

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
WWW.DOS.NY.GOV

FEB 14 2019

ANDREW M. CUOMO
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

February 8, 2019

Village Clerk
41 North Main Street
Dolgeville NY 13329

RE: Village of Dolgeville, Local Law 1 & 2 2019, filed on January 30 2019

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 473-2492



Department
of State

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one.)

of Dolgeville

Local Law No. 2 of the year 2019

A local law Local Law Establishing Tobacco Retail Licensing
(Insert Title)

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Dolgeville as follows:

AS ATTACHED

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2019 of the ~~(County)(City)(Town)~~(Village) of Dolgeville was duly passed by the Board of Trustees on January 21, 2019, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.

Damian J. Chmielewski
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: January 24, 2019

(Seal)

Local Law # 2-2019
Local Law Establishing
Tobacco Retail Licensing
Resolution # 171-2019

The following resolution offered by Trustee Jaquay sec. Trustee Kraszewski. Ayes all.

Local Law Establishing Tobacco Retail Licensing

BE IT ENACTED by the Village Board of Trustees of the Village of Dolgeville, NY follows:

Section One: Purpose: The purpose of this local law is to ensure that existing state and local tobacco sales regulation is effectively enforced.

And to establish a local licensing system for retailers of tobacco products, electronic cigarettes, and other products, regulated by Article 13-F of New York State Public Health Law and to ensure for the public health, safety, and welfare of our residents;

It is the intent of the Village of Dolgeville to implement effective measures through this Chapter to stop the sale of tobacco products, e-cigarettes, and other products regulated by the New York Adolescent Tobacco Use Prevention Act to youth, prevent the sale or distribution of contraband tobacco products, reduce the proliferation of tobacco outlets and marketing, prevent the tobacco industry from undermining public health law through price promotions, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

Section 2: Definitions

As used in this Chapter, the following terms shall have the meaning indicated:

ACCESSORY means any product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System; or (2) is intended or reasonably expected to affect or maintain the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System but (a) solely controls moisture and/or temperature of a stored Tobacco Product or Electronic Aerosol Delivery System; or (b) solely provided an external heat source to initiate but not maintain

combustion of a Tobacco Product. Accessory include, but is not limited to, carrying cases, lanyards and holsters.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

COMPONENT OR PART means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product's or Electronic Aerosol Delivery System's performance, composition, Constituents, or characteristics; or (2) to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System. Component or Part excludes anything that is an Accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software, rolling papers and flavorings for Tobacco Products or Electronic Aerosol Delivery Systems.

COUPON means any card, paper, note, form, statement, ticket, voucher, image or other article, whether in paper, digital or any other format, distributed for commercial purposes to be later surrendered, displayed, or scanned by the bearer so as to receive an item without charge or at a discount.

DEPARTMENT means the Dolgeville Police Department.

ELECTRONIC AEROSOL DELIVERY SYSTEM means an electronic device that, when activated, produces an aerosol that may be inhaled, whether or not he aerosol contains nicotine. Electronic Aerosol Delivery System includes any Component or Part but not Accessor, and any liquid or other substance to aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

LISTED OR NON-DISCOUNTED PRICE means the highest displayed price, before the application of any discounts, of a Tobacco Product or Electronic Aerosol Delivery System, at the place where the Tobacco Products or Electronic Aerosol Delivery Systems are sold or offered for sale, plus all applicable taxes if not included in the displayed price.

NEW TOBACCO RETAIL LICENSE means a Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, form, partnership, business, organization, or other legal entity.

PRICE CHARGED means the price actually paid by the consumer for a Tobacco Product or Electronic Aerosol Delivery System.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issue to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public [or independent] kindergarten, elementary, middle, junior high, or high school.

TOBACCO PRODUCT means any product made or derived from tobacco or which contains nicotine, marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco Product includes any Component or Part, but not Accessory. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale of Tobacco Products, Electronic Aerosol Delivery Systems, or any other product regulated by Article 13-F of the New York State Public Health Law in Dolgeville.

Section 3: Tobacco Retail License

(A)(1) Starting April 1, 2019 [**Enforcement Date – January 22, 2019**], no Person shall sell, offer for sale, or permit the sale of Tobacco Products, Electronic Aerosol Delivery Systems, or any other product regulated by Article 13-F of the New York State Public Health Law to consumers in Dolgeville, without a valid Tobacco Retail License issued by the Department. A Tobacco Retail License is not required for a wholesale dealer who sells products to retail dealers for the purpose of resale only and does not sell any Tobacco Products, Electronic Aerosol Delivery Systems or other products regulated by Article 13-F of the New York State Public Health Law directly to consumers.

(A)(2) Notwithstanding the requirement set forth in Section 3(A)(1), this Chapter shall not apply to registered organizations pursuant to Title V-A of article 33 of New York Public Health Law.

(B) All Tobacco Retail Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address at which Tobacco Products, Electronic Aerosol Delivery Systems or other products regulated under Article 13-F of the New York State Public Health Law are sold or offered for sale. Any change in business ownership or business address, or interruption in possession of a Tobacco Retail License, renders an Applicant ineligible for a Renewed Tobacco Retail License.

(C) All Tobacco Retail Licenses issued pursuant to this section are valid for no more than one year and expire on the one year anniversary date of **(Enforcement Date January 22, 2019)** following the effective date of the Tobacco Retail License. As set forth in **Section 8**, a Tobacco Retail License may be revoked by the Department prior to its expiration date for cause.

(D) Only a Person possessing a valid Tobacco Retail License is an eligible Applicant for a Renewed Tobacco Retail License.

(E) Applications for a Tobacco Retail License shall be submitted to the Department in writing upon a form provided by the department. The Department may require the forms to be signed and verified by the Applicant or an authorized agent thereof.

(F) Application for a Tobacco Retail License shall be accompanied by the fee set forth in **Section 6**.

(G) The issuance of any Tobacco Retail License pursuant to this Chapter is done in Dolgeville's discretion and shall not confer upon licensee any property rights in the continued possession of the license.

Section 4: Issuance of Licenses

(A) Upon the receipt of a completed application for a New Tobacco Retail License or Renewed Tobacco Retail License and the fee required by **Section 6**, the department shall inspect the location at which tobacco sales are to be permitted. The Department may also ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

(B) The Department may refuse to issue a Tobacco Retail License to an Applicant if it finds that one or more of the following bases for denial exists:

(1) The information presented in the application is incomplete, inaccurate, false, or misleading;

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

(3) The Applicant does not possess a required certificate of registration as a tobacco retail dealer from New York State Department of Taxation and Finance;

(4) The Applicant has been found by a court of law or administrative body to have violated any federal, state, or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on Tobacco Products, (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Product, or (d) the sale of Tobacco Products, Electronic Aerosol Delivery Systems, or any other product regulated by Article 13-F of the New York State Public Health Law;

(5) The Applicant has not paid to Dolgeville outstanding fees, fines, penalties, or other charges owed to the Dolgeville; or

(6) The Department determines, in accordance with written criteria established to further the purposes of this Chapter, that the Applicant is otherwise not fit to hold a Tobacco Retail License.

(C) No Tobacco Retail License shall be issued to any seller of Tobacco Products, Electronic Aerosol Delivery Systems, or any other product regulated by Article 13-F of the New York State Public Health Law that is not in a fixed, permanent location.

Section 5: Limitation on Number and Locations of Licenses Issued

(A) The Department shall issue no more than **three (3)** New Tobacco Retail Licenses. Upon issuing three (3) New Tobacco Retail Licenses, the Department shall not again issue a New License.

(B) The Department will accept a Tobacco Retail License application from only;

(1) an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer from the New York Ste Department of Taxation and Finance 180 days prior to the effective date of this Chapter;
or

(2) an Applicant for a location at which the Applicant exclusively sell Electronic Aerosol Delivery Systems or non-tobacco shisha (hookah) and was in operation [180 days] prior to the effective date of this Chapter.

(C) If the number of valid applications for Tobacco Retail Licenses exceeds **three (3)**, the Department shall grant the licenses by lottery.

(D) The Department shall not issue a Tobacco Retail License to any Applicant within **1000 feet** of the nearest point of the property line of a School.

Section 6: Required Fee

(A) Each application for a Tobacco Retail License shall be accompanied by a fee of **\$ 200.00**.

(B) The Department may modify the fee required by **Section 6(A)** for an application received within 11 months of the expiration date.

(C) Starting two years after the effective date of this Chapter, the Department may, on an annual basis, modify the fee required pursuant to **Section 6(A)**. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, 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 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.

Section 7: License Display

(A) Any Tobacco Retail License issued pursuant to this Chapter shall be displayed prominently at the location where the Tobacco Products are sold so that it is readily visible to customers.

(B) Selling, offering for sale, or permitting the sale of any Tobacco Product without a valid Tobacco Retail License displayed in accordance with **Section 7(A)** constitutes a violation of this Chapter.

Section 8: Revocation of Licenses

(A) The Department may suspend or revoke a Tobacco Retail License issued pursuant to this Chapter for violations of the terms and conditions of this Chapter or for violation of any federal, state, or local law or regulation pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on Tobacco Products, (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Products, or (d) the sale of Tobacco Products, Electronic Aerosol Delivery Systems or any other product regulated by Article 13-F of the New York State Public Health Law.

(B) The Department may revoke a Tobacco Retail License if the Department finds that one or more of the bases for denial of a license under **Section 4** existed at the time application was made or at any time before the license issued.

Section 9: Price Display

A Tobacco Retailer must display the Listed or Non-Discounted Price of Tobacco Products and Electronic Aerosol Delivery Systems on each package or on easy-to-read shelf tags, or signs, located directly above or below or immediately adjacent to each Tobacco Product or Electronic Aerosol Delivery System in accordance with N.Y. AGRIC. & MKTS. Law 197-b(2)(a) (McKinney 2017).

Section 10: Discounted Sales

No Tobacco Retailer, or any employee or agent of same, shall:

(A) Accept or redeem any Coupon that reduces the Price Charged of Tobacco Products or Electronic Aerosol Delivery Systems below the Listed or Non-Discounted Price;

(B) Accept or redeem any Coupon that permits the sale of Tobacco Products or Electronic Aerosol Delivery Systems to consumers through multi-pack discounts (e.g., the sale of three packages for less than the combined price of each package), or otherwise allow consumers to purchase any Tobacco Product, Electronic Aerosol Delivery System or combination of Tobacco Products or Electronic Aerosol Delivery Systems for less than sum of the Listed or Non-Discounted Price for each product; or

(C) Sell, offer for sale, or otherwise provide any product other than a Tobacco Product or Electronic Aerosol Delivery System to a consumer for less than the product's listed price

in exchange for the purchase of a Tobacco Product or Electronic Aerosol Delivery System by the consumer.

Section 11: Violations and Enforcement

(A) The department or its authorized designee(s) shall enforce the provisions of this Chapter. The Department may conduct periodic inspections in order to ensure compliance with this Chapter.

(B) In addition to the penalties provided for in **Section 8**, any Person found to be in violation of this Chapter shall be liable for civil penalty of not more than \$ **250** for the first violation, not more than \$ **500** for the second violation within a two-year period, and not more than \$ **1,000** for the third and each subsequent violation within a two-year period. Each day on which a violation occurs shall be considered a separate and distinct violation.

Section 12: Rules and Regulations

The department may issue and amend rules, regulation, standards, guidelines, or conditions to implement and enforce this Chapter.

Section 13: Severability

The provision of this Chapter are declared to severable, and if any section of this Chapter is held to be invalid, the invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

Section 14: Effective Date

The effective date of this law shall be **thirty (30)** days from the date of its enactment.

AYES: Trustees Jaquay, Kraszewski, Maxwell

NAYS: None

ABSENT: Trustee Reynolds

ADOPTED – January 21, 2019