

MEETING NOTICE
City of Ithaca
Planning & Economic Development Committee

Wednesday, December 12, 2012 – 6:00 p.m.
Common Council Chambers, City Hall, 108 East Green Street

A. Agenda Review

B. Special Order of Business

1. **Presentation: A Proposed Preservation Plan for Ithaca** (6:00 pm)
2. **Cornell CIPA Study of Collegetown Parking Study** (6:15 pm)
(Executive Summary)

C. Public Comment and Response from Committee Members (6:35 pm)

D. Announcements, Updates and Reports (6:45 pm)

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| 1. Intermunicipal Planning Coordination | 5. Energy Action Plan |
| 2. Dredging / Hydrilla | 6. Collegetown Zoning |
| 3. Emerson | 7. Minimum Parking Requirements |
| 4. Commons | |

E. Action Items

1. **Support for Intermunicipal (with Town of Ithaca) Development Focus Area Matching Fund application** (6:55 pm)
("Zoning Code Re-Vision for City/Town of Ithaca," agreement and materials)

F. Discussion Items

1. **Downtown Density – Zoning Change** (7:00 pm)
(concept memo, map, ordinance establishing CBD-T)
2. **Noise Ordinance** (7:15 pm)
(concept memo, sample ordinances/codes)
3. **Tobacco Legislation** (7:25 pm)
(overview, model ordinance)
4. **Divestiture of City-Owned Lands** (7:35 pm)
(concept memo, maps)
5. **Agenda Planning – potential upcoming items** (7:45 pm)
2013 department and committee workplans, industrial/PUD (planned unit development), landmarks ordinance changes, public art approval process.

G. Approval of Minutes

H. Adjournment (8:15 pm)

Direct questions about the agenda to Jennifer Dotson, Chairperson, (jdotson@cityofithaca.org or 351-5458) or the appropriate staff person at the Department of Planning & Development (274-6550). Back-up material is available in the office of the Department of Planning & Development. The agenda order is tentative and subject to change.

If you have a disability and require accommodations in order to fully participate, please contact the City Clerk at 274-6570 by 12:00 noon on Tuesday, December 11, 2012.

MODEL ORDINANCE FOR ITHACA TOBACCO RETAIL LICENSING

Section 99.1: Findings and Scope

WHEREAS, Tobacco use is the foremost preventable cause of premature death in the United States, causing over 400,000 deaths in the United States each year;

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

WHEREAS, the City of Ithaca 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;

WHEREAS, 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;

WHEREAS, the City of Ithaca has a substantial and important interest in reducing the illegal sale of Tobacco Products and Smoking Paraphernalia to minors;

WHEREAS, the State of New York has enacted Article 13-F of the Public Health Law, known as the Adolescent Tobacco Use Prevention Act, to prohibit the sale of Tobacco Products and Smoking Paraphernalia to minors;

WHEREAS, although it is unlawful to sell Tobacco Products to minors, 8.3% of New York retailers surveyed do sell to minors [New York State Department of Health, 2008 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].

WHEREAS, research has found that higher tobacco retail outlet density is significantly associated with higher rates of youth smoking initiation and experimentation;

WHEREAS, regulating the number and the location of retailers of tobacco products and smoking paraphernalia in the City is necessary to protect the public health, safety, and welfare of our youth;

WHEREAS, a local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of our residents;

WHEREAS, a local licensing system for tobacco retailers will help ensure that retailers comply with the Adolescent Tobacco Use Prevention Act, other tobacco control laws, and the business standards of the City of Ithaca;

WHEREAS, 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;

WHEREAS, Licensing laws in other communities have been effective in reducing the access of minors to Tobacco Products; and

WHEREAS, the City of Ithaca finds and believes, after careful study and deliberation that it must implement effective measures through this Article to reduce the number of tobacco retail outlets, regulate the location of tobacco retail outlets, stop the sale of Tobacco Products and Smoking Paraphernalia to youth, prevent the sale or distribution of contraband Tobacco Products, and facilitate the enforcement of tax laws and other applicable laws relating to Tobacco Products;

THEREFORE, the City of Ithaca does hereby enact the following, herein.

Section 99.2: Definitions

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

ADULT-ONLY ESTABLISHMENT means a facility where the operator ensures or has a reasonable basis to believe (such as by checking the identification of any person appearing to be under the age of 25) that no person under the Legal Age is permitted entrance.

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

DEPARTMENT means the **Clerk** of the City of Ithaca or an appointed designee.

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 the Applicant possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public or private kindergarten, elementary, middle, junior high, or high school.

SMOKING PARAPHERNALIA means any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco.

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. However, "Tobacco 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.

Comment [KMS1]: I understand there are some definitions the council is interested in keeping consistent with several state statutes, but I'm unsure what those specific terms are, or which definition is preferred. I would add them here individually, and either reference the state statute, or repeat the definition here.

Comment [KMS2]: Perhaps the Clerk will be administering the licenses, but another department will be responsible for inspections and enforcement (or rulemaking)?

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale of Tobacco Products or Smoking Paraphernalia in the City of Ithaca.

WINDOW DISPLAY means any shelving unit or display case affixed to or positioned directly in front of the exterior windows of a retail establishment.

Section 99.3: Tobacco Retail License

(A) Starting **[EnforcementDate]**, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Smoking Paraphernalia to consumers in the City of Ithaca without a valid Tobacco Retail License issued by the Department. 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.

Comment [KMS3]: This date should provide the Department with enough time to implement the law and review applications.

(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 Products or Smoking Paraphernalia 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 the **[Day of Month (of EnforcementDate)]** following the effective date of the Tobacco Retail License. As set forth in Section 99.10, a Tobacco Retail License may be revoked by the Department prior to its expiration date for cause.

(D) Applications for a New or Renewed Tobacco Retail License shall be submitted to the Department in writing upon a form provided by the Department. The Department may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

(E) Applications for a New or Renewed Tobacco Retail License shall be accompanied by the fee set forth in Section 99.7.

(F) The issuance of any Tobacco Retail License pursuant to this Article is done in the City of Ithaca’s discretion and shall not confer upon licensee any property rights in the continued possession of such a license.

Section 99.4: 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 99.7, the Department shall inspect the location at which tobacco or smoking paraphernalia sales are to be permitted. The Department may also ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

Comment [KMS4]: The original draft has an exception to the license requirement for “private clubs” but I am unclear on what those establishments are, so I have not included that exception here.

(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 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;
- (4) The application seeks a New Tobacco Retail License at a location for which this Article prohibits the issuance of a New Tobacco Retail License;
- (5) The total number of applications exceeds the number permitted by Section 99.5 of this Article;
- (6) The Applicant has previously had a Tobacco Retail License issued under this Article revoked;
- (7) A Tobacco Retail License issued under this Article for the same address or location has previously been revoked;
- (8) 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;
- (9) The Applicant has not paid to the City of Ithaca outstanding fees, fines, penalties, or other charges owed to the City of Ithaca; or
- (10) The Department determines, in accordance with written criteria established to further the purposes of this Article, that the Applicant is otherwise not fit to hold a Tobacco Retail License.

Section 99.5: Limitation on Number of Licenses Issued

- (A) For the first year subsequent to the effective date of this Article, 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 Article.
- (B) With the exception of the first year subsequent to the effective date of this Article, the total number of New and Renewed Tobacco Retail Licenses issued by the Department in a given year (measured from **EnforcementDate** to **EnforcementDate**) shall not exceed the number of Tobacco Retail Licenses that were issued during the previous year.
- (C) Starting on [**EnforcementDate + 1 year**], the Department 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 New Tobacco Retail Licenses exceeds the maximum number of such new licenses that may be issued pursuant to this section, the Department shall grant such licenses using the following priorities:

Comment [KMS5]: This permits current tobacco retailers registered with the state to obtain a City license. The 180 day period is to prevent a flurry of new registrations just prior to the implementation of this law.

Comment [KMS6]: This permits the gradual reduction of the number of licenses in the City, without affecting current businesses who comply with applicable laws.

(1) Tobacco Retail Licenses shall be granted, first, to any Applicant that held a valid Tobacco Retail License in the prior year for an establishment within 500 feet of the nearest point of the property line of a School and who is not seeking to renew that license. If there are more valid applications from such sellers for new licenses than the number of available new licenses, the licenses shall be granted to those Applicants by lottery;

Comment [KMS7]: This gives a preference to those retailers who voluntarily move their place of business further away from a school.

(2) Tobacco Retail Licenses shall be granted, second, to any person who will sell Tobacco Products at an Adult-Only Establishment. If there are more valid applications from such sellers for new licenses than the number of available new licenses, the licenses shall be granted to those Applicants by lottery; and

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

Section 99.6: Certain Locations

(A) No Tobacco Retail License shall be issued to any seller of Tobacco Products or Smoking Paraphernalia that is not in a fixed, permanent location.

(B) With the exception of the first year subsequent to effective date of this Article, no New Tobacco Retail License shall be issued to any establishment within 500 feet of the nearest point of the property line of a School.

Comment [KMS8]: This prevents new tobacco retailers from opening near schools (permits existing stores to obtain a license.)

(C) With the exception of the first year subsequent to the effective date of this Article, no New Tobacco Retail License shall be issued to any establishment within 500 feet of the nearest point of the property line of any other establishment holding a valid Tobacco Retail License.

Comment [KMS9]: This will ensure the density of tobacco retailers is reduced.

Section 99.7: Required Fee

(A) Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee of \$500.

Comment [KMS10]: I encourage the council to use our license fee calculator to ensure that this fee will pay for the implementation, administration and enforcement of the license.

(B) Starting two years after the effective date of this Article, the Department may, on an annual basis, modify the fee required pursuant to Section 99.7(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Article, 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 Article. 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 99.8: Required License Display

(A) Any Tobacco Retail License issued pursuant to this Article shall be displayed prominently at the location where the Tobacco Products or Smoking Paraphernalia are sold so that it is readily visible to customers.

(B) Selling, offering for sale, or permitting the sale of any Tobacco Product or Smoking Paraphernalia without a valid Tobacco Retail License displayed in accordance with Section 99.8(A) constitutes a violation of this Article.

Section 99.9 Display of Tobacco Products and Smoking Paraphernalia

No establishment licensed pursuant to this Article shall display or permit the display of any Tobacco Product, Smoking Paraphernalia, shisha or herbal cigarettes in a Window Display.

Section 99.10: Revocation of Licenses

(A) The Department may suspend or revoke a Tobacco Retail License issued pursuant to this Article for violations of the terms and conditions of this Article or for violation of any federal, state, or local law or regulation 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.

(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 Section 99.4 existed at the time application was made or at any time before the license issued.

Section 99.11: Violations and Enforcement

(A) The Department or its authorized designee(s) shall enforce the provisions of this Article. The Department may conduct periodic inspections in order to ensure compliance with this Article.

(B) In addition to the penalties provided for in Section 99.9, any Person found to be in violation of this Article shall be liable for civil penalty of not more than \$500 for the first violation, not more than \$1000 for the second violation within a two-year period, and not more than \$5000 for the third and each subsequent violation within a two-year period. Each day on which a violation occurs shall be considered a separate and distinct violation.

Section 99.12: Rules and Regulations

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

Section 99.13: Severability

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

Section 99.14: Effective Date

The effective date of this ordinance shall be thirty (30) days from the date of its enactment.

Comment [KMS11]: I've changed this provision from the earlier draft in an effort to more clearly identify the intended restriction as I understand it. There are other alternatives to restricting the display of merchandise (such as restricting the display of any tobacco products or smoking paraphernalia within the store if it is open to minors). I am available to discuss these alternatives, as well as the legal issues surrounding the regulation of commercial speech that might be implicated.

Comment [KMS12]: If there is an existing procedure for revoking existing City licenses for other businesses, it might be possible to integrate these processes.