

VILLAGE OF ENDICOTT

LOCAL LAW NO #14 FOR THE YEAR 2020

A LOCAL LAW ADDING A NEW CHAPTER ENTITLED “TOBACCO RETAIL LICENSE”

Be it enacted by the Board of Trustees of the Village of Endicott as follows:

Section 1. There shall be a new Chapter added to the Village of Endicott Code, entitled “Tobacco Retail License”, which shall read as follows:

§ 1. Definitions.

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

ADMINISTRATIVE HEARING — A hearing by the Village Manager or his designee.

ADULT-ONLY ESTABLISHMENT — 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 25) that no person under the age of 21 is permitted entrance.

AGE-VERIFIED CUSTOMER — 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 25 years of age; provided, however, that such appearance shall not constitute a defense in any proceeding alleging a violation of this article. It shall be an affirmative defense to a violation of this article 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 — An individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

VILLAGE CLERK — The Village Clerk or Deputy Village Clerk.

FIRE DEPARTMENT — The Village of Endicott Fire Department.

LEGAL AGE — The minimum age at which individuals are permitted to legally purchase Tobacco Products or Tobacco-Related Products.

NEW TOBACCO RETAIL LICENSE — Any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON — Any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

POLICE DEPARTMENT — The Village of Endicott Police Department.

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 year.

SCHOOL — A public or private pre-kindergarten, kindergarten, elementary, middle, junior high or high school or alternative school.

TOBACCO PRODUCT or TOBACCO-RELATED PRODUCT — 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 — 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 — A license issued by the Village Clerk to a Person to engage in the retail sale Tobacco Products or Tobacco-Related Products in the Village of Endicott.

§ 2. Tobacco retail license required.

- A. Starting May 1, 2020, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Tobacco-Related Products to consumers in the Village of Endicott without a valid Tobacco Retail License issued by the Village 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 Tobacco Products or Tobacco-Related Products directly to consumers.
- B. All Tobacco Retail Licenses issued pursuant to this section are nontransferable and nonassignable 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 Tobacco-Related Products are sold or offered for sale. Any change in business ownership or business address of a Person holding a Tobacco Retail License shall immediately terminate such Person's Tobacco Retail License, provided such Person may apply for 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 April 30 following the effective date of the Tobacco Retail License. As set forth in § 8, a Tobacco Retail License may be revoked by the Police Chief or designee prior to its expiration date for cause.
- D. Applications for a New Tobacco Retail License shall be made on a form specified by the Village Clerk, at least 30 days prior to May 1. The Village 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 Village Clerk at least 30 days prior to the expiration of the current license. The Village 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 required by § 7.
- G. The issuance of any Tobacco Retail License pursuant to this article is done in the discretion of the Village of Endicott and shall not confer upon licensee any property rights in the continued possession of such a license.

§ 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 § 7, the Police Department and the Fire Department, upon the showing of proper credentials and in the discharge of their 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 Police Department or Fire Department, the Village Attorney is authorized to make application to the Village Court 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 article. The Police Chief or Fire Chief or their designee 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 article, the New York State Uniform Fire Prevention and Building Code, or the Code of the Village of Endicott.
- C. No Tobacco Retail License shall be issued by the Village Clerk to an Applicant if one or more of the following bases for denial exists:
 - a. The information presented in the application is incomplete, inaccurate, false, or misleading;
 - b. The fee for the application has not been paid as required;
 - c. 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;
 - d. The Applicant seeks a New Tobacco Retail License at a location for which this article prohibits the issuance of a New Tobacco Retail License;
 - e. The Applicant has previously had a Tobacco Retail License issued under this article revoked;

- f. A Tobacco Retail License issued under this article for the same address or location previously has been revoked;
- g. The Applicant has been found by a court of law or administrative body to have violated any federal, state or local laws pertaining to:
 - i. Trafficking in contraband Tobacco Products, Tobacco-Related Products, or illegal drugs;
 - ii. The payment or collection of taxes on Tobacco Products or Tobacco-Related Products;
 - iii. The display of Tobacco Products or Tobacco-Related Products or of health warnings pertaining to Tobacco Products or Tobacco-Related Products; or
 - iv. The sale of Tobacco Products or Tobacco-Related Products;
- h. The Applicant is not in compliance with all applicable provisions of the New York State Uniform Building Code, Fire Prevention Code, Property Maintenance Code, Electrical Code and Plumbing Code, and the Code of the Village of Endicott; and
- i. The Applicant has not paid to the Village of Endicott outstanding fees, fines, penalties, or other charges owed to the Village of Endicott.

§ 4. Limitation on number of licenses issued.

- A. In 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. Except for the first year subsequent to the effective date of this article, the total number of New and Renewed Tobacco Retail Licenses issued by the Village Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.
- C. Starting on May 1, 2021, the Village 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.

§ 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 the effective date of this article, 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.

§ 6. Required license display.

- A. Any Tobacco Retail License issued pursuant to this article shall be displayed prominently at the location where 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 § 6A constitutes a violation of this article.

§ 7. Required fee.

Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set by resolution of the Board of Trustees for the Village of Endicott.

§ 8. Revocation or suspension of licenses.

Any Person who is found to be in violation of the terms and conditions of this article 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 Tobacco Retail License suspended for up to three months for a first offense, six 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 Village Manager or his designee.

§ 9. Enforcement; penalties for offenses.

- A. The Police Department and the Code Enforcement Officer shall enforce the provisions of this article. The Police Department and the Fire Department may conduct periodic inspections in order to ensure compliance with this article. Nothing in this article 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 § 8, any Person found to be in violation of this article shall be subject to any and all of the following:

1. Criminal. Any infraction of the provisions of this article by failure to comply with any of its requirements shall constitute a violation. Any Person who violates this article or fails to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the license, shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Endicott from taking such other lawful action as necessary to prevent or remedy an infraction.

2. Civil. Any Person or entity who violates any of the provisions of this article by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the license, shall be liable for a civil penalty of not more than \$1,000 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Village of Endicott.

3. Injunctive Relief. An action or proceeding may be instituted in the name of the Village of Endicott, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this article, or any term or condition of any license issued pursuant to any provision of this article. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Village Board.

§ 10. Severability.

The provisions of this article are declared to be severable, and if any section or subsection 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 2. Remainder

Except as hereinabove amended, the remainder of the Code of the Village of Endicott shall remain in full force and effect.

Section 3. Separability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any Person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other Persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or

unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such Person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

Section 4. Effective Date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

I, Anthony Bates, do hereby certify that I am the Village Manager for the Village of Endicott and that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Village Board of the Village of Endicott at a meeting thereof held at the Municipal Offices, 1009 E. Main Street, Endicott, New York on the 17th day of February, 2020.

A motion to approve LL#20-14 was made by Trustee Konecny and seconded by Trustee Chapman

Said resolution was adopted by the following roll call vote:

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| Trustee Chapman | Aye |
| Trustee Konecny | Aye |
| Trustee Warner | Aye |
| Trustee Dorner | Aye |

This notice is given pursuant to a resolution of the Board Duly Adopted at a regular meeting thereof held on the 17th day of February, 2020

Dated:

Village of Endicott Seal

Anthony J. Bates, Village Manager
Village of Endicott