

LOCAL LAW NO. 2 - 16
CHAUTAUQUA COUNTY

A LOCAL LAW TO RAISE THE LEGAL AGE FOR PURCHASE OF
TOBACCO PRODUCTS IN CHAUTAUQUA COUNTY TO 21

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York, as follows:

Section 1. Legislative Findings and Intent.

The sale in Chautauqua County of tobacco and related products to individuals under twenty-one years of age should be prohibited in order to:

- a) further the goals of New York State's tobacco use prevention and control program, as identified in New York State Public Health Law §1399-ii;
- b) respond to the fact that tobacco is the leading cause of preventable death and disease in New York State;
- c) respond to findings made by the Institute of Medicine, which prepared a report at the request of the U.S. Food and Drug Administration entitled "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products," concluding and suggesting that:
 - i. adolescent brains are uniquely vulnerable to the effects of nicotine;
 - ii. a younger age of initiation is strongly associated with greater nicotine dependence and is also associated with greater intensity and persistence of smoking beyond adolescence and into adulthood;
 - iii. almost one in five high school seniors is a current cigarette smoker;
 - iv. underage users rely primarily on social sources, such as friends and family, to acquire tobacco, and most of these sources are likely to be between eighteen and twenty years old;
 - v. raising the minimum legal age to twenty-one will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students;
 - vi. delaying initiation rates will likely decrease the prevalence of tobacco users in the U.S. population; and
 - vii. raising the minimum legal age will likely immediately improve the health of adolescents and young adults by reducing the number of those with adverse physiological effects;
- d) address the fact that, when adjusted for age, 27.8 percent of adults in Chautauqua County smoke, which is the ninth highest county smoking rate in the State;
- e) respond to findings that most (nearly 90%) of those addicted to tobacco, start using tobacco before twenty-one years of age;
- f) respond to the growing rates of electronic cigarette use among youth, which expose users to unhealthy levels of nicotine and other unknown harmful chemicals;

- g) reduce the exposure of our youth to disease-causing toxins in secondhand smoke and in chemicals emitted from electronic cigarettes, liquid nicotine, shisha, herbal cigarettes, and other Prohibited Products as defined herein;
- h) apply evidence-based strategies to address the public health issues that result from tobacco use including but not limited to cancer, heart disease, and lung disease;
- i) prevent exposure of youth, who are particularly susceptible to addiction, to the chemically addictive effects of tobacco and related products, in an effort to improve public wellness and reduce health insurance expenditures; and
- j) protect young County residents from the unregulated and unknown effects of electronic cigarettes, herbal cigarettes, and other Prohibited Products.

Section 2. Definitions.

- a) “Prohibited Products” means:
 - i. cigarettes, cigars, chewing tobacco, powdered tobacco, shisha, bidis, gutka, other tobacco products, nicotine water, herbal cigarettes, electronic cigarettes, liquid nicotine, snuff, rolling papers, and smoking paraphernalia, as those terms are defined in New York State Public Health Law Article 13-F and, when not so defined, as commonly understood to be defined; and
 - ii. all other products which are prohibited from being sold to minors by New York State Public Health Law Article 13-F, as the same may be amended from time to time.
- b) “Enforcement Officer” means the County of Chautauqua Board of Health.

Section 3. Policy.

- a) The sale of Prohibited Products to those under the age of twenty-one is prohibited in Chautauqua County to the same extent that sale of such products to those under eighteen years of age is prohibited by New York State Public Health Law Article 13-F, as the same may be amended from time to time.
- b) The identification requirements contained in New York State Public Health Law Article 13-F Section 1399-cc(3), as the same may be amended from time to time, are hereby incorporated into this law by reference, except that the age to be proven by such identification shall be twenty-one.
- c) Prohibited Products may not be sold in vending machines located in the County.
- d) No person operating a place of business wherein Prohibited Products are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any Prohibited Product in any manner, unless such Product is 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 as defined in subdivision eight of §1399-aa of New York State Public Health Law Article 13-F, as the same may be amended from time to time, and to places to which admission is restricted to persons twenty-one years of age or older.

Section 4. Posting of Signs.

Vendors of Prohibited Products shall post a sign in a conspicuous place imprinted with the statement “SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA, BIDIS, GUTKA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS, OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE, IS PROHIBITED BY LOCAL LAW.” Such sign shall be printed on a white card in red letters at least one-half inch in height. Signs shall be protected from tampering, damage, removal, or concealment. In the event additional sign language is required due to changes to New York State Public Health Law Article 13-F, vendors shall add such additional language to their signs, including, but not limited to, reference to additional products which may become prohibited for sale to minors.

Section 5. Enforcement.

- a) The Enforcement Officer is charged with ensuring compliance with this Local Law.
- b) In the event a violation of this Law also constitutes a violation of New York State Public Health Law, as the same may be amended from time to time, the Enforcement Officer shall take enforcement action pursuant to and in accordance with New York State Public Health Law Article 13-F §1399-ee, as the same may be amended from time to time.
- c) For a violation of this Law which does not constitute a violation of New York State Public Health Law:
 - i. the Enforcement Officer may issue and serve upon the person complained against a written hearing notice, in accordance with the provisions of the Chautauqua County Sanitary Code, together with the complaint made against him or her. The Complaint shall specify the provision(s) of this Local Law of which such person is alleged to be in violation, accompanied by a statement of the manner in which that person is alleged to have violated it, and shall require the person so complained against to answer the charges of such complaint at a public hearing before the Board of Health or its designated hearing officer, at a specified location, date, and time, not fewer than fifteen (15) days after the date of service of the notice;
 - ii. notwithstanding the above, the Board of Health or its designee may, in its discretion, offer a proposed stipulation to the person complained against, in which case the person complained against will have the option of executing the proposed stipulation within any time frame specified, or proceeding with a formal hearing;
 - iii. when the Enforcement Officer determines after a hearing that a violation of this Local Law has occurred, a civil penalty may be imposed by the Enforcement Officer pursuant to Section 6 of this Local Law. Nothing herein shall be construed as prohibiting an Enforcement Officer from commencing a proceeding for injunctive relief to compel compliance with this Local Law;
 - iv. any person who desires to register a complaint under this Local Law may do so through the Enforcement Officer;

- v. the decision of the Enforcement Officer shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules; and
- vi. the Enforcement Officer, subsequent to any appeal having been finally determined, may bring an action in a court of proper jurisdiction to recover the civil penalty assessed in accordance with Section 6 of this Local Law.

Section 6. Violations and Penalties.

Violation of any provision of this Local Law shall be punishable by a civil penalty in an amount determined by the Chautauqua County Board of Health, within the parameters of the minimum and maximum penalties set forth in New York State Public Health Law §1399-ee(2), as the same may be amended from time to time.

Section 7. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or business 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 specific application.

Section 8. Effective Date.

This local law shall become effective October 1, 2016.

Emailed: 3/11/16

Adopted by Legislature: 4/27/16

R/C Vote: 13 Yes; 6 No (No's: Bankoski, Muldowney,
Nebel, Scudder, Vanstrom,
Wilfong)

Public Hearing by County Executive: 5/12/16 (Signed on 5/17/16)

Mailed to State: 5/18/16