

**Local Law #2 of 2019  
RESOLUTION #294a  
(passed at Year End Mtg. 12/19/2018)**

**Resolution #294a**

**A LOCAL LAW TO AMEND THE PUTNAM COUNTY CODE TO LICENSE AND REGULATE THE SALE OF E-CIGARETTES, SIMILAR DEVICES, AND RELATED PRODUCTS**

**Be it enacted by the Legislature of the County of Putnam as follows:**

**Section 1.**

**Creating Chapter 147 of the Putnam County Code entitled “Electronic Cigarettes (E-Cigarettes)”.**

**Section 2.**

**Chapter 147 of the Putnam County Code is hereby amended to add a new Article I, entitled “Retail Sales Licensing” to read as follows:**

**§ 147-1 Findings and intent; statutory authority.**

- A. The Putnam County Legislature declares the intent and purpose of this Article is to preserve and improve the public health by regulating retail sales of e-cigarettes and related products.**
- B. The Putnam County Legislature hereby finds as follows:**
  - 1. E-cigarettes are designed to deliver nicotine, a highly addictive drug;**
  - 2. Nicotine-containing e-cigarettes are the most common nicotine products used by students; E-cigarette use among high schoolers in New York is increasing, and is more common than cigarette use;**
  - 3. Youth use of e-cigarettes and similar products is associated with future cigarette use;**
  - 4. Adults who might otherwise quit smoking combustible cigarettes instead use e-cigarettes in addition to cigarettes, thereby maintaining nicotine intake and addiction level;**
  - 5. E-cigarettes and related products are often marketed for use in places where traditional smoking is prohibited, and are also sold in locations that do not also sell tobacco;**
  - 6. E-cigarettes and similar devices pose health hazards and may contribute to youth smoking and reduced cessation, regardless of nicotine content;**
  - 7. A local licensing system for retailers of electronic cigarettes, similar devices, and related non-tobacco products regulated by Article 13-F of New York State**

Public Health Law is necessary and appropriate for the public health, safety, and welfare of our residents;

8. Therefore, the Putnam County Legislature declares the need to enact a new Chapter 147 and Article I of the Code of Putnam County to regulate retail sales of e-cigarettes, similar devices, and related paraphernalia; and
9. The County of Putnam desires to implement effective measures through this new Article to regulate the sale of e-cigarettes and related paraphernalia regulated by the New York Adolescent Tobacco Use Prevention Act, and facilitate the enforcement of other applicable laws relating to e-cigarette products.

C. Unless otherwise noted herein, Article 13-F of the New York State Public Health Law shall apply.

#### § 147-2 Definitions.

As used in this Article, the following terms shall have the meanings indicated:

**ACCESSORY** – 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 provides an external heat source to initiate but not maintain combustion of a Tobacco Product. Accessory includes, but is not limited to, carrying cases, lanyards, and holsters.

**APPLICANT** – An individual, partnership, limited liability company, corporation, or other business entity seeking an E-Cigarette Retail License.

**COMPONENT or PART** – Any software or assembly of materials intended or reasonably expected to: (1) alter or affect the Electronic Aerosol Delivery System’s performance, composition, constituents, or characteristics; or (2) be used with, or be used for the human consumption of through, an Electronic Aerosol Delivery System. Component or Part excludes anything that is an Accessory, and includes, but is not limited to, electronic cigarette liquids (“e-liquids”), cartridges, certain batteries, heating coils, programmable software, and flavorings for Tobacco Products or Electronic Aerosol Delivery Systems.

**DEPARTMENT** – The Putnam County Health Department.

**E-CIGARETTE RETAIL LICENSE** – A license issued by the Department to a Person to engage in the retail sale of Electronic Aerosol Delivery Systems in the County of Putnam.

**ELECTRONIC AEROSOL DELIVERY SYSTEM** – An electronic device that, when activated, produces an aerosol that may be inhaled, whether or not such aerosol contains nicotine. Electronic Aerosol Delivery System includes any Component or Part, but not an Accessory, and any liquid or other substance to be aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by New York State, as those terms are defined by State law, or by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**PERSON** – Any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

**TOBACCO PRODUCT** – 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 does not include an Accessory, and does not include drugs, devices, or combination products authorized for sale by New York State, as those terms are defined by State law, or by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**§ 147-3 E-Cigarette Retail License.**

- A.** Starting July 1, 2019, no Person shall sell, offer for sale, or permit the sale of Electronic Aerosol Delivery Systems to consumers in the County of Putnam without a valid E-Cigarette Retail License issued by the Department. An E-Cigarette 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 Electronic Aerosol Delivery Systems directly to consumers. An E-Cigarette Retail License is not required by a retail seller of Tobacco Products that possesses a required certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance, and is otherwise in compliance with Article 13-F of the New York Public Health Law and Chapter 223 of the Putnam County Code.
- B.** Notwithstanding the requirements set forth in Section 147-3(A), this Article shall not apply to registered organizations pursuant to Title V-A of Article 33 of New York Public Health Law.
- C.** All E-Cigarette 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 E-Cigarette Retail License. A separate E-Cigarette Retail License is required for each address at which Electronic Aerosol Delivery Systems are sold or offered for sale. Any change in business ownership or business address requires a new E-Cigarette Retail License.
- D.** All E-Cigarette Retail Licenses issued pursuant to this section are valid for no more than one year following the effective date of the E-Cigarette Retail License. As set forth in Section 147-7, an E-Cigarette Retail License may be revoked by the Department prior to its expiration date for cause.

- E. Applications for an E-Cigarette Retail License shall be submitted to the Department in writing upon a form provided by the Department. The Department may require such forms to be signed and verified by the Applicant or an authorized agent thereof.**
- F. Applications for an E-Cigarette Retail License shall be accompanied by the fee set forth in Section 147-5.**
- G. The issuance of any E-Cigarette Retail License pursuant to this Article is done in the discretion of the Department. However, issuance of an E-Cigarette Retail License shall not be denied to an Applicant not disqualified by the criteria set forth in Sections 147-4 (B) and (C). An E-Cigarette Retail License shall not confer upon a licensee any property rights in the continued possession of such a license.**

**§ 147-4 Issuance of Licenses.**

- A. Upon the receipt of a completed application for a new E-Cigarette Retail License or renewed E-Cigarette Retail License and the fee required by Section 147-5, the Department shall inspect the location at which Electronic Aerosol Delivery System 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 an E-Cigarette 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 has previously had an E-Cigarette Retail License issued under this Article revoked;**
  - (4) An E-Cigarette Retail License issued under this Article for the same address or location has previously been revoked;**
  - (5) The Applicant has not paid to the County of Putnam outstanding fees, fines, penalties, or other charges owed to the County of Putnam; or**
  - (6) The Department determines, in accordance with objective criteria established to further the specific purposes of this Article, that the Applicant is otherwise not fit to hold an E-Cigarette Retail License. Such criteria shall be maintained in written or printed form, and shall be made available to the public, and provided to any Applicant, upon request.****
- C. No E-Cigarette Retail License shall be issued to any seller of Electronic Aerosol Delivery Systems that is not in a fixed, permanent location.**

**§ 147-5 Required Fee.**

- A. Each application for an E-Cigarette Retail License shall be accompanied by a fee of two hundred fifty dollars (\$250.00).**
- B. The Department may reduce the fee required by Section 147-5(A) for an application that will result in issuance of an E-Cigarette Retail License valid for less than eleven (11) months.**
- C. Starting two years after the effective date of this Article, the Department may, on an annual basis, modify the fee required pursuant to Section 147-5(A), provided that such modified fee is duly approved by the Putnam County Legislature. The fee shall be calculated so as to recover the cost of administration and enforcement of this Article, 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 Article. 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.**

#### **§ 147-6 License Display**

- A. Any E-Cigarette Retail License issued pursuant to this Article shall be displayed prominently at the location where the Electronic Aerosol Delivery System are sold so that it is readily visible to customers.**
- B. Selling, offering for sale, or permitting the sale of any Electronic Aerosol Delivery System without a valid E-Cigarette Retail License displayed in accordance with Section 147-6(A) constitutes a violation of this Article.**

#### **§ 147-7 Revocation of License**

- A. The Department may suspend or revoke an E-Cigarette Retail License issued pursuant to this Article for violations of the terms and conditions of this Article or for violation of any federal, state, or local law or regulation pertaining to (a) trafficking in illegal drugs, including synthetic drugs; or (b) 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 an E-Cigarette Retail License if the Department finds that one or more of the bases for denial of a license under Section 147-4 (B) existed at the time application was made, or at any time before the license issued.**
- C. The Department may revoke an E-Cigarette Retail License if the Department finds that any Person issued such a licensee is conducting retail sales of Electronic Aerosol Delivery Systems at a location other than one indicated on an E-Cigarette Retail License issued by the Department.**

#### **§ 147-8 Violations and Enforcement**

- A. The Department or its authorized designee(s) shall enforce the provisions of this Article. The Department may conduct periodic inspections in order to ensure compliance with this Article.
- B. In addition to the penalties provided for in Section 147-7, any Person found to be in violation of this Article shall be liable for a civil penalty of not more than two hundred fifty dollars (\$250.00) for the first violation; not more than five hundred dollars (\$500.00) for the second violation within a two-year period; and not more than one thousand dollars (\$1,000.00) for the third and each subsequent violation within a two-year period.

#### **§ 147-9 Rules and Regulations**

The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Article, which shall be maintained in written or printed form, and which shall be made available to the public, and provided to any Applicant, upon request.

#### **§ 147-10 Signage.**

Any Person operating a place of business wherein any Electronic Aerosol Delivery System is sold or offered for sale shall post in a conspicuous place a sign upon which there shall be imprinted the following statement, "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW." Such sign shall be printed on a white card in red letters at least one-half inch in height. This Section shall not apply to any person exempted from licensing pursuant to Section 147-3 (A) or (B) of this Article.

#### **§ 147-11 - Reverse pre-emption**

This Article shall be null and void on the day that federal or statewide legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this Article, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Putnam. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations, have been enacted for purposes of triggering the provisions of this Article.

#### **§ 147-12 Severability**

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

#### **§ 147-13 Effective Date**

This Local Law shall take effect 60 days from its filing with the NYS Secretary of State.

