

INTRODUCTORY
2024-__
NO.

F.N.

ONEIDA COUNTY BOARD OF LEGISLATORS

RESOLUTION NO.

INTRODUCED BY:
2ND BY:

LOCAL LAW INTRO. “__” OF 2024
LOCAL LAW NO. __ OF 2024

A LOCAL LAW _____

BE IT ENACED BY THE BOARD OF COUNTY LEGISLATORS OF THE COUNTY OF ONEIDA, STATE OF NEW YORK, AS FOLLOWS:

SECTION 1. SHORT TITLE.

This Act shall be known and may be cited as the “Smoking Paraphernalia Retail Control Act”.

SECTION 2. AUTHORITY

The Board of County Legislators adopts this Act pursuant to New York State Constitution Article IX, §§ 1(a), 2(c)(10) and New York Municipal Home Rule Law § 10(1)(ii)(a)(12).

SECTION 3. LEGISLATIVE FINDINGS AND PURPOSE.

In 1964, the Surgeon General of the United States issued the first of several reports linking cigarette smoking to lung and throat cancer and a dramatic increase in mortality (*see* Report Surgeon General, *The Health Consequences of Smoking—50 Years of Progress*, at 3 [2014]). In the decades since, smoking has been causally linked to 13 types of cancer and 25 types of chronic disease, including coronary heart disease and diabetes (*see id.* at 4).

Smoking of cigarettes has fallen since then, but the use of cigarette alternatives (waterpipes and electronic cigarettes) has increased dramatically, threatening to undo decades of progress (*see Cobb et al.*, *Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States*, 34 Am. J. Health Behavior, at 275-285 [2010]; Report Surgeon General, *E-Cigarette Use Among Youth and Young Adults*, at vii [2016] [“E-cigarette use has increased considerably in recent years, growing an astounding 900% among high school students from 2011 to 2015”]). A single waterpipe (hookah) session is equivalent to smoking up to 50 cigarettes (*see id.* at 780; *see also Cobb et al.*, *Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States*, 34 Am. J. Health Behavior, at 275-285 [2010]). And electronic cigarettes, or “vapes,” often contain nicotine, cancer-causing and disease-causing chemicals, heavy metals, particles, and harmful

flavorings (see Report Surgeon General, E-Cigarette Use Among Youth and Young Adults, at 100–117 [2016]).

Neighborhoods with smoke and vape shops have higher rates of tobacco use (see Kong and Henriksen, Retail Endgame Strategies: Reduce Tobacco Availability, Visibility and Promote Health Equity, at 2 [2022]). And where tobacco retailers are located near high schools, students are more likely to begin smoking (see McCarthy, *et al.* Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students, 99 Am. J. Pub. Health, at 12 [2009]). This is especially dangerous because young people are susceptible to unique childhood diseases and are likely to smoke into adulthood (see generally Report Surgeon General, Preventing Tobacco Use Among Youth and Young Adults, at 3, 8–9 [2012]).

Federal and state law regulate tobacco heavily but leave a gap. They focus on the sale of tobacco and nicotine but do not regulate the sale of the equipment, such as pipes and waterpipes, used to inhale them (see generally Michael Freiberg, Options for State and Local Governments to Regulate Non-Cigarette Tobacco Products, 21 Health Policy & Law Rev. 409, 414–416, 437 [2021]; see also 21 U.S.C. §§ 321 [defining tobacco products to mean products made or derived from tobacco or containing nicotine from any source, 387–387v [regulating the sale, labelling, and marketing of tobacco products]; Public Health Law Article 13-E [regulation of smoking and vaping in public areas]; Public Health Law Art. 13-F [preventing adolescent use of tobacco and nicotine]).

Considering the foregoing, the Board of County Legislators finds and determines that the regulation of smoking paraphernalia retailers will promote the health and well-being of Oneida County residents. Moreover, the establishment of rules and standards for the operation of licensed paraphernalia retailers will promote the public health by reducing youth access to smoking paraphernalia (see Frieberg, *supra* at 437), reducing tobacco and nicotine dependency and addiction, and reducing the incidence of tobacco-caused cancers and chronic diseases.

Recognizing that it will take time for retailers to comply with this Act, the Board of County Legislators further determines that this Act should take effect 180 days after its filing with the Secretary of State, as set forth in Section 10.

SECTION 4. EXEMPTIONS.

This Act shall not apply to any federally recognized Indian tribe nor to any person or business licensed to sell cannabis or allow the onsite consumption of cannabis, pursuant to the New York State Cannabis Law.

SECTION 5. DEFINITIONS.

- A. “Beneficial Owner” means any person who directly or indirectly exercises substantial control over a non-natural Person or who owns or controls at least 25 percent of the ownership interests of such non-natural Person.
- B. “Department” means the Oneida County Department of Health.
- C. “License Fee” means the fee paid for a Smoking Paraphernalia Retail License.

- D. “Notice of Violation and Order to Cease” means a notice of violation and order to cease Unlawful Activity, along with any penalties for such conduct, as set forth in Section 8(C)(4).
- E. “Order to Seal” means an order to seal a premises of any business engaged in Unlawful Activity, as set forth in Section 8(C)(5).
- F. “Person” means any person, firm, company, corporation, partnership, sole proprietor, limited partnership, or association.
- G. “Retail” means to solicit or receive an order for, to keep or expose for sale, and to keep with the intent to sell Smoking Paraphernalia.
- H. “Retailer” means a Person who engages in the Retail sale of Smoking Paraphernalia.
- I. “Smoking Paraphernalia” means any pipe, waterpipe, hookah, rolling papers, leaf (such as tendu leaves), electronic pipe, electronic cigarettes, and electronic tank-devices, or any other device, equipment or apparatus designed for the inhalation of tobacco or nicotine.
- J. “Smoking Paraphernalia Retail License” means a license to sell Smoking Paraphernalia at Retail.
- K. “Unlawful Activity” means activity prohibited by Section 6 of this Act.

SECTION 6. PROHIBITIONS AND RESTRICTIONS

- A. No Person shall sell Smoking Paraphernalia at Retail within the County of Oneida unless such Person or the Retailer for whom such person is employed possesses a Smoking Paraphernalia Retail License.
- B. No Person shall sell Smoking Paraphernalia within the County of Oneida to a person under the age of 21 years.
- C. No Person shall allow to work on any premises within the County of Oneida where the Retail sale of Smoking Paraphernalia occurs a person under the age of eighteen years in any capacity where the duties of such person require or permit such person to sell, dispense or handle Smoking Paraphernalia. Any employee eighteen years of age or older and under twenty-one years of age may not have direct interaction with customers inside a Retail store where the sale of Smoking Paraphernalia occurs.
- D. No Person shall engage, participate in, or aid or abet any violation of any provision of this Act.

SECTION 7. PENALTIES

- A. Any Person who engages in Unlawful Activity may be subject to a civil penalty of up to five hundred dollars per each day during which such violation continues.
- B. Any Person who engages in Unlawful Activity, and any of such Person's Beneficial Owners, may be subject to the suspension, revocation, or debarment from holding of a Smoking Paraphernalia Retail License.
- C. Without limiting any other recourse, remedy or relief that may be available, the County Attorney may, in addition to filing requests for hearings as provided in Section 8(C)(5)(b) of this Act, bring an action or proceeding against any person who violates, disobeys or disregards any term or provision of this Act or of any lawful notice, order or regulation pursuant hereto for any relief authorized by law, including equitable and/or injunctive relief and the recovery of civil penalties; provided, however, that the Department shall furnish the County Attorney with such material, evidentiary matter or proof as may be requested by the County Attorney for the conduct of such an action or proceeding. The County Attorney shall be entitled to his or her costs, including reasonable attorneys' fees, of such action or proceeding.

SECTION 8. DEPARTMENT AUTHORITY. The Department shall have the authority to:

- A. Adopt policies and procedures to implement this Act.
- B. Accept applications for, and award or deny Smoking Paraphernalia Retail Licenses, as follows:
 - 1. Any Person above the age of twenty-one years wishing to sell Smoking Paraphernalia at Retail shall apply to the Department for a Smoking Paraphernalia Retail License. Such application shall be in a form prescribed by the Department, and shall include:
 - (a). The name, street address, email address, and direct phone number of the applicant;
 - (b). If the applicant is not a natural person, the type of its corporate form or association, the state of its incorporation or formation, and the address of its principal place of business;
 - (c). The name of the business under which Smoking Paraphernalia will be sold at Retail.
 - (d). The address of the proposed Retail location;
 - (e). The proposed hours of operation of the proposed Retail Location;
 - (f). A description of all Smoking Paraphernalia to be sold at Retail;

- (g). The identity and addresses of all schools, parks, licensed daycares, and playgrounds within 1,000 feet of the proposed Retail location;
- (h). The identity and address of any other Smoking Paraphernalia Retailer within a one quarter mile radius of the proposed Retail Location.
- (i). The names of the Beneficial Owners of the applicant, or Retailer (if different from the applicant); and if such Beneficial Owners are not natural persons, all Beneficial Owners of such Beneficial Owners continuing until all natural person Beneficial Owners, direct and indirect, have been identified;
- (j). If the applicant is not a natural person, proof that the application is duly authorized by the applicant;
- (k). A description of the applicant's prior application for, suspension of, revocation of, or debarment from the holding of a Smoking Paraphernalia Retail License;
- (l). The License Fee in an accompanying cashier's check, bank draft, or money order; and
- (m). The applicant's signed verification, affirmed under penalties of perjury, that the application is complete, true, and contains no material omissions, including no failure to disclose any Beneficial Owner, direct or indirect.

2. The fee for a Smoking Paraphernalia Retail License shall be two thousand five hundred dollars and zero cents (\$2,500.00) and shall increase by three percent (3%) on January 1st of each year following the effective date of this Act, as calculated by the Department and published on its public website. The License Fee shall be returned to the applicant in the event the Department denies the application for a Smoking Paraphernalia Retail License.

3. The Department shall grant or deny a Smoking Paraphernalia Retail License based upon, but not limited to, the following criteria.

- (a). Whether the application is complete, accurate, and accompanied by the License Fee.
- (b). Whether the Retail location is sufficiently distant from any school, park, licensed daycare, or playground, and specifically, no Smoking Paraphernalia Retail License shall be granted within one thousand feet from any school, park, licensed daycare, or playground.

- (c). Whether the number of other Smoking Paraphernalia Retail Licenses in proximity to the location creates so significant a density of such Retailers that the purposes of this Act are diminished or frustrated, and specifically, no Smoking Paraphernalia Retail License shall be granted within a one quarter-mile radius of any other Smoking Paraphernalia Retailer.
 - (d). Whether the hours of operation of the Retail business are at such times and dates when children and teenagers are typically in school, thereby minimizing youth access to Smoking Paraphernalia.
 - (e). Whether the granting of a Smoking Paraphernalia Retail License would negatively effect pedestrian or vehicular traffic, and parking, in proximity to the location.
 - (f). Whether the granting of a Smoking Paraphernalia Retail License would generate noise or disturbances at the location sufficient to disrupt the quiet use and enjoyment of adjacent properties.
 - (g). Whether, upon considering the effect of previously issued Smoking Paraphernalia Retail Licenses, the Department determines that there has been an increase, or maintenance, in smoking throughout the County and that the denial of a Smoking Paraphernalia Retail License will militate or reduce such trend within the County.
 - (h). Whether the applicant currently holds a Smoking Paraphernalia Retail License and has complied with this Act.
 - (i). The applicant's and its Beneficial Owners' (if any) history of compliance or non-compliance with this Act.
- 4. The Department may in granting a Smoking Paraphernalia Retail License impose conditions to mitigate any of the factors described in Section 8(B)(3), and make such Smoking Paraphernalia Retail License contingent upon the licensee's continued compliance with such conditions.
 - 5. If the Department denies the applicant a Smoking Paraphernalia Retail License, the Department shall notify the applicant in writing of the specific reason or reasons for such denial.
 - 6. Any Smoking Paraphernalia Retail License issued pursuant to this Act shall expire after two years from the date of its issuance and shall not be transferrable to any other Person. A separate application and separate Smoking Paraphernalia Retail License shall be required per Retail location. Any Person who holds a Smoking Paraphernalia Retail License who wishes to renew such license shall apply for such renewal according to same procedures as for an initial Smoking Paraphernalia Retail License.

7. The Department may suspend, revoke, or debar a Person or Beneficial Owner from holding, a Smoking Paraphernalia Retail License according to the following procedures:
- (a). Upon a writing issued to such Person or Beneficial Owner and served upon such Person or Beneficial Owner served in accordance with Section 8(C)(4) of this Act, notifying such Person or Beneficial Owner of its violation of any provision of this Act, or conditions of its Smoking Paraphernalia Retail License, and imposing a warning, suspension, revocation, or debarment of a Person or Beneficial Owner from holding, a Smoking Paraphernalia Retail License.
 - (b). In determining the severity of the penalty, whether a warning, suspension, revocation, or debarment from holding a Smoking Paraphernalia Retail License is appropriate, the Department shall consider the following and such other factors as it deems appropriate:
 - i. The nature and severity of the Person or Beneficial Owner's violation of this Act or the terms of its Smoking Paraphernalia Retail License.
 - ii. Whether the violation was intentional or not intentional.
 - iii. The Person or Beneficial Owner's history of compliance with this Act or the conditions of its Smoking Paraphernalia Retail License.
 - iv. Whether the violation poses an imminent threat to the public health, safety, and welfare as set forth in Section 8(C)(5)(a) of this Act.
 - v. Whether warning, suspension, revocation, or debarment of a Person or Beneficial Owner from holding a Smoking Paraphernalia Retail License would deter violations by other Persons and/or promote the public health and safety.
 - (c). Such Person or Beneficial Owner shall have the opportunity to respond to the foregoing notice in writing within ten calendar days, such response setting forth any denial, matter, or evidence in mitigation of Department's notice.
 - (d). Within thirty (30) days, the Department shall issue a final determination, in writing, to the Person or Beneficial Owner setting forth its bases for the determination and penalty and imposing a warning, suspension, revocation, or debarment of the Person or Beneficial Owner from holding a Smoking Paraphernalia Retail License.

- C. Enforce the provisions of this Act, including the Authority to:
1. Receive and track complaints of any Unlawful Activity, such complaints in such form and manner as prescribed by the Department.
 2. Conduct inspections, including undercover inspections, of any place of business located within Oneida County, including a vehicle used for such business, for Unlawful Activity, provided however, that such business is not exempt as set forth in Section 4 of this Act.
 3. Seize any Smoking Paraphernalia found in the possession of a person engaged in Unlawful Activity and in their place of business, including a vehicle used for such business, provided that the Department maintain documentation of the chain of custody of such seized products and ensure that such products are properly stored, catalogued, and safeguarded until such time as they may be returned or properly destroyed by the County.
 4. Issue a notice of violation and order to cease Unlawful Activity along with any penalties for such conduct. Any notice of violation and order to cease Unlawful Activity shall be served by delivery thereof to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises. A copy of the notice of violation and order shall also be mailed to any address for the owner of the business at any address provided by the person to whom such order was delivered pursuant to this subparagraph.
 5. Issue an order to seal the building or premises of any business engaged in Unlawful Activity, when such activity is conducted, maintained, or permitted in such building or premises, and occupied as a place of business, subject to the procedures and requirements set forth in this paragraph:
 - (a). The Department may issue an order to seal with an immediate effective date if such order is based upon a finding by the Department of an imminent threat to the public health, safety, and welfare. For the purposes of determining whether there is an imminent threat to the public health, safety, and welfare, the Department shall consider:
 - i. Whether upon a second or subsequent inspection of the business, Unlawful Activity is confirmed to be continuing more than ten calendar days after a notice of violation and order to cease Unlawful Activity was previously issued by the Department;
 - ii. Documented sales to minors;

- iii. Orders issued following an inspection wherein the person engaged in the Unlawful Activity engaged in violent, tumultuous, or other behaviors indicating expressed intent to not comply with the Department's order to cease the Unlawful Activity;
 - iv. Documented presence of unlawful firearms at the building or premises;
 - v. Proximity of the building or premises to schools, houses of worship, or public youth facilities; or
 - vi. Presence of products deemed unsafe based on reports of illness or hospitalization.
- (b). The order to seal shall be served by delivery thereof to the owner of the business or other person of suitable age or discretion in actual or apparent control of the premises at the time of the inspection and shall be posted at the building or premises that have been sealed, secured and closed. A copy of the order shall also be mailed to any address for the owner of the business provided by the person to whom such order was delivered pursuant to this subparagraph. The order shall remain in effect pending a hearing and final determination of a court, or until such order is vacated by the officer or agency pursuant to the local law adopted pursuant to this subdivision. An order to seal shall explicitly state that a request for a hearing may be submitted in writing to the County Attorney as applicable within seven days. Upon receiving such a request for a hearing, the County Attorney shall file a copy of the request with the clerk of the city court or county court in the city or county where the building or premises is located.
- (c). The court that receives notice of a request for a hearing from the County Attorney shall fix the date of such hearing no later than three business days from the date such notice is received by the court and provide notice to the parties of the date, time, and location of the hearing. Upon such date, or upon such other date to which the proceeding may be adjourned by agreement of the parties, the court shall hear testimony and receive evidence presented by the parties. The County and the person that requested the hearing shall be parties to the proceeding. Within four business days of the conclusion of the hearing, the court shall make a determination as to:
- i. Whether the person upon which the order to seal was issued was engaged in Unlawful Activity; and

- ii. If the order to seal was imposed with immediate effect, whether such Unlawful Activity presents an imminent threat to public health, safety and welfare, as set forth in Section 8(C)(5)(a) of this Act; and
 - iii. If the court is satisfied that an order to seal was properly issued, the court may render a judgment affirming the issuance of an order to seal, and direct the closing of the building or premises by any police officer or peace officer with jurisdiction to the extent necessary to abate the Unlawful Activity and shall direct any police officer or peace officer with jurisdiction to post a copy of the judgment and a printed notice of such closing conforming to the requirements of this Act. In the event that the court determines that the Unlawful Activity occurred but did not present an imminent threat to public health, safety, and welfare, the court may modify the order to seal to take effect within a reasonable time, not to exceed thirty (30) days, unless the Unlawful Activity is first abated to the satisfaction of the Court. The closing directed by the judgment shall be for such period as the court may direct but in no event shall the closing be for a period of more than one year from the posting of the judgment provided for in this subparagraph. Failure of a party that requested a hearing to appear at the hearing will result in a default and order of sealing to remain in effect for such period as the court may direct but in no event shall the order be in effect for a period of more than one year from the posting of the judgment unless otherwise vacated.
- (d). The Department, or upon the Department's request any police officer or peace officer with jurisdiction, may execute and enforce an order to seal issued by the Department, in accordance with the following procedures.
- i. The person serving and executing the order to seal shall forthwith make and return to the Department an inventory of personal property situated in and used in conducting, maintaining, or permitting the Unlawful Activity and shall enter upon the building or premises for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory including, but not limited to photographing such personal property.
 - ii. The person serving and executing the order to seal shall enter the building or premises and, upon service of the order,

command all persons present in the building or premises to vacate the premises forthwith. Upon the building or premises being vacated, the premises shall be securely locked and all keys delivered to the officer serving the order who thereafter shall deliver the keys to the fee owner, lessor, or lessee of the building or premises involved. If the fee owner, lessor, or lessee is not at the building or premises when the order is being executed, the officer shall securely padlock the premises and retain the keys until the fee owner, lessor, or lessee of the building is ascertained, in which event, the officer shall deliver the keys to such fee owner, lessor, or lessee.

- iii. Upon service and execution of the order to seal, the person serving or executing the same shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the unlicensed activity is being conducted, maintained, or permitted. In addition, the officer shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that the premises have been closed by order of the Department.
 - iv. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than five thousand dollars or by a class B misdemeanor, or both, provided such order or notice contains therein a notice of such penalty, and shall be referred to the District Attorney for enforcement.
- (e). The Department shall mail a copy, by certified mail, of any order to seal issued by the Department within five days following issuance of such order to the person in whose name the real estate affected by the order is recorded in the office of the city register or the county clerk, as the case may be, who shall be presumed to be the owner thereof. Such mailing shall constitute notice to the owner and shall be deemed to be complete upon such mailing by the office as provided above.
- (f). If at any time a respondent permanently vacates the building or premises subject to an order to seal issued by the Department, or if the building owner provides sufficient proof thereof, any action or proceeding filed in accordance with these procedures relating to such building or premises shall be withdrawn by the Department without prejudice, and any order to seal shall be vacated.

- (g). Upon a demand by the County Attorney, a respondent or defendant shall provide to the County prior to a hearing pursuant to Section 8(C)(5)(a) of this Act, within five days after a demand or sooner if a hearing is scheduled less than five days from the date of demand, a verified statement setting forth:
- i. If the responding party is a natural person, such party's full legal name; date of birth; current home or business street address; and unique identifying number from an unexpired passport, an unexpired state driver's license, or an unexpired identification card or document issued by a state or local government agency or tribal authority for the purpose of identification of that individual;
 - ii. If the responding party is a partnership, limited liability partnership, limited liability company, or other unincorporated association, including a for profit or not-for-profit membership organization or club, the information required pursuant to Section 8(C)(5)(g)(i) or all of its partners or members, as well as the state or other jurisdiction of its formation;
 - iii. If the responding party is a corporation, its state or other jurisdiction of incorporation, principal place of business, and any state or other jurisdiction of which that party is a citizen; and
 - iv. If the responding party is not a natural person, for each Beneficial Owner of the responding party, its: full legal name; date of birth; current home or business street address; and a unique identifying number from an unexpired passport, an unexpired state driver's license, or unexpired identification card or document issued by a state or local government agency or tribal authority for the purpose of identification of that individual.

- D. Maintain a registry of all Retailers within the County possessing a Smoking Paraphernalia Retail License.

SECTION 9. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section, or part of this Act 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 effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Act, 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 10. EFFECTIVE DATE.

This Act shall take effect on the date that is 180 days following its filing with the Secretary of State in accordance with Sections 20, 21 and 27 of the Municipal Home Rule Law.

APPROVED:

DATED:

Adopted by the following vote:

AYES NAYS ABSENT

DRAFT