

84. 96.

Local Law No.
City of Syracuse

2023

**A LOCAL LAW OF THE CITY OF SYRACUSE
TO ADD A NEW ARTICLE 16 TO BE ENTITLED
“TOBACCO RETAIL LICENSE” TO CHAPTER 9
OF THE REVISED GENERAL ORDINANCES OF
THE CITY OF SYRACUSE, AS AMENDED,
ENTITLED BUSINESS: MERCANTILE,
TRANSIENT, ITINERANT**

BE IT ENACTED, by the Common Council of the City of Syracuse, as follows:

SECTION 1.

This Local Law shall add a new Article 16, to be entitled “Tobacco Retail License” to Chapter 9 of the Revised General Ordinances of the City of Syracuse, as amended, entitled Business: Mercantile, Transient, Itinerant, which shall read as follows:

CHAPTER 9. BUSINESS: MERCANTILE, TRANSIENT, ITINERANT

ARTICLE 16. TOBACCO RETAIL LICENSE

§ 16-1. Legislative Findings, Intent and Purpose.

Tobacco products and electronic smoking devices are addictive and inherently dangerous and have been shown to be harmful to the public health. Tobacco use is the leading preventable cause of death in the United States, causing over 480,000 deaths in the United States each year from health conditions including but not limited to cancer and heart disease. In New York State, approximately 28,000 adults die from smoking-related illnesses each year.

Research shows that the accessibility and availability of tobacco products and electronic smoking devices influences youth to begin using tobacco products and electronic smoking devices. Youth are uniquely vulnerable to the effects of nicotine and the formation of nicotine dependence. Nicotine exposure can harm the developing adolescent brain. An overwhelming majority of Americans who smoke cigarettes daily first tried smoking by the age of eighteen (18), and youth who use e-cigarettes may be more likely to smoke cigarettes in the future. The Surgeon General of the United States has concluded that almost no one starts smoking tobacco after age twenty-five (25).

Tobacco product and electronic smoking device retail outlet density is associated with increased rates of smoking. Although it is unlawful to sell tobacco products to minors, according to a report by the New York State Department of Health, Youth Access Tobacco Enforcement Program for the period of April 1, 2018 through March 21, 2020, 7.91% of the New York retailers surveyed do sell to minors. 22.5% of high school students in New York State use electronic nicotine delivery

systems (also called electronic cigarettes). 25.6% of high school students in New York State use some form of tobacco product.

The City of Syracuse has a substantial interest in reducing the number of individuals of all ages who use tobacco products and electronic smoking devices, and a particular interest in protecting youth from nicotine dependence and the illnesses and premature death associated with the use of tobacco products, electronic smoking devices and other products regulated by New York State Public Health Law Article 13-F, known as the Adolescent Tobacco Use Prevention Act. The purpose of this legislation is to ensure the public health, safety and welfare of the citizens of the City of Syracuse by providing a local law to require a Tobacco Retail License to sell tobacco products, electronic smoking devices, and all other products regulated by New York State Public Health Law Article 13-F in the City of Syracuse.

The Family Smoking Prevention and Control Act of 2009 provides local governments with the freedom to implement tobacco control policies. A local licensing system for tobacco product and electronic smoking device retailers will provide a local enforcement mechanism to allow the City of Syracuse to monitor and increase retailers' compliance with federal, state, and local laws, including laws that prohibit the sale of tobacco products and electronic smoking devices to minors, such as New York State Public Health Law Article 13-F, by requiring compliance with these laws as a condition for obtaining and maintaining a local Tobacco Retail License.

The Mayor and Common Council of the City of Syracuse find that the City of Syracuse has a substantial and important interest in reducing the illegal sale of tobacco products, electronic smoking devices, and all other products regulated by New York State Public Health Law Article 13-F, to minors. It is the intent of the City of Syracuse through the addition of this new Article to implement effective measures to license all retailers selling tobacco products, electronic smoking devices, and all other products regulated by New York State Public Health Law Article 13-F; to reduce the number of such retailers; to regulate the location of such retailers; to stop the sale of tobacco products, electronic smoking devices, and all other products regulated by New York State Public Health Law Article 13-F, to minors; and to reduce the number of individuals of all ages who use tobacco products and electronic smoking devices.

§16-2. Definitions.

For the purposes of this Article, the following words and phrases shall be defined as follows:

- (a) *Accessory* shall mean a product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product or Electronic Smoking Device, does not contain tobacco and is not made or derived from tobacco, including, but not limited to, carrying cases, lanyards, lighters, and holsters and meets either of the following:
 - (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents or characteristics of a Tobacco Product or Electronic Smoking Device; or
 - (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents or characteristics of a Tobacco Product or Electronic Smoking Device but:

- (A) solely controls moisture and/or temperature of a stored Tobacco Product or Electronic Smoking Device; or
 - (B) solely provides an external heat source to initiate but not maintain combustion of a Tobacco Product.
- (b) *Applicant* shall mean an individual, corporation, partnership, limited liability company, or other business entity, as well as each entity's members, partners, and/or shareholders, as applicable, seeking a Tobacco Retail License. Applicant must be the actual State License holder and must be the entity offering the Covered Product for sale.
- (c) *Application* shall mean the form completed in writing by an Applicant or an authorized agent thereof and executed and verified under penalty of perjury by the Applicant or the authorized agent thereof.
- (d) *Application Fee* shall mean the annual non-refundable \$250.00 fee owed to the Division upon the submission of an Application.
- (e) *Building* shall mean a permanent structure affixed to real property within the City bearing a tax parcel identification number rendering the land improved for purposes of taxation.
- (f) *City* shall mean the City of Syracuse.
- (g) *Component or Part* shall mean software or materials intended or reasonably expected: (1) to alter or affect the performance, composition, constituents or characteristics of a Tobacco Product or Electronic Smoking Device or (2) to be used with or for the human consumption of a Tobacco Product or Electronic Smoking Device. "Component or Part" excludes an Accessory and includes, but is not limited to, e-liquids, cartridges, refills, batteries, heating coils, programmable software, rolling papers, wraps, hookahs, mouthpieces, pipes and flavorings for Tobacco Products or Electronic Smoking Devices, whether they are sold together or separately.
- (h) *Corporation Counsel* shall mean the Corporation Counsel of the City of Syracuse.
- (i) *Covered Product(s)* shall mean any Tobacco Product, Electronic Smoking Device, or any other product regulated by Article 13-F of the New York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act.
- (j) *Division* shall mean the Division of Code Enforcement for the City.
- (k) *Director* shall mean the Director or Deputy Commissioner of the Division of Code Enforcement, or their designee, for the City.
- (l) *Electronic Smoking Device(s)* shall mean any device that may be used to deliver any aerosolized or vaporized substance that may be inhaled, whether or not the aerosolized or

vaporized substance contains nicotine, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic Smoking Device" includes any Component or Part but not Accessory and includes any substance to be aerosolized or vaporized, whether or not separately sold. "Electronic Smoking Device" does not include drugs, devices, or combination products approved and authorized for sale by the U.S. Food and Drug Administration for cessation purposes, as those terms are defined in the Federal Food, Drug, and Cosmetic Act and does not include products regulated under Article 7-A of the Consolidated Laws of the State of New York.

- (m) *Gas Station* shall mean a premises where petroleum for motor vehicles is stored and sold, for which all valid New York State licenses and/or certificates, including but not limited to a New York State Department of Environmental Conservation registration, if required, is maintained, and includes a convenience store located on the same premises.
- (n) *Public Park* shall mean a park owned by the City or any of its agencies.
- (o) *School* shall mean any public or private kindergarten, elementary, middle, junior high, or high school and their grounds and/or facilities.
- (p) *State License(s)* shall mean a valid New York State Department of Taxation and Finance certificate of registration for the sale of a Covered Product.
- (q) *Tobacco Product(s)* shall mean any product containing, made of, or derived from tobacco or nicotine, including synthetic nicotine, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, bidis, powdered tobacco, and nicotine water. "Tobacco Product" includes a Component or Part, whether or not separately sold, but not Accessory. "Tobacco Product" does not include drugs, devices, or combination products approved and authorized for sale by the U.S. Food and Drug Administration for cessation purposes, as those terms are defined in the Federal Food, Drug, and Cosmetic Act and does not include products regulated under Article 7-A of the Consolidated Laws of the State of New York.
- (r) *Tobacco Retail License* shall mean any license issued by the Division to an Applicant to engage in the retail sale of any Covered Product in the City.

§16-3. Tobacco Retail License Required.

- (a) As of the effective date of this Article, a valid Tobacco Retail License issued by the Division in compliance with this Article shall be required to sell, to offer for sale, or to permit the sale of a Covered Product to consumers in the City in accordance with the terms hereof. The requirement for a Tobacco Retail License detailed in this Article is not applicable for a wholesale dealer who sells products to retail dealers for the purpose of resale only and does not sell any Covered Product directly to consumers.

- (b) Applicants must submit an Application for a Tobacco Retail License to the Division on an annual basis. Tobacco Retail Licenses issued pursuant to this Article shall be effective upon the date of issuance thereof and shall be valid for a period of one (1) year from the date of issuance, unless sooner suspended or revoked.
- (c) The annual Application Fee is non-refundable.
- (d) Each Application for a Tobacco Retail License shall be filed with the Division in accordance with Section 16-4 hereof.
- (e) Notwithstanding the requirements set forth in Subsection (a) above, this Article shall not apply to an organization that is deemed a registered organization pursuant to Section 3364 of the New York State Public Health Law.

§16-4. Tobacco Retail License Application and Eligibility Requirements.

(1) Eligibility for a Tobacco Retail License

- (a) Each Tobacco Retail License shall be issued only to actual sellers of Covered Products to be located in a Building.
- (b) In order to be eligible to receive a Tobacco Retail License from the Division, the Applicant must meet the following criteria:
 - i. The Applicant shall hold, possess and provide proof to the Division of a current and valid State License(s) issued by the New York State Department of Taxation and Finance;
 - ii. The Applicant shall hold, possess and provide proof to the Division of all required permits, licenses, and/or approvals necessary and/or required to operate in New York State and the City;
 - iii. The Applicant must not owe to the City any outstanding taxes, payments in lieu of taxes, fees, fines, penalties or other charges;
 - iv. The Applicant shall not be or have been the owner or commercial tenant of a premises declared to be a public nuisance under Chapter 45 of the Revised General Ordinances of the City, as amended;
 - v. Subject only to Section 16-4(2)(e) below, the Applicant, as the owner or tenant of any Building at which Covered Products are being sold, offered for sale, or permitted to be sold under a Tobacco Retail License, shall be in compliance with the Property Conservation Code of the City and with all other laws, ordinances and regulations of the City at the time of Application. Notwithstanding anything herein to the contrary, the Division may consider a Building's twelve (12) month history relative to compliance with the Property Conservation Code of the City and any other related codes and regulations;

- vi. No Tobacco Retail License shall be issued to any Applicant within seven hundred fifty (750) feet of a School or Public Park as measured by a straight line from the nearest point of the property line of the parcel on which the School or Public Park is located to the nearest point of the property line of the parcel on which the Applicant's business is located for which the Tobacco Retail License is being sought hereunder.
 - vii. No Tobacco Retail License shall be issued to any Applicant within seven hundred fifty (750) feet of another business holding and/or operating under a current and valid Tobacco Retail License as measured by a straight line from the nearest point of the property line of the parcel on which the business holding and/or operating under a current and valid Tobacco Retail License is located to the nearest point of the property line of the parcel on which the Applicant's business is located for which the Tobacco Retail License is being sought hereunder.
 - viii. In the event a School or Public Park locates within seven hundred fifty (750) feet of an existing business holding and/or operating under a current and valid Tobacco Retail License, such business shall not be precluded from holding or continued operation under the Tobacco Retail License or from applying for or obtaining a new Tobacco Retail License.
 - ix. Any Applicant applying for a Tobacco Retail License who disputes the Division's finding that the Applicant is disqualified under Sections 16-4(1)(b)(vi) or 16-4(1)(b)(vii) above may dispute such finding as set forth below. Any such dispute must be made in writing, via certified U.S. Mail, to the Division within thirty (30) days of receipt of the notice provided for in Section 16-6(b) below and include any and all evidence the Applicant relies on to support its claim that it is not located within seven hundred fifty (750) feet of a School, Public Park, or business holding and/or operating under a current and valid Tobacco Retail License. The Division shall consider such evidence as part of the Application. The Director shall have final authority to determine whether the business is located within seven hundred fifty (750) feet of a School, Public Park, or business holding and/or operating under a current and valid Tobacco Retail License.
- (c) As of the effective date of this Article, and notwithstanding Sections 16-4(1)(b)(vi) and 16-4(1)(b)(vii) hereof, if an Applicant: (i) possesses a valid State License; (ii) has a fee interest or a signed and valid lease for space in a Building where a Covered Product will be or is currently being sold, offered for sale, or permitted to be sold as set forth in the Application; (iii) satisfies all other requirements for licensure hereunder and meets and is otherwise compliant with the terms and conditions of this Article; and (iv) submits an Application within the timeframe set forth in Section 16-4(2)(a) hereof, then, notwithstanding anything in this Section to the contrary, such Applicant shall be eligible for a Tobacco Retail License for the same Applicant in the same Building and eligible for subsequent annual licensure in accordance herewith. Any such Applicant who fails to

submit an Application within this time frame shall be bound by Sections 16-4(1)(b)(vi) and 16-4(1)(b)(vii) above.

(2) Application Process

- (a) All Applications for a Tobacco Retail License shall be submitted to the Division within One Hundred Twenty (120) days of the giving of notice as set forth in Section 16-18 hereof and then annually thereafter at least sixty (60) days prior to the expiration of the current Tobacco Retail License. The Director, in his/her sole discretion, shall have authority to permit submission of an Application where an Application is late or incomplete through no fault of the Applicant;
- (b) An Application shall be executed and verified under penalty of perjury by the Applicant or an authorized agent thereof. The Applicant shall maintain a duplicate original signed and verified Application, which shall be subject to inspection by the City;
- (c) Each Application for a Tobacco Retail License shall be accompanied by the Application Fee;
- (d) Applicants shall agree that the business address provided in the Application shall be the address to which any notice required under this Article and any service of process required under the New York Civil Practice Law and Rules or under any local law or ordinance shall be sent unless the Applicant notifies the Division by certified U.S. Mail of a different address to be used for such notice;
- (e) Upon the receipt of a completed Application and the Application Fee, the Division and/or its designee shall inspect the Building at which any Covered Product is to be sold, offered for sale, or permitted to be sold as sought in the Application to ensure compliance with all applicable codes and regulations. Such inspection shall be scheduled in accordance with Section 16-6(8) below. The Applicant shall have thirty (30) days to cure any code violations identified and cited during such inspection, unless, the violation cannot reasonably be cured within such thirty-day period, then, provided the Applicant commences to cure within such thirty-day period and to prosecute such cure with due diligence, then the Applicant shall have an additional thirty (30) days to cure such violation. In no event, without the express written permission of the Division in its sole discretion, shall the Applicant have more than such period to cure. The Division may also ask the Applicant to provide additional information that is reasonably related to the determination of whether a Tobacco Retail License may issue;
- (f) Upon the receipt of a completed Application and the Application Fee, the Chief of Police or his/her designee shall conduct a criminal background check on the Applicant.

§16-5. Issuance of Tobacco Retail Licenses.

- (a) Within sixty (60) days of compliance with and completion of the requirements set forth in Section 16-4 above, the Division must make a determination on the Application and notify the

Applicant of the determination. If the Applicant currently holds a valid Tobacco Retail License issued pursuant to this Article, the Applicant may continue to operate under the Tobacco Retail License until such time as a determination on the new Application is made by the Division and such determination is provided by the Division to the Applicant.

- (b) In the event an Application for a Tobacco Retail License is approved, the Division shall notify the Applicant in writing, via certified U.S. Mail and First-Class Mail to the address provided by the Applicant pursuant to Section 16-4(2)(d) above.
- (c) The issuance of any Tobacco Retail License pursuant to this Article is done in the City's sole discretion and shall not confer upon the Applicant any property interest or other right in the possession of a Tobacco Retail License.

§16-6. Denial of Tobacco Retail Licenses.

- (a) The Division may, in its sole discretion, refuse to issue a Tobacco Retail License to an Applicant if it finds that one or more of the following reasons for denial exists:
 - (1) The Applicant has failed to meet any requirement of this Article;
 - (2) The information presented in the Application is incomplete, inaccurate, false, or misleading;
 - (3) The fee for the Application has not been paid as required;
 - (4) The Applicant has previously had a Tobacco Retail License issued under this Article revoked for any reason within the previous five (5) years;
 - (5) A Tobacco Retail License issued under this Article for the same address or location was previously revoked within the preceding three (3) years; unless the Applicant has demonstrated, to the satisfaction of the Division, that the Applicant has no connection to the prior licensee, its members, partners, or shareholders and was not the owner of the premises at the time of revocation;
 - (6) The Applicant has been found by a court of law or administrative body to have violated any federal, state or local law pertaining to: (a) trafficking in a contraband Covered Product(s); (b) the payment or collection of taxes on a Covered Product(s); the display of a Covered Product(s); (d) the display of health warnings pertaining to a Covered Product(s); or (e) the sale of a Covered Product(s);
 - (7) The Applicant has outstanding fines and/or violations with the Onondaga County Health Department in connection with violation(s) of New York State Public Health Law Article 13-F, known as the Adolescent Tobacco Use Prevention Act;

- (8) The Applicant fails to schedule and permit the inspection required under Section 16-4(2)(e) above to take place within thirty (30) days of submitting an Application, unless otherwise agreed to by the Division;
 - (9) The Applicant fails to pass the inspection required under Section 16-4(2)(e) above;
 - (10) The Applicant is in violation of any other provision of this Article or is in violation of any federal or state statutes or rules and regulations or any local laws, ordinances, rules and regulations of the City; or
 - (11) The Applicant has been convicted, and such conviction has not been expunged, of:
 - (A) Any felony, as defined in the New York Penal Law, in the five (5) years immediately preceding the date of the Application; or
 - (B) Any Class A misdemeanor, as defined in the New York Penal Law, in the two (2) years immediately preceding the date of the Application.
 - (C) In the event the Applicant's background check contains one of the above-enumerated offenses, the Division shall notify the Applicant, via certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof, and include a copy of the information obtained relative to the relevant conviction(s) with this correspondence. The letter shall inform the Applicant of the opportunity to provide any information to the Division regarding rehabilitation, good conduct, mistaken identity, or any other information regarding the conviction(s) the Applicant wishes the Division to Consider. The Applicant shall furnish such information, if any, in writing, via certified U.S. Mail, to the Division within ten (10) days of the date of the letter sent by the Division. The Division shall consider all such information and notify the Applicant in writing, via certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof, within thirty (30) days of its determination relative to the additional provided information.
- (b) In the event an Application for a Tobacco Retail License is denied for any reason, the Division shall notify the Applicant in writing, via certified U.S. Mail and First-Class Mail to the address provided by the Applicant pursuant to Section 16-4(2)(d) above, of the reason(s) the Application was denied.

§16-7. Operation of Business.

Tobacco Retail License holders shall comply with all provisions of federal and state statutes, rules and regulations and all local laws, ordinances, rules and regulations of the City relating to the conduct of business and the occupation, use and maintenance of the premises at which the business is located. Moreover, Tobacco Retail License holders shall comply with any and all notices, orders, decisions and determinations made by any City official that governs the occupation and use of the business holding and/or operating under the Tobacco Retail License.

§16-8. Limitation on Number of Licenses Issued.

- (a) As of the effective date of this Article, the total number of Tobacco Retail Licenses to be issued by the Division shall be no more than the sum of: (i) the number of valid and current State Licenses issued for establishments open and operating in the City as of the effective date of this Article; and (ii) the number of valid and current State Licenses that were issued by New York State for establishments on or before the effective date of this Article which open for the operation of business in accordance with the provisions of this Article on or before the Ninetieth (90th) day following the effective date of this Article. Issuance of any additional Tobacco Retail Licenses shall be authorized pursuant to Section 16-9 below.
- (b) A Tobacco Retail License shall only be issued to an Applicant for the same location at which the Applicant possessed a valid State License prior to the effective date of this Article.
- (c) Notwithstanding paragraph (b) above, beginning one (1) year from the effective date of this Article, the Division shall issue only one (1) Tobacco Retail License for every two (2) Tobacco Retail Licenses that were revoked or expired and not renewed during the previous year.
- (d) Whenever the number of valid Applications for Tobacco Retail Licenses exceeds the maximum number of such licenses available for issue in accordance with Section 16-8 above, the Division shall grant such licenses using the following priorities:
 - (1) Tobacco Retail Licenses shall be granted, first, by order of Application date and time to any Applicant compliant with this Article that held a valid Tobacco Retail License in the prior year;
 - (2) A Tobacco Retail License shall be granted, second, by order of Application date and time to any Applicant compliant with this Article that did not hold a valid Tobacco Retail License in the prior year; or
 - (3) A Tobacco Retail License shall be granted by lottery when the order of Application date and time is insufficient, in the discretion of the Division, to determine who shall be issued a license pursuant to Section 16-8(d)(2) above.

§16-9. Procedure for Authorizing Additional Licenses.

- (a) The Division, upon its own initiative, upon direction of the Syracuse Common Council, or upon written request by an Applicant, may conduct a public hearing(s) to determine whether necessity requires the issuance of additional Tobacco Retail Licenses to exceed the maximum license number specified in Section 16-8 above. Notice of such public hearing shall be advertised in print or digitally in the Post Standard or any other publication authorized by the Common Council at least one time. The hearing shall be held not less than ten (10) days after the date of last publication of such notice. The cost of such hearing, if requested by an Applicant, shall be borne by the Applicant.

- (b) A determination of the question of the need for additional Tobacco Retail Licenses shall be made only after consideration of the factors set forth in Section 16-1 hereof and the requirements or demands of the public, all public comments received at or in conjunction with the hearing and such other relevant facts as the Division shall deem advisable or necessary to take into consideration.
- (c) If the Division determines, after such a public hearing, that additional Tobacco Retail Licenses are necessary, the Division shall thereupon request that the Syracuse Common Council approve the number of Tobacco Retail Licenses to be issued.

§16-10. Transferability.

All Tobacco Retail Licenses issued pursuant to this Article are nontransferable and non-assignable and are valid only for the Applicant and the specific Building indicated on the Tobacco Retail License; unless, the establishment is an operating Gas Station. A valid and current Tobacco Retail License may be transferred or assigned from an existing Tobacco Retail License holder (hereinafter "transferor or assignor") operating a Gas Station to a new owner that acquires the Gas Station operating under the Tobacco Retail License, provided the transferor or assignor is not in violation of any state or local law and the new owner (hereinafter "transferee or assignee") otherwise satisfies all of the conditions for licensure under this Article. Notwithstanding anything herein to the contrary, if the transferee or assignee satisfies the forgoing conditions, and the transferor or assignor was issued a Tobacco Retail License pursuant to Section 16-4(1)(c) hereof, then failure of the transferee or assignee to satisfy Sections 16-4(1)(b)(vi) and/or 16-4(1)(b)(vii) hereof shall not prevent the transferee or assignee from seeking a new Tobacco Retail License for the same Gas Station as the transferor or assignor. In such event, the transferee or assignee shall be entitled to annually apply for a Tobacco Retail License in accordance with the terms of this Article. A separate Tobacco Retail License is required for each Building at which a Covered Product is sold or offered for sale. Except as specifically noted in this Section 16-10, any change in business ownership, membership interests, shareholders, partnership interests, business address, or interruption in possession of a Tobacco Retail License, will result in the automatic termination of the Tobacco Retail License. A Tobacco Retail License holder shall notify the Division in writing, via certified U.S. Mail, within five (5) days following the date when such Tobacco Retail License holder transfers, assigns, sells, closes or moves the business operating under the Tobacco Retail License. Upon being notified, the Division shall cancel the Tobacco Retail License.

§16-11. Requirement to Display Tobacco Retail License.

Any Tobacco Retail License issued pursuant to this Article shall be conspicuously displayed at the location where a Covered Product is sold or offered for sale so that it is readily visible to customers.

§16-12. Violations and Penalties.

(a) Any or all of the following shall constitute a violation under this Article:

- (1) The application and/or eligibility requirements for a Tobacco Retail License under Section 16-4 above are not met at any time after the license was issued; or

- (2) One or more of the bases for denial of a Tobacco Retail License under Section 16-6 above exists any time after the license was issued; or
 - (3) A violation by the Tobacco Retail License holder of any federal, state or local law or regulation pertaining to: (a) trafficking in a contraband Covered Product(s); (b) the payment or collection of taxes on a Covered Product(s); (c) the display of a Covered Product(s); (d) the display of health warnings pertaining to a Covered Product(s); or (e) the sale of a Covered Product(s); or
 - (4) Selling, offering for sale, or permitting the sale of any Covered Product without a valid Tobacco Retail License displayed in accordance with Section 16-11 above; or
 - (5) The Tobacco Retail License holder submitted an Application that contained a material misrepresentation; or
 - (6) The Tobacco Retail License holder is in violation of any other provision of this Article or is in violation of any federal or state statutes or rules and regulations as well as any local laws, ordinances, rules, and regulations of the City.
- (b) Following notice and a hearing in accordance with Section 16-14 below, any Tobacco Retail License holder found to be in violation of this Article shall be liable for civil penalty of not more than \$3,500.00 for the first violation, not more than \$7,000.00 for the second violation, and not more than \$10,000.00 for the third and each subsequent violation pursuant to Section 8-118 of the Charter of the City of Syracuse, as amended. Each day on which a violation occurs shall be considered a separate and distinct violation.

§16-13. Suspension and Revocation of Licenses.

- (a) Following notice and a hearing in accordance with Section 16-14 below, the Division may take any of the following actions based on a violation(s) of this Article:
 - (1) Suspension of the Tobacco Retail License for up to twelve (12) months; or
 - (2) Revocation of the Tobacco Retail License.

§16-14. Hearing.

- (a) In the event a Tobacco Retail License holder is alleged to be in violation of this Article, the Division may hold a hearing upon fifteen (15) days written notice to the license holder sent by certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof. Any such notice shall inform the license holder of the date, time and location of the hearing and the alleged violation(s) and potential resulting penalty.

- (b) Any hearing held hereunder shall be held before a hearing officer chosen by the Division who shall not be an employee within the Division. All such hearings shall be recorded. All such recordings shall be maintained for at least two (2) years.
- (c) Upon written notice to the Tobacco Retail License holder, the Division and/or hearing officer may adjourn the hearing date as the Division deems necessary and reasonable.
- (d) The Tobacco Retail License holder shall be allowed to be represented by counsel and shall be allowed to call witnesses on their behalf and conduct cross-examination of all witnesses.
- (e) The hearing officer shall review the hearing recording and all exhibits submitted at the hearing and, within forty-five (45) days following the hearing, render a written recommendation to the Director as to whether a Tobacco Retail License should be suspended or revoked and as to the civil penalty, as applicable and as defined in Section 16-12 above, that should be assessed.
- (f) Forty-five (45) days after receipt of the hearing officer's written recommendation, the hearing recording, and all exhibits submitted at the hearing, the Director shall conduct a de novo review of the recording, all exhibits submitted at the hearing, and the hearing officer's written recommendation. The Director shall then make a determination whether a Tobacco Retail License should be suspended or revoked and as to any civil penalty that should be assessed pursuant to Section 16-12 above. The Director shall provide the Corporation Counsel with a written order containing his/her determination, which the Corporation Counsel shall use to prepare the final order. Within thirty (30) days after receipt of the Director's written order, the final order shall be drafted by the Corporation Counsel or his/her designee. The Final Order shall be signed by the Director and sent to the Tobacco Retail License holder by certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof.

§16-15. Failure to Obtain Tobacco Retail License.

- (a) In the event any business required to obtain a Tobacco Retail License under Section 16-3 herein fails to obtain a Tobacco Retail License and continues to sell, to offer for sale, or to permit the sale of a Covered Product to consumers in the City, the Division shall notify the business in writing via Certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof: 1) that it is operating in violation of this Article; 2) that it has fifteen (15) days from receipt of the written notification to stop operating in violation of this Article; and 3) that if it continues to operate in violation of this Article after fifteen (15) days from the date written notification was mailed, the business shall be subject to immediate closure by the Division under Section 107.1.4 of the 2020 New York State Property Maintenance Code and under any other relevant statute, law, ordinance, rule or regulation and a civil penalty of up to \$10,000.00 as provided in Section 8-118 of the Charter of the City of Syracuse, as amended, may be imposed.

- (b) In the event the business is provided with the written notification described in Section 16-15(a) above and continues to operate in violation of this Article after such notification, the Division shall immediately close the business under Section 107.1.4 of the 2020 New York State Property Maintenance Code and under any other relevant statute, law, ordinance, rule or regulation and may impose a civil penalty of up to \$10,000.00 as provided in Section 8-118 of the Charter of the City of Syracuse, as amended.

§16-16. Inspections Access.

In addition to the requirements set forth in Section 16-4 above, officers and employees of any City departments with responsibility to enforce or assist the Director in enforcing this Article shall have the right of access to any business subject to the terms of this Article for the purpose of making an inspection during normal business hours and the City shall also have the authority to seek inspection warrants where necessary to properly administer this Article.

§16-17. Enforcement.

- (a) The Director, in conjunction with other City Departments, including but not limited to the Syracuse Police Department, shall enforce the provisions of this Article. The Director and/or its authorized designee(s) may conduct periodic inspections of the business holding and/or operating under the Tobacco Retail License, or a business in violation of this Article, in order to ensure compliance with this Article.
- (b) The Corporation Counsel may maintain an action or special proceeding in a court of competent jurisdiction for the recovery of civil penalties, together with costs and disbursements. In addition to any action or special proceeding for recovery of civil penalties, the Corporation Counsel may take any and all action necessary to enforce this Article, including but not limited to, an action or special proceeding to enjoin the continued operation or maintenance of a business in violation of the terms of this Article.

§16-18. Notice Regarding This Article.

Within sixty (60) days of the effective date of this Article, the Division shall send to all known entities possessing a valid and current State License a copy of this Article and shall post this Article in print or digitally in the Post Standard or any other publication authorized by the Common Council once a week for two (2) weeks and on the Division's website. Failure to receive a notice shall not affect the applicability of this Article.

§16-19. Rules and Regulations.

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

§16-20. Severability.

If any clause, sentence, paragraph or part of this Article or application thereof to any person or circumstance shall be judged by any court to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof or the application thereof to other person or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and the persons or circumstances directly involved in the controversy in which the judgement shall be rendered.

§16-21. Effective Date.

This Article shall be effective as of October 1, 2023 subject to and in accordance with the provisions of New York State Municipal Home Rule Law.

**SECTION 2.
SEVERABILITY CLAUSE**

Severability is intended throughout and within the provisions of this Local Law. If any section, subsection, sentence, clause, phrase or portion of this Local Law is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Local Law.

**SECTION 3.
SAVINGS CLAUSE**

This Local Law is not intended to rescind or repeal any existing City of Syracuse Charter Provision unless such change is made by its express terms. Otherwise, all other provisions of the Syracuse City Charter and Local Laws not inconsistent with the provisions of this Local Law shall remain in full force and effect.

**SECTION 4.
EFFECTIVE AND OPERATIVE DATE**

This Local Law shall be effective on October 1, 2023 subject to and in accordance with the provisions of New York State Municipal Home Rule Law.