

LOCAL LAW NO. P FOR 2024

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK AMENDING CHAPTER 242 OF THE ALBANY COUNTY CODE TO PROVIDE A LOCAL LICENSING SYSTEM FOR TOBACCO AND RELATED PRODUCTS

Introduced: 9/9/24

By: Cunningham, Willingham, McLean Lane, McLaughlin, Miller

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

SECTION I. Article Creation.

Chapter 242, Article VI, Tobacco Retail Licensing, is hereby created

SECTION II. Title

This law shall be known as the “Quit Using Inhalants & Tobacco (QUIT Act).

SECTION III. § 242-32 Legislative Intent and Purpose

In accordance with New York State Public Health Law § 1399-ii, the County of Albany intends to limit the concentration of smoke shops and tobacco retailers within the County. The regulations herein are intended to further the goals of New York State's tobacco use prevention and control program, due to the known adverse impacts of tobacco and nicotine use. In furtherance of the state's goals, the County finds that:

- a. Smoke shop and tobacco retailer density is associated with higher rates of tobacco use in both youth and adult populations; and
- b. Adolescent brains are vulnerable to the effects of nicotine and to nicotine dependency; and
- c. Tobacco use leads to preventable death and disease in New York State; and
- d. 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, and
- e. The restriction of increasing smoke shop and tobacco retailer density will reduce the availability of nicotine products to residents, and in particular young residents, thus reducing risk to the public's health, safety, and wellbeing.

SECTION IV. § 242-33 Authority

This article is enacted by the Albany County Legislature pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law § 10.

SECTION V. § 242-34 Definitions

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

Accessory: as defined in Chapter 242 §242-20.

Component or Part: as defined in Chapter 242 §242-20.

Constituent: An ingredient, substance, chemical, or compound, other than tobacco, water, reconstituted tobacco sheet, or propylene glycol or vegetable glycerin that is added by the manufacturer to a covered product during the processing, manufacture, or packing of the covered product.

Covered Product: A tobacco product, electronic aerosol delivery system, or another or product regulated by Article 13-F of the Public Health Law.

Department: as defined in Chapter 242 §242-20.

Commissioner: as defined in Chapter 242 §242-20.

Electronic Aerosol Delivery System: as defined in Chapter 242 §242-20.

New Tobacco Retail License: a tobacco retail license that is not a renewed tobacco retail license.

Person: as defined in Chapter 242 §242-3

Renewed Tobacco Retail License: 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 12 months.

Sell: Shall mean to sell, exchange, give or dispose of to another or offer to or agree to do the same.

School: A public or independent kindergarten, elementary, middle, junior high, or high school.

Tobacco Product: as defined in Chapter 242 §242-20

Tobacco Retailer: A retailer licensed pursuant to this chapter.

Tobacco Retail License: A license issued pursuant to Chapter 242 §242-35 by the Department to a person to engage in the retail sale in the County of Albany of a covered product.

SECTION VI. §242-35 Tobacco Retail License Required.

- a. No person shall sell, offer for sale, or permit the sale of a covered product by retail within the County of Albany without a valid tobacco retail license. A tobacco retail license is not required for a wholesale dealer who sells products to retail dealers for the purpose of resale only and does not sell a covered product directly to consumers.
- b. Notwithstanding the requirements set forth in Subsection A, this chapter shall not apply to registered organizations pursuant to § 3364 of the Public Health Law.
- c. A tobacco retail license issued pursuant to this chapter is nontransferable and non-assignable and 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 where a covered product is sold or offered for sale. A change in business ownership or business address requires a new tobacco retail license.

SECTION VII. §242-36 License Application and Application Fee

- a. An application for a new tobacco retail license or a renewed tobacco retail license shall be submitted to the Department in writing upon a form provided by the Department and shall contain information as required by the Department. The Department may require the forms to be signed and verified by the applicant or an authorized agent thereof.
- b. Each application for a tobacco retail license shall be accompanied by a non-refundable application fee of \$240.
- c. Upon the receipt of a completed application for a tobacco retail license and the application fee required by Subsection B, the Department may inspect the location at which sales of a covered product are to be permitted. The Department may ask the applicant to provide additional information that is reasonably related to the determination of whether a tobacco retail license may issue.

SECTION VIII. §242-37 Issuance of Licenses

- a. No tobacco retail license shall be issued to a seller of a covered product that is not in a fixed, permanent location.

- b. The issuance of a tobacco retail license pursuant to this chapter is done in the Department's discretion and shall not confer upon licensee any property rights in the continued possession of the license.
- c. The Department shall collect from the applicant the tobacco retail license fee prescribed by §242-36(b); §242-38(b) prior to issuing a tobacco retail license.
- d. 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 for the application has not been paid as required;
 - 3. The applicant does not possess a valid certificate of registration required by state or federal law for the sale of a covered product;
 - 4. The Department has previously revoked a tobacco retail license issued under this chapter to the applicant;
 - 5. The Department has previously revoked a tobacco retail license issued under this chapter for the same address or location;
 - 6. The applicant has been found by a court of law or administrative body to have violated a federal, state, or local law pertaining to:
 - i. Trafficking in contraband tobacco products or illegal drugs;
 - ii. The payment or collection of taxes on a covered product
 - iii. The display of a covered product or of health warnings pertaining to a covered product; or
 - iv. The sale of a covered product.
 - 7. The applicant has not paid to the Count of Albany outstanding fees, fines, penalties, or other charges owed to the Count of Albany, including the fee for the tobacco retail license required by §242-36(b); §242-389(b)§ 114-7; or
 - 8. The Department determines, in accordance with written criteria established to further the purposes of this chapter, that the applicant is otherwise not fit to hold a tobacco retail license.

SECTION IX. §242-38 License Term and Annual Fee

- a. A tobacco retail license issued pursuant to this chapter shall be valid for no more than one year and shall expire on December 31. As set forth in § 114-12 revocation of licenses, a tobacco retail license may be revoked for cause by the Department prior to its expiration.
- b. The tobacco retailer shall pay an annual tobacco retail license fee of \$240.
- c. The Director may discount the tobacco retail license fee required by §242-36(b); §242-38(b) for an application received within six months of the expiration date.

SECTION X: §242-39 Display of License

- a. A tobacco retail license issued pursuant to this chapter shall be conspicuously displayed at the location where a covered product is sold so that it is readily visible to customers.
- b. Selling, offering for sale, or permitting the sale of a covered product without a valid tobacco retail license displayed in accordance with Subsection (a) constitutes a violation of this chapter.

SECTION XI: §242-40 Number of Licenses Issued

- a. For the first year after the effective date of this chapter, the Department shall accept an application for a tobacco retail license only from an applicant for the same location at which the applicant possessed a valid certificate of registration as a tobacco retail dealer or electronic aerosol delivery system (vapor) products dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this chapter.
- b. Beginning one year after the effective date of this chapter, the Department shall issue a renewed tobacco retail license to eligible applicants.
- c. Thereafter, the Department shall issue only one new tobacco retail license for every two tobacco retail licenses that are not renewed, until a floor of one hundred fifty (150) is reached. Thereafter, the Department shall evaluate the effect of this local law on reducing tobacco usage by reducing the density of tobacco retailers.
- d. Whenever the number of valid applications for a new tobacco retail license exceeds the maximum number of new tobacco retail licenses that may be issued pursuant to this section, the Department shall grant new tobacco retail licenses using the following priorities:
 - 1. A new tobacco retail license shall be granted, first, to an applicant for an establishment whose property line is located 1,000 feet or more from the nearest point of the property line of a school who holds but does not seek to renew a valid tobacco retail license for an establishment whose property line is within 1,000 feet of the nearest point of the property line of a school. If there are more valid applications from these applicants than the number of available new tobacco retail licenses, the new tobacco retail license(s) shall be granted to these applicants by lottery;
 - 2. A new tobacco retail license shall be granted, second, to an applicant whose property line is located 1,000 feet or more from the nearest point of the property line of a school. If there are more valid applications from these applicants than the number of available new tobacco retail licenses, the new tobacco retail license(s) shall be granted to these applicants by lottery;
 - 3. A new tobacco retail license shall be granted, third, to an applicant who will sell a covered product at an establishment where the operator restricts entry to persons 21 years and older. If there are more valid applications from these applicants than the number of available new

tobacco retail licenses, the new tobacco retail license(s) shall be granted to these applicants by lottery;

4. Any remaining new tobacco retail licenses shall be granted to applicants by lottery.

SECTION XII: §242-41 Sales of Electronic Aerosol Delivery Systems

No tobacco retailer whose property line is located within 1,000 feet of the nearest point of the property line of a school shall distribute without charge, sell, offer for sale, or possess with intent to sell an electronic aerosol delivery system, commonly known as vapor products or electronic cigarettes.

SECTION XIII: §242-42 Violation and Penalties; Enforcement

- a. The Department or its authorized designee(s) shall enforce the provisions of this chapter. The Department may conduct periodic inspections to ensure compliance with this chapter.
- b. In addition to the penalties provided for in § 114-12, a person found to be in violation of this chapter shall be liable for a civil penalty of not more than \$500 for the first violation, not more than \$750 for the second violation within a two-year period, and not more than \$1,000 for the third and each subsequent violation within a two-year period, or as determined by the Director. Each day on which a violation occurs shall be considered a separate and distinct violation.

SECTION XIV. § 242-43 Revocation of Licenses

- a. The Department may suspend or revoke a tobacco retail license issued pursuant to this chapter for violations of the terms and conditions of this chapter or for violation of a federal, state, or local law or regulation pertaining to:
 1. Trafficking a contraband covered product or illegal drug;
 2. The payment or collection of taxes on a covered product;
 3. The display of a covered product or of health warnings pertaining to a covered product; or
 4. The sale of a covered product.
- b. The Department may revoke a tobacco retail license if the Department finds that one or more of the bases for denial of a license under §242-37 existed at the time application was made or at any time before the license issued.

SECTION XV. §242-44 Rules and Regulations

The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this chapter.

SECTION XVI. Severability

If any part or provision of this local law, or the application thereof to any individual or circumstance, is held invalid, the remainder of the local law shall not be affected thereby and shall continue in force and effect.

SECTION XVII. Effective Date

This Local Law shall take effect on January 1, 2025 and its filing with the Secretary of State as required by §27 of the New York State Municipal Home Rule Law.

Referred to Law and Health Committees – 9/9/24