

**A LOCAL LAW OF THE CITY OF SYRACUSE  
AMENDING ARTICLE 16 OF CHAPTER 9 OF  
THE REVISED GENERAL ORDINANCES OF  
THE CITY OF SYRACUSE, AS AMENDED  
ENTITLED “TOBACCO RETAIL LICENSE” TO  
ADD A SUBSECTION (c) TO SECTION 16-12  
ENTITLED “VIOLATIONS AND PENALTIES”;  
TO AMEND LANGUAGE IN SUBSECTION (a)  
OF SECTION 16-14 ENTITLED “HEARINGS”;  
TO AMEND LANGUAGE IN SUBSECTIONS (a)  
AND (b) OF SECTION 16-15, ENTITLED  
“FAILURE TO OBTAIN TOBACCO RETAIL  
LICENSE”; AND TO ADD A SUBSECTION (c) TO  
SECTION 16-15, ENTITLED FAILURE TO  
OBTAIN TOBACCO RETAIL LICENSE**

BE IT ENACTED, by the Common Council of the City of Syracuse, as follows:

**SECTION 1.**

This Local Law is to authorize the City to amend Article 16 of Chapter 9 of the Revised General Ordinances of the City of Syracuse, as amended, entitled “Tobacco Retail License” to add a new subsection (c) to Section 16-12 to be entitled “Violations and Penalties”; to amend subsection (a) of Section 16-14 entitled “Hearing”; to amend subsection (a) of Section 16-15 and subsection (b) of Section 16-15, entitled “Failure to Obtain Tobacco Retail License”; and to add a new subsection (c) to Section 16-15. The purpose of these amendments and additions is to create a procedure for pursuing enforcement actions against businesses who are selling a covered tobacco product without a local Tobacco Retail License.

Sections 16-12 of Article 16 of Chapter 9 of the Revised General Ordinances, as amended, is hereby amended by this Local Law to read as follows:

**ARTICLE 16. TOBACCO RETAIL LICENSE**

**§16-12. Violations and Penalties.**

(a) Any or all of the following shall constitute a violation under this Article:

- (1) The application and/or eligibility requirements for a Tobacco Retail License under Section 16-4 above are not met at any time after the license was issued; or
  - (2) One or more of the bases for denial of a Tobacco Retail License under Section 16-6 above exists any time after the license was issued; or
  - (3) A violation by the Tobacco Retail License holder of any federal, state or local law or regulation pertaining to: (a) trafficking in a contraband Covered Product(s); (b) the payment or collection of taxes on a Covered Product(s); (c) the display of a Covered Product(s); (d) the display of health warnings pertaining to a Covered Product(s); or (e) the sale of a Covered Product(s); or
  - (4) Selling, offering for sale, or permitting the sale of any Covered Product without a valid Tobacco Retail License displayed in accordance with Section 16-11 above; or
  - (5) The Tobacco Retail License holder submitted an Application that contained a material misrepresentation; or
  - (6) The Tobacco Retail License holder is in violation of any other provision of this Article or is in violation of any federal or state statutes or rules and regulations as well as any local laws, ordinances, rules, and regulations of the City.
- (b) Any Tobacco Retail License holder found to be in violation of this Article shall be liable for civil penalty of not more than \$3,500.00 for the first violation, not more than \$7,000.00 for the second violation, and not more than \$10,000.00 for the third and each subsequent violation pursuant to Section 8-118 of the Charter of the City of Syracuse, as amended. Each day on which a violation occurs shall be considered a separate and distinct violation.
- (c) In the event that a Tobacco Retail License holder commits a violation enumerated in Section 16-12(a), the Division shall provide notice of the violation to the Tobacco Retail License holder in writing via Certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d). Such notice shall inform the license holder of: (1) the alleged violation(s) committed, (2) the potential civil penalty resulting from the violation(s), and (3) the right to request a hearing in accordance with Section 16-14(a) below, regarding the violation(s).

; and

Sections 16-14 of Article 16 of Chapter 9 of the Revised General Ordinances, as amended, is hereby amended by this Local Law to read as follows:

#### **§ 16-14 Hearing**

- (a) In the event a Tobacco Retail License holder is alleged to be in violation of this Article, the Tobacco Retail License holder may request a hearing. A Tobacco Retail License holder must

submit a written request, via Certified U.S. Mail and First-Class Mail, for a hearing to the Division within fifteen (15) days of the receiving the notice of the violation(s) issued by the Division pursuant to Section 16-12(c). When a request for a hearing is properly made, the Division shall set a time and place for such hearing.

- (b) Any hearing held hereunder shall be held before a hearing officer chosen by the Division who shall not be an employee within the Division. All such hearings shall be recorded. All such recordings shall be maintained for at least two (2) years.
- (c) Upon written notice to the Tobacco Retail License holder, the Division and/or hearing officer may adjourn the hearing date as the Division deems necessary and reasonable.
- (d) The Tobacco Retail License holder shall be allowed to be represented by counsel and shall be allowed to call witnesses on their behalf and conduct cross-examination of all witnesses.
- (e) The hearing officer shall review the hearing recording and all exhibits submitted at the hearing and, within forty-five (45) days following the hearing, render a written recommendation to the Director as to whether a Tobacco Retail License should be suspended or revoked and as to the civil penalty, as applicable and as defined in Section 16-12 above, that should be assessed.
- (f) Forty-five (45) days after receipt of the hearing officer's written recommendation, the hearing recording, and all exhibits submitted at the hearing, the Director shall conduct a de novo review of the recording, all exhibits submitted at the hearing, and the hearing officer's written recommendation. The Director shall then make a determination whether a Tobacco Retail License should be suspended or revoked and as to any civil penalty that should be assessed pursuant to Section 16-12 above. The Director shall provide the Corporation Counsel with a written order containing his/her determination, which the Corporation Counsel shall use to prepare the final order. Within thirty (30) days after receipt of the Director's written order, the final order shall be drafted by the Corporation Counsel or his/her designee. The Final Order shall be signed by the Director and sent to the Tobacco Retail License holder by certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof.

; and

Sections 16-15 of Article 16 of Chapter 9 of the Revised General Ordinances, as amended, is hereby amended by this Local Law to read as follows:

**§ 16-15 Failure to Obtain Tobacco Retail License.**

- (a) (1) In the event any business required to obtain a Tobacco Retail License under Section 16-3 herein fails to obtain a Tobacco Retail License and continues to sell, to offer for sale, or to permit the sale of a Covered Product to consumers in the City, the Division shall notify the business in writing via Certified U.S. Mail and First-Class Mail to the address provided pursuant to Section 16-4(2)(d) hereof, or if no application was filed then to

the business' premises and any last known address on record with the Division, if any: 1) that it is operating in violation of this Article; 2) that it has fifteen (15) days from receipt of the written notification to stop operating in violation of this Article; 3) that if it continues to operate in violation of this Article after fifteen (15) days from the date written notification was mailed, and following any requested hearing, the business shall be subject to immediate closure by the Division, subject to (c) hereof and pursuant to Section 107.1.4 of the 2020 New York State Property Maintenance Code and under any other relevant statute, law, ordinance, rule or regulation and civil penalties in accordance with Section 16-12(b), with each day constituting a separate and distinct violation; 4) that if it continues to operate in violation of this Article after such fifteen (15) days' notice, and following any requested hearing, any and all certificates, licenses, permits or other registrations issued by the City of Syracuse to the business will be subject to immediate revocation; and 5) the business owner may request a hearing by submitting a written request for a hearing to the Division via Certified U.S. Mail and First-Class Mail within fifteen (15) days of receipt of the notice.

(2) Any written request for a hearing submitted by the business owner shall provide a valid address for service of papers related to the hearing

(a) In the event the business is provided with the written notification described in Section 16-15(a) above and continues to operate in violation of this Article after such notification without any request for a hearing as set forth herein, the Division shall:

(1) close the business under Section 107.1.4 of the 2020 New York State Property Maintenance Code and under any other relevant statute, law, ordinance, rule or regulation and may impose a civil penalty in accordance with Section 16-12(b);

(2) Revoke any certificates, licenses, permits, or other registrations, issued by the City of Syracuse to the business. The Division shall provide written notice of the revocations to the business owner and property owner via certified U.S. Mail and First-Class Mail to the business premises and any last known address on record with the Division, if any; and

(3) placard the business, directing that the premises, or any part of the premises, be vacated. No such premises shall again be used, or the placard removed, until written approval is secured from the Director.

(b) In the event a business properly submits a request for a hearing as set forth in Section 16-15(a) above, the Director or his/her designee shall schedule and complete a hearing in accordance with the hearing procedure established in Section 16-14(a) – (f), subject to the following modifications:

- (i) If, following his/her de novo review of the hearing records, the Director determines that a business was selling, offering for sale, or permitting the sale of Covered Products without a Tobacco Retail License, the Director may order the business closed for a period of time up to one (1) year, may assess a civil penalty in accordance with Section 16-12(b), and may revoke any certificates, licenses, permits, or other registrations issued by the City to the business.
- (ii) The final order issued by the Director shall be sent via Certified U.S. Mail and First-Class Mail to the address provided by the business owner and/or property owner in their written request for a hearing.

## **SECTION 2. SEVERABILITY CLAUSE**

Severability is intended throughout and within the provisions of this Local Law. If any section, subsection, sentence, clause, phrase or portion of this Local Law is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Local Law.

## **SECTION 3. SAVINGS CLAUSE**

This Local Law is not intended to rescind or repeal any existing City of Syracuse Charter Provision, Local Law, or General Ordinance unless such change is made by its express terms. Otherwise all other provisions of the Syracuse City Charter, Revised General Ordinances and Local Laws not inconsistent with the provisions of this Local Law shall remain in full force and effect.

## **SECTION 4. EFFECTIVE AND OPERATIVE DATE**

This Local Law shall be effective immediately in accordance with the provisions of New York State Municipal Home Rule Law.