

LOCAL LAW NO.: _____ - 2014

OF

**A LOCAL LAW ADDING CHAPTER 276 OF THE CODE OF ORDINANCES
OF THE CITY OF NEWBURGH ENTITLED “TOBACCO” AND ENACTING ARTICLE I
ENTITLED “TOBACCO RETAIL LICENSE” AND ARTICLE II ENTITLED “SALE TO
PERSONS UNDER AGE 19”**

BE IT ENACTED, by the Council of the City of Newburgh, New York that Chapter 276 “Tobacco” be and is hereby added as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Adding Chapter 276 entitled ‘Tobacco’ and Enacting Article I entitled ‘Tobacco Retail License’ and Article II entitled ‘Sale to Persons under Age 19’ to the Code of Ordinances of the City of Newburgh”.

SECTION 2 - PURPOSE AND INTENT

WHEREAS, 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; and

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

WHEREAS, the City of Newburgh 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

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 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; and

WHEREAS, 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

WHEREAS, although it is unlawful to sell tobacco products to minors, New York State Department of Health, The New York Youth Tobacco Survey 2008 finds that 8.4% middle school and 28% of high school students in the Hudson Valley Area who use cigarettes report that they usually purchase their cigarettes from a retail store; and

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

WHEREAS, The New York State Tobacco Control Evaluation Program Tobacco Retail Outlet Density by Proximity to Schools and in Low Income Areas Orange County, New York Findings, a report by the Department of Health Behavior, Division of Cancer Prevention and Population Sciences, at Roswell Park Cancer Institute found that in 2012 of the 319 validated tobacco retail outlets located in Orange County, 110 or 34.5% are located in the Newburgh area and in Orange County, 16.3% (n=52 of 319) are located within a distance of 1,000 feet of a school; and

WHEREAS, research shows 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; and

WHEREAS, City of Newburgh has a substantial and important interest in reducing the illegal sale of tobacco products to minors; and

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; and

WHEREAS, licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors; and

WHEREAS, restricting the number and the location of tobacco retailers and the associated marketing of tobacco products within those retail stores in the City is necessary to protect the public health, safety, and welfare of our youth; and

WHEREAS, 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 City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED THAT, it is the intent of the City of Newburgh to implement effective measures through this Chapter 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 Newburgh, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 276 entitled “Tobacco”, Article I entitled “Tobacco License” and Article II entitled “Sale to Persons under Age 19” to read as follows:

ARTICLE I. TOBACCO LICENSE

§ 276-1 Definitions.

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

ADMINISTRATIVE HEARING means a hearing by the City Manager 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 age of 21 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 not constitute a defense in any proceeding alleging a violation of this Chapter. It shall be an affirmative defense to a violation of this Chapter 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.

CITY CLERK means the City Clerk or Deputy City Clerk.

FIRE DEPARTMENT means the City of Newburgh Fire Department including the Bureau of Fire Prevention and the Bureau of Code Compliance

LEGAL AGE means the minimum age at which individuals are permitted to legally purchase tobacco products or tobacco-related products in the City of Newburgh.

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.

POLICE DEPARTMENT means the City of Newburgh Police 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 City Clerk to a Person to engage in the retail sale of Tobacco Products or Tobacco-Related Products in the City of Newburgh.

§ 276-2 Tobacco Retail License

A. Starting March 1, 2015, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Tobacco-Related Products to consumers in the City of Newburgh, without a valid Tobacco Retail License issued by the City 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 February 28 following the effective date of the Tobacco Retail License. As set forth in Section 276-8, a Tobacco Retail License may be revoked by the Police 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 City Clerk, at least 30 days prior to March 1, 2015. The City 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 City Clerk at least 30 days prior to the expiration of the current license. The City 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 276-7.

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

§ 276-3 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 276-7, the Police Department and the Fire Department upon the showing of proper credentials and in the discharge of his duties, may enter to inspect the location at which tobacco sales are to be permitted. The Police Department also may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

B. At the request of the Fire Department, the Corporation Counsel is authorized to make application to the City Court of the City of Newburgh or any other court of competent jurisdiction for the issuance of a search warrant to be executed by a police officer in order to conduct an inspection of any premises believed to be subject to this chapter. The municipal officer may seek a search warrant whenever the owner, managing agent, or occupant fails to allow inspections of any dwelling unit contained in the rental property where there is a reasonable cause to believe that there is a violation of this chapter, the New York Uniformed Fire Prevention Building Code Act, or of any code of the City of Newburgh or any applicable fire code.

C. No Tobacco Retail License shall be issued by the City 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 Chapter prohibits the issuance of a New Tobacco Retail License;
- (5) The Applicant has previously had a Tobacco Retail License issued under this Chapter revoked;
- (6) A Tobacco Retail License issued under this Chapter 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 City of Newburgh; and
- (9) The Applicant has not paid to the City of Newburgh outstanding fees, fines, penalties, or other charges owed to the City of Newburgh.

§ 276-4 Limitation on Number of Licenses Issued

A. In the first year subsequent to the effective date of this Chapter, 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 Chapter.

B. Except for the first year subsequent to the effective date of this Chapter, the total number of New and Renewed Tobacco Retail Licenses issued by the City Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.

C. Starting on March 1, 2016, the City 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 held a valid Tobacco Retail License in the prior year for an establishment within 1,000 feet of the nearest property line of a school and who is not seeking renewal of that license. 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.

§ 276-5 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. With the exception of the first year subsequent to effective date of this Local Law, no New Tobacco Retail License shall be issued to any establishment within 1,000 feet of the nearest point of the property line of a School.

§ 276-6 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 276-6(A) constitutes a violation of this Local Law.

§ 276-7 Required Fee

- A. Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set forth in Chapter 163 “Fees” of the Code of Ordinances of the City of Newburgh.
- B. Starting two years after the effective date of this Chapter, the City Council may, on an annual basis, modify the fee required pursuant to Section 276-7(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, 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 Chapter. 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.

§ 276-8 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 City of Newburgh License 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 City Manager or his designee.

§ 276-9 Violations and Enforcement

A. The Police Department shall enforce the provisions of this Chapter. The Police Department and the Fire Department may conduct periodic inspections in order to ensure compliance with this Chapter. Nothing in this Chapter shall preclude the Fire Department and its Bureau of Fire Prevention and Bureau of Code Compliance from enforcing the New York State Uniform Fire Prevention and Building Code in accordance with all other New York State and local laws, rules and regulations.

B. In addition to the penalties provided for in Section 276-8, any Person found to be in violation of this Chapter 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.

ARTICLE II. SALE TO PERSONS UNDER AGE 19

§ 276-10 Prohibitions and proof of age

A. Any person operating a place of business wherein tobacco or tobacco-related products are sold or offered for sale is prohibited from selling such tobacco or tobacco-related products to individuals under nineteen (19) years of age.

B. Sale of such tobacco or tobacco-related products in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution that the individual is at least nineteen (19) years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty (26) years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco or tobacco-related products to an individual under nineteen (19) years of age.

§ 276-11 Posting of sign

Any person operating a place of business wherein tobacco or tobacco products are sold or offered for sale shall post in a conspicuous place, a sign upon which there shall be imprinted the following statement:

SALE OF CIGARETTES, CIGARS, PIPE TOBACCO, SNUFF, CHEWING TOBACCO, DIPPING TOBACCO, BIDIS, SNUS, SHISHA, POWDERED AND/OR DISSOLVABLE TOBACCO PRODUCTS, LIQUID NICOTINE AND ELECTRONIC CIGARETTE CARTRIDGES TO PERSONS UNDER 19 YEARS OF AGE IS PROHIBITED UNDER PENALTY OF LAW.

Such sign shall be printed on a white card in red capital letters at least $\frac{3}{4}$ inch in height.

§ 276-12 Enforcement; penalties for offenses

A. Any person who shall violate any of the provisions of this Article or fail to comply therewith or who shall violate or fail to comply with any order made thereunder shall be punished as provided in § 276-9 for violation of this Chapter of the Code of Ordinances of the City of Newburgh.

B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects. Each day that prohibited conditions exist shall constitute a separate offense.

C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

§ 276-13 Severability

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

SECTION 4 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 5 - EFFECTIVE DATE

This Local Law shall be effective on March 1, 2015 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.

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