

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County    City    Town    Village  
(Select one:)

of County of Cayuga

Local Law No. 5 of the year 2013

A local law for Tobacco Retail Licensing Ordinance.  
(Insert Title)

Be it enacted by the Cayuga County Legislature of the  
(Name of Legislative Body)

County    City    Town    Village  
(Select one:)

of Cayuga as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**COUNTY OF CAYUGA, NEW YORK**

**LOCAL LAW NO. 5 FOR THE YEAR 2013**

**LOCAL LAW NO. 5 FOR THE YEAR 2013. A LOCAL LAW FOR TOBACCO RETAIL LICENSING ORDINANCE**

**BE IT ENACTED:** by the County Legislature, as follows:

**Section 1: Findings**

**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; and

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

**WHEREAS**, the County of Cayuga 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.

Cayuga 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, 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].

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 Cayuga County.

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.

Licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors.

**Section 2: Definitions**

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

**ADMINISTRATIVE HEARING** means a hearing by the Cayuga County Board of Health as allowed by PHL Section 309 and according to regulations adopted by the Cayuga County Board of Health.

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

**DEPARTMENT** means the Department of Health and Human Services.

**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.

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, shisha, powdered and/or dissolvable tobacco products, and electronic cigarette cartridges, whether packaged or not; any packaging that indicates it might contain any substance containing tobacco or nicotine.

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale of Tobacco Products in Cayuga County.

### **Section 3: Tobacco Retail License**

(A) Starting January 1, 2014, no Person shall sell, offer for sale, or permit the sale of Tobacco Products to consumers in Cayuga County, 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.

(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 with the following exceptions:

(1) A valid and current Tobacco Retail License may be transferred from a location where an applicant holds a valid and current Tobacco Retail License within 100 feet of the nearest point of the property line of a School to a new location as long as the new location complies with this law.

(2) 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 section are valid for no more than two years and expire on January 1 following the effective date of the Tobacco Retail License.

(D) Applications for a New Tobacco Retail License shall be made on a form specified by the Department, at least 30 days prior to January 1, 2014. The Department 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 Department at least 30 days prior to the expiration of the current permit. The Department may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

### **Section 4: Issuance of Licenses**

(A) Upon the receipt of a completed application for a New or Renewed Tobacco Retail License, the Department shall inspect the location at which tobacco sales are to be permitted.

(B) The Department will 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 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;

(3) The Applicant seeks a New Tobacco Retail License at a location for which this Local Law prohibits the issuance of a New Tobacco Retail License;

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

(5) The Applicant has not paid to Cayuga County outstanding fees, fines, penalties, or other charges owed to Cayuga County.

**Section 5: Certain Locations**

(A) No Tobacco Retail License shall be issued to any seller of tobacco 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 100 feet of the nearest point of the property line of a School.

**Section 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 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 6(A) constitutes a violation of this Local Law.

**Section 7: 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 of health warnings pertaining to Tobacco Products, or (b) the sale of Tobacco Products shall have their Cayuga County 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.

**Section 8: Violations and Enforcement**

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

(B) In addition to the penalties provided for in Section 7, any Person found to be in violation of this Local Law shall be liable for civil penalty of not more than \$250 for the first violation, not more than \$500 for the second violation within a two-year period, and not more than \$1000 for the third and each subsequent violation within a two-year period after notice and an opportunity to be heard at an administrative hearing. Each day on which a violation occurs shall be considered a separate and distinct violation.

**Section 9: Severability**

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

**Section 10: Effective Date**

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

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2013 of the (County)(City)(Town)(Village) of Cayuga was duly passed by the County of Cayuga on September 24 2013, in accordance with the applicable *(Name of Legislative Body)* provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20    , in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local *(Elective Chief Executive Officer\*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

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\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

*Sheila P. Smith*

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 9/25/13

