This Comprehensive Tobacco Retailer Licensing Ordinance was prepared to assist New York municipalities and counties interested in establishing or strengthening a local commercial tobacco retailer licensing (“TRL”) program and further regulating the tobacco retail environment.

Communities adopt TRL laws to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative public health and equity impacts associated with tobacco use, and enforce local, state, and federal tobacco control laws.

1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous and tribal communities for centuries. Commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit http://www.keepitsacred.itcmi.org. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
This model ordinance takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment. It builds on core provisions such as requiring a local tobacco retailer license by incorporating several innovative policy options. It also reflects changes to state and federal tobacco control laws such as Tobacco 21 and the federal Food and Drug Administration’s (“FDA”) Deeming Rule that expands the FDA’s regulatory authority to all tobacco products. The model ordinance offers municipalities and counties a variety of options to tailor this policy to meet the needs of their communities.2

The model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data. Readers should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdiction.

Customizing the Ordinance

Context boxes are included throughout the ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A municipality or county wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [ _________ ] ) prompt you to customize the language to fit your community’s needs. In other instances, the ordinance offers you a choice of options (such as [ choice one/choice two ]). Some options are followed by a comment that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community’s existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and engender health equity.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain tobacco control policies that are intended to help make that world a reality. Accordingly, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for local governments in New York State. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements.

2 This model ordinance uses “community” as shorthand for a group of people who will be impacted, either directly or indirectly, by a proposed changemaking strategy. People in a community (1) are in a particular geographic area, like a neighborhood or jurisdiction, and/or (2) share a common identity or characteristic.
While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide information through our publications, as well as referrals to experts in the field. Education, stakeholder and community engagement, and a strong advocacy plan are key steps in the adoption of effective tobacco control policies. If a community is in need of resources to help engage the public and develop an advocacy plan, or if a municipality or county is considering adopting an ordinance and is interested in learning about the range of resources available, please contact the Public Health Law Center. If you have any questions about this ordinance, you can reach us at publichealthlawcenter@mitchellhamline.edu.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health, and was made possible by a contract from the New York State Department of Health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.

The [municipal council/county board of supervisors] of [insert jurisdiction name] does ordain as follows:

**Note**

This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

**SECTION I.** [See Appendix A: Findings]

**Note**

The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this model ordinance should include findings of fact — data, statistics, relevant epidemiological information, for instance — that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this model ordinance appears in “Appendix A. Findings.” Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.
SECTION II. [ Article/Chapter ] of the [ municipality/county ] of [ Municipal/County Code ] is hereby amended to read as follows:

Sec. [ _____ (*1) ]. DEFINITIONS. The following words and phrases, whenever used in this [ article/chapter ], shall have the meanings defined in this section unless the context clearly requires otherwise:

(A) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.

(B) “Applicant” means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

(C) “Cannabis” has the meaning set forth in Cannabis § 3(5), as that section may be amended from time to time.

(D) “Cannabis Product” has the meaning set forth in Cannabis § 3(9), as that section may be amended from time to time.

(E) “Cannabis Retailer” means any person who sells at retail any cannabis product, the sale of which a license is required under the provisions Chapter 7-A of the New York Statutes, as that section may be amended from time to time.

(F) “Child-Resistant Packaging” means packaging that is designed and constructed to be significantly difficult for children under 5 years of age to open within a reasonable time, that is not difficult for normal adults to use properly, and that meets the definition and testing requirements set out in the Code of Federal Regulations, title 16, sections 1700.15(b) and 1700.20.

(G) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette.

(H) “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.

(I) “Compliance checks” means systems the department or other regulatory unit of government uses to investigate and ensure that tobacco retailers are following and complying with
the requirements of this [article/chapter]. Compliance checks may be conducted by the department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products. Compliance checks may also involve the use of persons between the ages of 18 and 20 who purchase or attempt to purchase tobacco products.

(J) “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

(K) “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

(L) “Department” means [insert department name] and any agency or person designated by the Department to enforce or administer the provisions of this [article/chapter].

(M) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(N) “Flavored Tobacco Product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice or that imparts a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

(O) “Full Retail Price” means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
(P) “Little Cigar” means any roll for smoking made wholly or in part of tobacco if such
product is wrapped in any substance containing tobacco, other than natural leaf tobacco
wrapper, and weighing not more than four pounds per thousand or with a cellulose
acetate or other integrated filter.

(Q) “Manufacturer” means any person, including any repacker or relabeler, who
manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports
a finished tobacco product for sale or distribution into the United States.

(R) “Movable place of business” means any form of business that is operated out of a kiosk,
truck, van, automobile or other type of vehicle or transportable shelter and not a fixed
address storefront or other permanent type of structure authorized for sales transactions.

(S) “Person” means any natural person, business, company, cooperative association,
corporation, firm, organization, partnership, personal representative, receiver, trustee,
assignee, or any other legal entity.

(T) “Pharmacy” means any retail establishment in which the profession of pharmacy
is practiced by a pharmacist licensed by the State of New York where prescription
pharmaceuticals are offered for sale, regardless of whether the retail establishment sells
other retail goods in addition to prescription pharmaceuticals.

(U) “Proprietor” means a person with an ownership or managerial interest in a business. An
ownership interest shall be deemed to exist when a person has a 10% or greater interest
in the stock, assets, or income of a business other than the sole interest of security
for debt. A managerial interest shall be deemed to exist when a person has or shares
ultimate control over the day-to-day operations of a business.

(V) “Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for
a commercial purpose, in any manner or by any means whatsoever.

(W) “Self-Service Display” means the open display or storage of tobacco products in a manner
that is physically accessible in any way to the general public without the assistance of
the retailer or employee of the retailer and a direct face-to-face transfer between the
purchaser and the retailer or employee of the retailer. A vending machine is a form of
self-service display.

(X) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar,
cigarette, or pipe, or any other lighted or heated product containing, made, or derived
from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is
intended for inhalation. “Smoking” includes using an electronic smoking device.
(Y) “Tobacco Product” means:

1. 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, or snus;

2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale and approved by the U.S. Food and Drug Administration for cessation purposes, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Note
Both the definition of “electronic smoking device” and “tobacco product” in this model include substances that go into an electronic smoking device regardless of whether they contain nicotine. In a jurisdiction that already regulates the commercial sale of cannabis products, these definitions might result in an overlapping and possibly confusing regulatory regime where certain products are covered by both the tobacco and cannabis laws. The Center can provide additional language to exclude regulated cannabis products under a TRL.

(Z) “Tobacco Retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

(AA) “Tobacco Retailing” means engaging in the activities of a tobacco retailer.

(BB) “Tobacco Retail License” means a license issued pursuant to Section 2 of this local law by the [Department/_________] to a person to engage in tobacco retailing in [municipality/county].
(CC) “Youth-Oriented Facility” means a parcel in the [municipality/county] that is occupied by:

1. a private or public kindergarten, elementary, middle, junior high, or high school;
2. a library open to the public;
3. a playground open to the public;
4. a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
5. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;
6. a park open to the public or to all the residents of a private community;
7. a licensed child-care facility or preschool;
8. or any other facility frequented by youth.

Sec. [_______ (*2)]. GENERAL REQUIREMENTS AND PROHIBITIONS.

(A) TOBACCO RETAILER’S LICENSE REQUIRED. It shall be unlawful for any person to engage in tobacco retailing in the [municipality/county] without first obtaining and maintaining a valid tobacco retailer’s license for each address at which tobacco retailing is to occur. A tobacco retail license is not required for wholesalers who do not sell tobacco products directly to consumers. A change in ownership or address requires a new tobacco retail license. A license issued pursuant to this law is nontransferable and nonassignable.

- This local law shall not apply to a registered organization pursuant to section 3364 of the public health law.

(B) LAWFUL BUSINESS OPERATION. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article/chapter] for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.

(C) SMOKING PROHIBITED. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this [article/chapter]. Smoking is also prohibited outdoors within 25 feet of any retail establishment licensed under this [article/chapter].
(D) MINIMUM LEGAL SALES AGE. No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.

(E) DISPLAY OF LICENSE. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(F) POSITIVE IDENTIFICATION REQUIRED. No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government-issued photographic identification that the recipient is at least 21 years of age. Identification shall be required of anyone appearing younger than the age of 30.

(G) SELF-SERVICE DISPLAYS PROHIBITED. Tobacco retailing by means of a self-service display is prohibited.

(H) ON-SITE SALES. All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this [article/chapter] for any tobacco retailer or any of the tobacco retailer’s agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in the [municipality/county].

Sec. [______(*3)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

(A) FLAVORED TOBACCO PRODUCT SALES PROHIBITED. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

(B) PRESUMPTIVE FLAVORED TOBACCO PRODUCT. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco, or that imparts a cooling or numbing sensation, constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Sec. [______(*4)]. TOBACCO PRODUCT PRICING AND PACKAGING.

(A) PACKAGING AND LABELING. No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer’s packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

(B) DISPLAY OF PRICE. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
(C) DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS. It is unlawful for
any person to distribute free or nominally priced tobacco products.

(D) PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No tobacco retailer shall:

(1) honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to
purchase a tobacco product for less than the full retail price;

(2) sell any tobacco product to a consumer through a multiple-package discount or
otherwise provide any such product to a consumer for less than the full retail price
in consideration for the purchase of any tobacco product or any other item; or

(3) provide any free or discounted item to a consumer in consideration for the
purchase of any tobacco product.

(E) MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS. No tobacco retailer
shall sell:

(1) any little cigar unless it is sold in a package of at least [20] little cigars; or

(2) any cigar unless it is sold in a package of at least at least [6] cigars; provided,
however, that this subsection shall not apply to a cigar that has a price of at least
[$X.00] per cigar, including all applicable taxes and fees.

(F) CIGARETTE AND CIGAR PRICING. No tobacco retailer shall sell:

(1) Cigarettes at a price that is less than [$X.00] per package of 20 cigarettes,
including all applicable taxes and fees;

(2) Little cigars at a price that is less than [$X.00] per package of little cigars,
including all applicable taxes and fees; or

(3) Cigars at a price that is less [$X.00] per cigar, including all applicable taxes and fees.

The minimum prices established in this section shall be adjusted annually by the
[Department/_______] in proportion with the Consumer Price Index, using
a system established by the [Department/_______]. The minimum price for
cigarettes shall not be below the Cigarette Marketing Standards Act.3

3 Publication 509, Minimum Wholesale and Retail Cigarette Prices for Certain Standard Cigarette Brands, NEW YORK STATE
Note

Indexing minimum prices to inflation is an efficient policy that does not require decision-makers to amend the TRL annually to keep up with prevailing prices. Jurisdictions in New York should keep the prices close to the nearest U.S. Bureau of Labor Statistics statistical area, and the language here is broad enough that a jurisdiction can take that approach or determine another effective way to adjust the prices over time.

Sec. [ ______ (“5”) ]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

(A) MOBILE VENDING. No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.

(B) LICENSED CANNABIS BUSINESSES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of New York.

(C) PHARMACIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

(D) PROXIMITY TO YOUTH-ORIENTED FACILITIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a youth-oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the Applicant’s business is located.

(E) PROXIMITY TO OTHER TOBACCO RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a tobacco retailer location already licensed pursuant to this [article/chapter] as measured by a straight line from the nearest point of the property line of the parcel on which the Applicant’s business is located to the nearest point of the property line of the parcel on which an existing licensee’s business is located.

(F) PROXIMITY TO CANNABIS RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the Applicant’s business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer is located.
Note

The three proximity limitations above would prohibit tobacco retailing within a certain distance of relevant businesses and facilities with no grandfathering of existing licensed retailers. As a result, retail licenses for locations that do not meet these proximity limitations would not be renewable after expiring. Issuing a tobacco retail license is a privilege, not a right, and jurisdictions have the authority to grant or deny tobacco retailer licenses. Accordingly, it would be unlikely for a tobacco retailer to successfully argue that refusing to renew its license is a violation of the constitutional guarantee against taking property without due process. To deal with potential “ takings ” claims, some jurisdictions have created a hearing process for affected businesses where they can make hardship arguments and ask for additional time to sell prohibited products, allowing for some flexibility on a case-by-case basis and under extraordinary circumstances.

(G) POPULATION AND DENSITY. The issuing of tobacco retailer licenses is limited as follows:

1. The total number of tobacco retailer licenses within the [ municipality/county ] shall be limited to one for each [ 2,500 ] inhabitants of the [ municipality/county ].

2. For the purposes of this subsection, the total population of the [ municipality/county ] shall be determined by the most current published total available from the U.S. Census Bureau or the New York State Department of Labor, whichever has been more recently updated, as of the date the license application is filed.

3. No new license may issue to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).

Sec. [ _______ (*6) ]. LICENSE APPLICATION PROCEDURE.

(A) An application for a new tobacco retailer’s license or renewal shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or authorized agent. All applications shall be submitted in writing on a form supplied by the [ Department/_________ ].

(B) A license issued contrary to this [ article/chapter ], contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section [ ___ (*13)(C) ] of this [ article/chapter ]. Nothing in this [ article/chapter ] shall be construed to vest in any person obtaining and maintaining a tobacco retailer’s license any status or right to act as a tobacco retailer in contravention of any provision of law.
(C) Applicant submissions shall contain the following information:

(1) The name, address, and telephone number of each proprietor of the business seeking a license.

(2) The business name, address, and telephone number of the location for which a license is sought.

(3) The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this [article/chapter].

(4) Proof that the location for which a tobacco retailer’s license is sought has been issued all necessary state licenses for the sale of tobacco products.

(5) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this [article/chapter] or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.

(6) A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this [article/chapter].

(7) Such other information as the [Department/_______] deems necessary for the administration or enforcement of this [article/chapter] as specified on the application form required by this section.

(D) A licensed tobacco retailer shall inform the [Department/_______] in writing of any change in the information submitted on an application for a tobacco retailer’s license within [10] business days of a change.

Sec. [______ (*7)]. LICENSE ISSUANCE OR DENIAL.

(A) ISSUANCE OF LICENSE. Upon the receipt of a complete and adequate application for a tobacco retailer’s license and the license fee required by this [article/chapter], the [Department/_______] may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant that is deemed necessary.

(1) The issuance of a Tobacco License pursuant to this local law is done in [municipality/county’s] discretion and shall not confer upon licensee any property rights in the continued possession of the license.
(2) The application fee must be collected before issuing a license.

(B) DENIAL OF APPLICATION. The [Department/_________] may deny an application for a tobacco retailer’s license based on any of the following:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article/chapter];

(2) The required application fee has not been paid;

(3) The Applicant does not possess a valid certificate of registration required by state or federal law for the sale of a tobacco product;

(4) The application seeks authorization for tobacco retailing at a location for which this [article/chapter] prohibits a licensed to be issued, such as if the [Department/_________] has previously revoked a Tobacco Retail License issued under this local law for the same address or location, for the same proprietor;

(5) The application seeks authorization for tobacco retailing for a proprietor to whom this [article/chapter] prohibits a license to be issued, such as if the [Department/_________] has previously revoked a Tobacco Retail License issued under this local law to the Applicant; or

(6) The Applicant has been found by a court of law or administrative body to have violated a federal, state, or local law pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on a Tobacco Product, (c) the display of a Tobacco Product or of health warnings pertaining to a Tobacco Product, or (d) the sale of a Tobacco Product;

(7) The Applicant has not paid to [municipality/county] outstanding fees, fines, penalties, or other charges owed to [municipality/county], including the fee for the Tobacco Retail License;

(8) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this [article/chapter], that is unlawful pursuant to any other [article/chapter] of this Code, or that is unlawful pursuant to any other law.

(9) Any other suitable reason the granting of a license to the Applicant is not consistent with the public health and welfare, including the Applicant’s history of noncompliance with this [article/chapter] and other laws relating to the sale of tobacco products.
Sec. [______ (*8)]. LICENSE RENEWAL AND EXPIRATION.

(A) RENEWAL OF LICENSE. A tobacco retailer’s license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is [1 year]. Each tobacco retailer shall apply for the renewal of its tobacco retailer’s license and submit the license fee no later than [30] days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section [___ (*6)].

Sec. [______ (*9)]. LICENSES NOT TRANSFERABLE, PAST VIOLATIONS AT RETAIL LOCATION.

(A) LICENSES NOT TRANSFERABLE. A tobacco retailer’s license may not be transferred or assigned from one person to another or from one location to another. A separate license is required for each address and a new tobacco retailer’s license is required whenever a tobacco retailing location has a change in proprietors.

(B) PAST VIOLATIONS. Notwithstanding any other provision of this [article/chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

(1) the location has been transferred to new proprietor(s) in an arm’s length transaction; and

(2) the new proprietor(s) provide the [municipality/county] with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm’s length transaction.

Sec. [______ (*10)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article/chapter] shall be construed to grant any person obtaining and maintaining a tobacco retailer’s license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the [municipality/county] identified on the face of the permit. Nothing in this [article/chapter] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

Sec. [______ (*11)]. FEE FOR LICENSE.

Each application for a license shall be accompanied by a nonrefundable application fee of [ $Application Fee Amount ], or as determined by the [Department/______]. The
The Department/_________ shall also charge an annual Tobacco Retail License fee of $License Fee Amount. The fee to issue or to renew a tobacco retailer’s license shall be established from time to time by resolution of the municipal council/board of supervisors/county legislature. The fee shall be calculated so as to recover the total cost of administration and enforcement of this article/chapter, including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this article/chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

For license renewals, the Department/_________ may discount the Tobacco Retail License fee for an application received within 10 months of the expiration date.

Upon receipt of a completed application for a Tobacco Retail License and the required application fee, the Department/_________ shall inspect the location at which sales of a Tobacco Product are to be permitted. The Department/_________ may ask Applicant for additional information as necessary to determine whether a Tobacco Retail License may be issued.

Note

The license fee can incorporate the cost of enforcing all tobacco laws related to tobacco retailing because a violation of any tobacco-related law is a basis for suspension of a license. Any fee charged must be “reasonably necessary to the accomplishment of the regulatory program,” and cannot be used as a general source of revenue. Walton v. New York State Dept. of Correctional Services, 921 N.E.2d 145, 151 (N.Y. 2009). The Public Health Law Center can provide further information on some of the factors to consider when calculating a reasonable license fee.

Sec. [______ (*12)]. COMPLIANCE MONITORING.

(A) Compliance with this article/chapter shall be monitored by the Department/_______.

In addition, the municipality/county may designate additional persons to monitor compliance with this article/chapter. All licensed premises must be open to inspection by municipality/county staff or designated persons during regular business hours.

(B) The Department/_______ shall inspect each tobacco retailer at least 3 times per 12-month period to ensure compliance with this article/chapter.
Note

Subsection (B) allows for the inspection of licensed premises to check for any violations of this ordinance or other tobacco control laws. For example, some inspections might focus on pricing or flavored product violations, but preferably inspectors would be able to review compliance with all applicable laws during the inspections. For more information on challenges and case studies in enforcing TRL requirements please contact the Center.

(C) The [Department/_______] will conduct at least [one] compliance check per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.

Note

This underage sales compliance provision requires a minimum of one check per year, but jurisdictions might choose to require more frequent compliance checks to ensure consistent compliance.

(D) Nothing in this section shall create a right of action in any licensee or other person against the [municipality/county] or its agents.

Sec. [_______ (*13)]. SUSPENSION OR REVOCATION OF LICENSE.

(A) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if the Department finds, based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, have violated any of the requirements, conditions, or prohibitions of this [article/chapter], or any federal, state, or local law or regulation pertaining to (a) trafficking a contraband Tobacco Product or illegal drug, (b) the payment or collection of taxes on a Tobacco Product, (c) the display of a Tobacco Product or of health warnings pertaining to a Covered Product, or (d) the sale of a Covered Product, including any of the requirements, conditions, or prohibitions of this [article/chapter]. The license shall also be suspended or revoked if such violation has been determined by any court of competent jurisdiction, or if the licensee has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in Section [___ (*2)] above.
(1) Upon a finding by the [Department/_________] of a first violation of this [article/chapter] at a location, the license shall be suspended for [30] days.

(2) Upon a finding by the [Department/_________] of a second violation of this [article/chapter] at a location within any [5]-year period, the license shall be suspended for [90] days.

(3) Upon a finding by the [Department/_________] of a third violation of this [article/chapter] at a location within any [5]-year period, the license shall be suspended for [1] year.

(4) Upon a finding by the [Department/_________] of four or more violations of this [article/chapter] at a location within any [5]-year period, the license shall be revoked.

APPEAL OF SUSPENSION OR REVOCATION. A decision of the [Department/_________] to suspend or revoke a license is appealable to [the name of appellate agency, panel, or person (for example, Board of Supervisors, city manager, or director of the health department)] and any appeal must be filed in writing with [the name of the agency, panel, or person to receive the notice (for example, Board of Supervisors)] within 10 days of mailing of the [Department/_________]’s decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (C) below.

(B) REVOCATION OF LICENSE WRONGLY ISSUED. A tobacco retailer’s license shall be revoked if the [Department/_________] finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section [___ (*7)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [municipality/county].

Sec. [______ (*14)]. TOBACCO RETAILING WITHOUT A VALID LICENSE.

(A) INELIGIBLE FOR LICENSE. In addition to any other penalty authorized by law, if the [Department/_________] finds, or if a court of competent jurisdiction determines, based on a preponderance of evidence after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer’s license, either directly or through the person’s agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer’s license as follows:

(1) After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been
transferred in an arm’s length transaction), until [ 30 ] days have passed from the date of the violation.

(2) After a second violation of this section at a location within any [ 5-year ] period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until [ 90 ] days have passed from the date of the violation.

(3) After a third or subsequent violation of this section at a location within any [ 5 year ] period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until [ 5 ] years have passed from the date of the violation.

Sec. [ ____ (‘15) ]. ADDITIONAL REMEDIES.

(A) The remedies provided by this [ article/chapter ] are cumulative and in addition to any other remedies available at law or in equity.

(B) Whenever evidence of a violation of this [ article/chapter ] is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this [ article/chapter ] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(C) Violations of this [ article/chapter ] are subject to a civil action brought by the [ district attorney ] or the [ county counsel ], punishable by a civil fine not less than [ $250 ] and not exceeding [ $1,000 ] per violation.

(D) Violations of this [ article/chapter ] may, in the discretion of the [ district attorney/county counsel ], be prosecuted as infractions or misdemeanors when the interests of justice so require.

(E) Violations of this [ article/chapter ] are hereby declared to be public nuisances.

(F) In addition to other remedies provided by this [ article/chapter ] or by other law, any violation of this [ article/chapter ] may be remedied by a civil action brought by the [ district attorney/county counsel ], including administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

(G) Tobacco products offered for sale in violation of this [ article/chapter ] are subject to seizure by the [ Department/_________ ] or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice.
and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this [article/chapter]. The decision by the [Department/_________] may be appealed pursuant to the procedures set forth in Section [___ (*13)(B)]. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(H) For the purposes of the civil remedies provided in this [article/chapter]:

(1) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter]; and

(2) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter].

(I) All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

Sec. [______ (*16)]. EXCEPTIONS.

(A) Nothing in this [article/chapter] prevents the provision of tobacco products to any person as part of an Indigenous or tribal practice or a lawfully recognized religious or spiritual ceremony or practice.

(B) Nothing in this [article/chapter] shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

Sec. [______ (*17)]. CONSTRUCTION & SEVERABILITY. It is the intent of the [municipality council/board of supervisors/county legislature/] of [insert jurisdiction name] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this [article/chapter], or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this [article/chapter], or its application to any other person or circumstance. The [board of supervisors/county legislature/municipality council] of [jurisdiction] hereby declares that it would have
adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases were declared invalid or unenforceable.

Sec. [ ______ ("18) ]. PUBLIC RECORDS. All information provided to the [ Department/_________ ] by a licensee or license applicant pursuant to this [ article/chapter ] shall be subject to disclosure under New York State’s Freedom of Information Law (Public Officers Law, § 84 et seq.) or any other applicable law.

SECTION III. Effective date.

This Ordinance shall take effect and be in force from and after [ 45 days after ] filing with the Secretary of State, as required by section 27 of the Municipal Home Rule Law; provided, however, that Section [ ___ ("3) ] shall not take effect until [ 6 months after date of enactment ].

Appendix A. Findings.

The [ municipality council/board of supervisors/county legislature ] of [ insert jurisdiction name ] hereby finds and declares as follows:

WHEREAS the [ municipality council/board of supervisors/county legislature ] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [ municipality council/board of supervisors/county legislature ], to protect the health, safety, and welfare of our residents;

WHEREAS approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation’s leading cause of preventable death;¹

WHEREAS the World Health Organization (WHO) estimates that tobacco kills 8 million people and causes over 1.4 trillion dollars in economic damage each year;²

WHEREAS 5.6 million of today’s Americans who are younger than 18 years of age are projected to die prematurely from a smoking-related illness;³

WHEREAS tobacco use is the number one cause of preventable death in New York State⁴ and continues to be an urgent public health issue, as evidenced by the following:

- 28,200 New York State adults die from their own smoking annually;⁵
- Over half of all adult cancer deaths in New York State are attributable to smoking;⁶
• Smoking costs New York State $12.07 billion in annual health care expenses, $7.12 billion in Medicaid costs caused by smoking, and $18.2 billion in smoking-caused productivity losses.\(^7\)

• Tobacco use can cause disease in nearly all organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States.\(^8\)

WHEREAS tobacco use among priority populations, especially those with lower socioeconomic status, in New York State contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

• Those without a college degree (13.7–19.0%), without a high school degree (19%), making less than $25,000 a year (20%), suffering from disabilities (17.4%) and/or mental health issues (19.7%), the unemployed (20.2%), and those without private insurance (either on Medicaid, 22.9%, or no insurance, 14.2%) all report a higher smoking prevalence than the statewide average among all adults (12.0%). Smoking is also higher outside of New York City (13.4% outside of the city versus 10.1% inside of the city), among males (14.2%), and among White and Black non-Hispanic populations (12.5 and 12.3%, respectively);\(^9\)

• [ insert local data if available ]

WHEREAS, despite the state’s efforts to limit youth access to tobacco, youth throughout the U.S. are still able to access tobacco products, as evidenced by the following:

• The tobacco use rate for high school age students was 24.8% in 2022.\(^10\)

• E-cigarettes are the most commonly used tobacco products among youth, with a use rate of 14.1% in 2022.\(^11\)

• Use of other tobacco products, including cigars, smokeless tobacco, pipe tobacco, and hookah, was 9.1% in 2022.\(^12\)

• [ insert local data if available ]

WHEREAS the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting, as evidenced by the following:

• Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users.\(^13\)

• Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one.”\(^14\)
• The tobacco industry spends an estimated $177.3 million annually to market tobacco products to New York State residents;¹⁵

• One-third of underage experimentation with smoking is attributable to tobacco company advertising;¹⁶

• Youth frequently exposed to retail tobacco promotions are 1.6 times more likely to try smoking and 1.3 times more likely to be susceptible to smoking in the future;¹⁷

• Teens who visit a store with retail tobacco advertising at least twice per week are at twice the risk for starting smoking;¹⁸

• Tobacco product displays and retail marketing lead to impulse purchases both among current smokers and recent quitters;¹⁹

• [insert local data if available]

WHEREAS requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the [municipality council/board of supervisors/county legislature] to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

• Tobacco products are the number one seller in U.S. convenience stores,²⁰ and in 2021, tobacco product sales totaled over $57.2 billion dollars for convenience stores;²¹

• Systematic scientific reviews indicate that merchant compliance with youth tobacco sales laws reduces the rate of tobacco use among adolescents;²²

• Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;²³

WHEREAS the federal Family Smoking Prevention and Tobacco Control Act, enacted in 2009, prohibited candy-and fruit-flavored cigarettes,²⁴ largely because these flavored products are marketed to youth and young adults,²⁵ and younger smokers were more likely than older smokers to have tried these products;²⁶

WHEREAS federal law does not restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;
WHEREAS flavors mask the harsh taste of tobacco, making them more appealing, especially to youth, as evidenced by the following:

- Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco;\textsuperscript{27}
- 81% of youth who have tried a tobacco product first began with a flavored product;\textsuperscript{28}
- These products help establish tobacco habits that can lead to long-term addiction;\textsuperscript{29}

The availability of flavored products is largely responsible for the significant increase in youth use of e-cigarettes, and the New York State law restricting the sale of flavored vapor products still leaves many flavored tobacco products available;

WHEREAS menthol drives lifelong tobacco use and tobacco-attributable health disparities, as evidenced by the following:

- Menthol products are more addictive, and both youth and racial/ethnic minorities find it easier to start and harder to quit smoking menthol cigarettes;\textsuperscript{30}
- More than half of youth who use cigarettes use mentholated cigarettes;\textsuperscript{31}
- Racial/ethnic minorities, LGBT groups, groups with severe psychological distress and/or substance abuse disorders, and groups with fewer years of education and lower income use menthol products at far higher rates;\textsuperscript{32}
- In recognition of decades of predatory tobacco industry marketing practices, the NAACP adopted a unanimous resolution in 2016 supporting state and local efforts to restrict the sale of menthol cigarettes and other flavored tobacco products;\textsuperscript{33}

WHEREAS between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);\textsuperscript{34}

WHEREAS flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;\textsuperscript{35}

WHEREAS scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans, and possibly Hispanic and Latino individuals;\textsuperscript{36} and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes,
and reduced success in smoking cessation, especially among African American menthol smokers;\textsuperscript{37}

\textbf{WHEREAS} research indicates that the FDA ban in 2009 on all flavored cigarette products (except menthol) led to a 6\% decrease in youth tobacco use and a 17\% decrease in the likelihood of a youth becoming a cigarette smoker;\textsuperscript{38}

\textbf{WHEREAS} studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following:

- An evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, youth had 37\% lower odds of ever trying flavored tobacco products and 28\% lower odds of ever using any type of tobacco;\textsuperscript{39}

- An evaluation of a law in Providence, Rhode Island, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, current use of any tobacco product among high school youth declined from 22\% to 12\% and e-cigarette use declined from 13.3\% to 6.6\%, even as statewide e-cigarette use among high school students/youth increased to more than 20\%;\textsuperscript{40}

\textbf{WHEREAS} the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;\textsuperscript{41}

\textbf{WHEREAS} the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use;\textsuperscript{42}

\textbf{WHEREAS} research has also consistently shown that increases in cigarette prices will result in less smoking across various sociodemographic populations;\textsuperscript{43}

\textbf{WHEREAS} a systematic review by the U.S. Community Preventive Services Task Force found that a 20\% price increase would reduce demand for cigarettes by approximately 10.4\%, the prevalence of adult tobacco use by 3.6\%, and initiation of tobacco use by young people by 8.6\%;\textsuperscript{44}

\textbf{WHEREAS} unequal price increases across different types of tobacco products lead to substitution from one product to another;\textsuperscript{45}

\textbf{WHEREAS} youth are particularly responsive to changes in tobacco prices\textsuperscript{46} and evidence suggests that tobacco companies deliberately target youth with price reductions.\textsuperscript{47}
WHEREAS evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,\textsuperscript{48} Newport menthol cigarettes cost less in areas with higher proportions of African Americans,\textsuperscript{49} and underserved communities are targeted with price discounts and coupons;\textsuperscript{50}

WHEREAS tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their cigarette marketing budgets on price discounts, accounting for nearly $6.2 billion of $8.6 billion in advertising and promotional expenditures in 2018;\textsuperscript{51}

WHEREAS price-discounted sales account for a substantial proportion of overall tobacco product sales;\textsuperscript{52}

WHEREAS although federal and state law ban the sale of individual cigarettes, neither federal nor New York State laws restrict the sale of individual little cigars and cigars;

WHEREAS many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth. Additionally, between 2012 and 2016, annual sales of cigarillos (little cigars) increased by 78% overall and by 155% for “concept-flavored” (e.g., Jazz) cigarillos;\textsuperscript{53}

WHEREAS a 10\% increase in cigar prices has been associated with decreased cigar sales\textsuperscript{54} and may significantly reduce cigar use among youth;\textsuperscript{55}

WHEREAS minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;\textsuperscript{56}

WHEREAS studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13\%\textsuperscript{57} and the impact of a federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by billions per year and prompt millions of smokers to quit;\textsuperscript{58}

WHEREAS research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, particularly in neighborhoods experiencing poverty;\textsuperscript{59}

WHEREAS the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of noncigarette tobacco product use;\textsuperscript{60}

WHEREAS adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer and density is higher;\textsuperscript{61}
WHEREAS tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;  

WHEREAS tobacco retailer density is higher in urban compared to rural areas, except for low-income communities, which have higher tobacco retailer densities regardless of geography, and Hispanic communities, which are associated with variable retailer densities across geography;  

WHEREAS policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate inequities in the location and distribution of tobacco retailers;  

WHEREAS both youth and adult tobacco users are more likely to also use cannabis;  

WHEREAS strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in commercial settings can limit their opportunities to obtain these products;  

WHEREAS strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) are necessary to achieve reductions in youth tobacco sales;  

WHEREAS the Institute of Medicine recognizes that retailers are not likely to comply with youth tobacco access laws unless such laws are actively enforced through retailer compliance checks paired with meaningful penalties on business owners for violations;  

WHEREAS state law permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law;  

WHEREAS several cities and counties in New York State have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco;  

WHEREAS the has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and  

WHEREAS the finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of , in order to protect the health, safety, and welfare of our residents;  

NOW THEREFORE it is the intent of the , in enacting this ordinance, to ensure compliance with the business standards
and practices of [municipality/county] and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to youth, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

Endnotes


11 Id.

12 Id.


14 Memorandum from D.S. Burrows, supra note 7.

15 Toll of Tobacco in New York, supra note 2.

16 Id.


26 Id.


36 Food & Drug Admin., supra note 30.
37 Id.


39 Farley & Johns, supra note 29.


47 Id.

48 Mills, supra note 42.


58 Doogan et al., supra note 54.


63 Rodriguez et al., supra note 67.

65 Lawman et al., supra note 69; Cantrell, supra note 69.


67 U.S. Dep’t Health & Hum. Servs., supra note 25; DiFranza, supra note 23.

