-one (21).

In pursuing this Local Law, the Ulster County Legislature is responding to findings by the Institute of Medicine that:

- A) Adolescent brains are uniquely vulnerable to the effects of nicotine;
- B) A younger age of initiation is strongly associated with greater nicotine dependence and is also associated with greater intensity and persistence of smoking beyond adolescence and into adulthood;
- C) Almost one in five high school seniors is a current cigarette smoker;
- D) Underage users rely primarily on social sources to acquire tobacco and most of those sources are likely to be between eighteen (18) and twenty-one (21) years old;
- E) Raising the minimum legal age to twenty-one (21) will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students;
- F) Raising the minimum legal age will likely immediately improve the health of adolescents and young adults by reducing the number of those with adverse physiological effects.

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SECTION 2. DEFINITIONS.

TOBACCO PRODUCT means any product made or derived from tobacco, or which contains nicotine marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco products include, but are not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products and electronic cigarette cartridges. If the names of any product, either made or derived from tobacco, changes or deviates from those listed above, they shall continue to be included in this definition and are subject to the restrictions of this Local Law.

HERBAL CIGARETTE means any cigarette like product not containing tobacco, but designed to simulate traditional cigarette smoking through the burning of various herbs.

SMOKING PARAPHERNALIA means any pipe, water pipe, hookah, rolling papers, electronic aerosol delivery system or any other device, equipment or apparatus designed for the consumption or inhalation of tobacco products.

TOBACCO PRODUCT RETAILER means any person who sells or offers for sale any tobacco product, or any employee of such a person.

ENFORCEMENT OFFICER means any police officer, county health inspector or other employee of the County of Ulster authorized to enforce this Local Law.

SECTION 3. PROHIBITED ACTS.

A) No person shall sell or permit the sale of tobacco products, herbal cigarettes, or smoking paraphernalia to any person under the age of twenty-one (21), anywhere in Ulster County, New York.

B) A tobacco product retailer shall require an individual purchasing tobacco products to demonstrate his or her age, through (a) a valid driver's license or non-driver's identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of

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the dominion of Canada, or (b) a valid passport issued by the United States government or any other country. Such identification need not be required of any individual who reasonably appears to be at least thirty (30) years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes to an individual under twenty-one (21) years of age.

SECTION 4. POSTING OF SIGNS.

A) No person shall sell or permit the sale of tobacco products, herbal cigarettes, or smoking paraphernalia in Ulster County, New York, unless a notice is posted in a conspicuous place at the location where such age restricted products and items are sold.

B) The sign shall provide notice, which shall state: "SALE OF CIGARETTES, CIGARS, PIPE TOBACCO, SNUFF, CHEWING TOBACCO, DIPPING TOBACCO, BIDIS, SNUS, DISSOLVABLE TOBACCO PRODUCTS, ELECTRONIC CIGARETTE CARTRIDGES, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, AND SMOKING PARAPHERNALIA TO PERSONS UNDER 21 YEARS OF AGE IS PROHIBITED BY LOCAL LAW."

C) Such sign shall be printed on a white card in red letters at least ½ inch in height. Signs shall be protected from tapering, damage, removal, or concealment.

SECTION 5. TRAINING AND EDUCATION.

The Ulster County Department of Health shall create appropriate training materials and programs that shall be made available to any existing tobacco retailer.

SECTION 6. ENFORCEMENT.

A) The enforcement officer is charged with ensuring compliance with this Local Law.

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B) The enforcement officer shall be authorized to serve official notices of violation of this Local Law.

C) For violations of this Local Law:

(1) The enforcement officer may issue and serve upon the person complained against written hearing notice, together with the complaint, Service of such notice shall be deemed complete upon personal delivery or, if delivered by certified first class mail, after five (5) days;

(2) The complaint shall specify the provision(s) of this Local Law of which such person is alleged to have violated and shall require the person so complained against to answer the charges of such complaint at a public hearing before the Ulster County Commissioner of Health or the Public Health Director, or his or her designee at a specified location, date, and time;

(3) Notwithstanding the above, the Ulster County Commissioner of Health or the Public Health Director or his or her designee may, in his or her discretion, offer a proposed stipulation to the person complained against, in which case the person complained against will have the option of executing the proposed stipulation within the time frame specified, or proceeding with a formal hearing;

(4) When the Ulster County Commissioner of Health or the Public Health Director or his or her designee determines, after a hearing, that a violation of this Local Law has occurred, a civil penalty may be imposed by the hearing officer;

(5) Nothing contained herein shall be construed as prohibiting the County Attorney or his or her designee from commencing a proceeding for injunctive relief to compel compliance with this Local Law;

(6) Any person who desires to register a complaint under this Local Law may do so through the enforcement officer;

(7) The decision of the Ulster County Commissioner of Health or the Public Health Director or his or her designee shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules; and

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(8) The County Attorney or his or her designee, subsequent to any appeal having been finally determined, may bring an action in a court of law of proper jurisdiction to recover the civil penalty in accordance with Section 7 of this Local Law.

D) The Ulster County Department of Health shall conduct random spot checks to determine compliance with this Local Law. Such spot checks shall cover at least one fourth of the Tobacco Product Retailers in Ulster County each year.

E) On or before March 1 of every year, the Ulster County Commissioner of Health or the Public Health Director shall make a report to the Ulster County Legislature and the County Executive providing the number of violations served pursuant to this Local Law in the immediately preceding calendar year, the dispositions, and any other pertinent information.

SECTION 7. PENALTIES FOR OFFENSES.

A) Any person who violates any provision of this article shall be subject to the imposition of a civil penalty by the Ulster County Commissioner of Health or the Public Health Director of a minimum of \$300.00, but not to exceed \$1,000.00 for a first violation, and a minimum of \$500.00, but not to exceed \$1,500.00 for each subsequent violation.

B) For purposes of enforcing the ban on the sale of tobacco products, herbal cigarettes, and smoking paraphernalia to minors, other than by vending machine, a sale shall be made only to an individual who demonstrates that he/she is at least twenty-one (21) years of age and has demonstrated such in accordance with the guidelines set forth hereinabove. Such identification shall not be required of any individual who reasonably appears to be at least thirty (30) years of age; provided

however, that such appearance shall not be a defense in any action alleging the sale to an individual under twenty-one (21) years of age.

C) Violations of this Local Law shall be separate from and, where applicable, in addition to a violation of the New York State Adolescent Tobacco Use Prevention Act (ATUPA).

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SECTION 8. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section, or part of this Local Law 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 affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Local Law, 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 9. EFFECTIVE DATE.

This Local Law shall take effect January 1, 2019.