

A LOCAL LAW PROHIBITING THE SALE OF TOBACCO PRODUCTS OR HERBAL CIGARETTES, ROLLING PAPERS OR PIPES TO ANYONE UNDER THE AGE OF 19 EXCEPT PERSONS SERVING IN THE UNITED STATES MILITARY, INCLUDING NATIONAL GUARD AND RESERVES

BE IT ENACTED BY THE COUNTY LEGISLATURE OF ONONDAGA COUNTY AS FOLLOWS:

Section 1. Findings/Purpose.

This Legislature hereby finds and determines that primary tobacco use is a major cause of mortality and morbidity, directly causing an estimated 434,000 deaths per year in the United States; more deaths than are caused by the use of any other legal or illegal substance or drug. This Legislature also finds and determines that every eight seconds someone in the world dies due to tobacco. This Legislature further finds that over 80% of adult smokers began smoking before the age of 18 and tobacco companies make \$1.8 billion from under age sales.

This Legislature determines that the effects of smoking generated by the smoking of cigars, cigarettes, pipes, and similar articles pose a threat to the health, safety and well-being of youth within Onondaga County. The purpose of this local law is to make tobacco products inaccessible to Onondaga County high school age youth to reduce the chances that they will become addicted to cigarettes at any age.

Section 2. Definitions.

As used in this local law:

(a) "Person" means a person, firm, company, corporation, partnership, sole proprietor, limited partnership or association.

(b) "Tobacco products" means one or more cigarettes or cigars, bidis, chewing tobacco, powdered tobacco, nicotine water or any other tobacco products.

(c) "Herbal cigarette" means any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a cigarette, cigar or pipe filler.

(d) "Bidis" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendra leaf (*diospyros exculpra*), or any other product offered to consumers as "beedies" or "bidis".

(e) "Tobacco business" means a sole proprietorship, corporation, limited liability company, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories, licensed by the State of New York to sell, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

(f) "Nicotine water" means bottled water that is laced with nicotine.

Section 3. Prohibitions.

Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale is prohibited from selling such products, herbal cigarettes, rolling papers or pipes to individuals under 19 years of age, except for all persons who are 18 years of age and are serving in the United States military, including National Guard and Reserves and shall post in a conspicuous place, a sign upon which there shall be imprinted the following statement:

**“SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, ROLLING PAPERS OR PIPES, TO PERSONS UNDER NINETEEN (19) YEARS OF AGE, IS PROHIBITED UNDER PENALTY OF LAW. THIS PROHIBITION SHALL NOT APPLY TO SALES TO PERSONS EIGHTEEN (18) YEARS OF AGE SERVING IN THE UNITED STATES MILITARY, INCLUDING NATIONAL GUARD AND RESERVES.”**

Such sign shall be printed on a white card in red capital letters at least three quarters of an inch (3/4) in height.

Sale of tobacco products or herbal cigarettes in such places, other than by a vending machine, shall be made only to an individual who demonstrates that such individual is at least 19 years of age, or is 18 years of age and serving in the United States military, including National Guard and Reserves through:

(a) a valid driver's license or non-driver's identification card issued by the Commissioner of Motor Vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada; or

(b) a valid passport issued by the United States government or any other country; or

(c) an identification card issued by the armed forces of the United States.

Such identification need not be required of any individual who reasonably appears to be at least twenty-five (25) years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of a tobacco product or herbal cigarettes in violation of this Local Law.

#### Section 4. Storage for Sale.

No person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any tobacco product or herbal cigarettes in any manner, unless such products and cigarettes are stored for sale:

(a) behind a counter in an area accessible only to the personnel of such business; or

(b) in a locked container, provided, however, such restriction shall not apply to tobacco businesses and to places to which admission is restricted to persons 19 years of age or older.

#### Section 5. Inspection and Enforcement.

The Onondaga County Department of Health shall enforce this law in accordance with the procedures set forth in Article 1-B of the Onondaga County Sanitary Code. The Onondaga County Health Commissioner or his/her designee shall be authorized to serve a Notice of Violation of this law. Any such Notice of Violation will also serve as notice of a hearing and shall include the following information: charges and violations complained of with specific reference to this local law; the time and place of the hearing; the purpose of the hearing; the right to present evidence; the right to examine and cross examine witnesses; and the right to be represented by counsel.

#### Section 6. Penalties.

(a) Any person who violates any provision of section 3 or 4 of this local law shall be subject to the imposition of a civil penalty by the Commissioner of the Department of Health of a minimum of three hundred dollars, but not to exceed one thousand dollars for a first violation, and a minimum of five hundred dollars, but not to exceed one thousand five hundred dollars for each subsequent violation. Provided, however, that such penalties shall not be imposed in any case where such person shall have been found to have sold tobacco products in violation of Article 13-F of the New York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act (ATUPA).

(b) For purposes of enforcing the ban on the sale of any tobacco products and/or herbal cigarettes to minors, other than by a vending machine, a sale of any tobacco products and/or herbal cigarette shall be made only to an individual who demonstrates that he/she is at least 19 years of age, or is 18 years of age and serving in the United States military, including National Guard and Reserves, and has demonstrated such in accordance with the guidelines set forth hereinabove in Section 3(a), (b) and (c).

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 the sale of any tobacco product and/or herbal cigarette in violation of this Local Law.

**Section 7. Applicability.**

This law shall apply to all sales of products prohibited on or after the effective date of this Local Law.

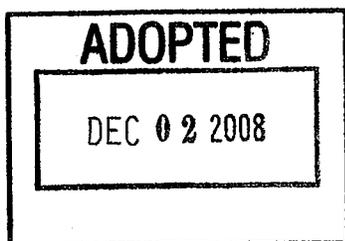
**Section 8. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 9. Effective Date.**

This local law shall take effect March 2, 2009

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I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF LEGISLATION DULY ADOPTED BY THE COUNTY LEGISLATURE OF ONONDAGA COUNTY ON THE

2nd DAY OF December, 2008.

*Deborah A. Marino*

CLERK, COUNTY LEGISLATURE  
ONONDAGA COUNTY, NEW YORK

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