



**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None
 Seconded by: None
 Date of Adoption: January 16, 2024
 Index No: 13-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
 Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	X			
Ald. Jean-Francois	X			
Ald. Johnson	X			
Ald. Wray	X			
Ald. Kleiner	X			
Ald. Green	X			
Ald. Witt	X			
Ald. Masi	X			
Pres. Rodrigues	X			
Total	9			

I hereby approve the attached Resolution/Local Law.

 Joseph M. DeStefano, Mayor

 Date

**Authorization to Amend City Code by creating a new Chapter 438,
Tobacco/Hookah/Vaping Establishment Licenses**

WHEREAS, the Mayor, Police Chief and Corporation Counsel have recommended the creation of licenses for smoke shops, as well as providing guidelines for obtaining and retaining such licenses.

NOW THEREFORE BE IT Resolved, and be it Ordained, by the Common Council of the City of Middletown, New York, as follows:

Section 1 - The Code of the City of Middletown, N.Y., is hereby amended by creating a new Chapter 438, Tobacco/Hookah/Vaping Establishment Licenses, to read as follows:

Chapter 438. Tobacco/Hookah/Vaping Establishment Licenses.

Section 438-1. Tobacco/Hookah/Vaping Establishment License Required.

A. Effective immediately, no person shall own or operate a Tobacco/Hookah/Vaping establishment, unless a license is first obtained from the City of Middletown Commissioner of Public Works (“Commissioner”).

B. Within fifteen (15) days of the effective date of this Ordinance, the Commissioner of Public Works shall send a copy of this Ordinance by regular and certified mail to all current owners and operators of Tobacco/Hookah/Vaping establishments in this City. Within sixty (60) days of the effective date of this Ordinance, all current owners and operators of Tobacco/Hookah/Vaping establishments in this City must apply for a valid Tobacco/Hookah/Vaping license to continue operation.

C. The application cost for this license shall be Two Hundred Dollars (\$200.00).

D. This Chapter in no way repeals nor contradicts zoning regulations or special use permit requirements in any zoning district in this City. However, this Chapter adds a second requirement to zoning regulations in the form of a license, and therefore all special use permit approvals must be conditioned on obtaining a license pursuant to this Chapter.

Section 438-2. Application. Every applicant for a license issued pursuant to this Chapter shall submit the following information:

A. The name, address, and telephone number of the individual or entity applying for a license, together with the name and location of the business to receive the license. If the applicant is a corporation or limited liability company, the applicant must list an individual who resides within the City of Middletown or within fifteen (15) miles of the City limits for purposes of service and notice.

B. The applicant’s driver’s license as proof of residency.

C. Proof of registration with the New York State Department of Taxation as a tobacco and/or vape retail dealer is required.

D. Any other reasonable information requested by the Commissioner.

E. All applications for a license shall be referred by the Commissioner to the Middletown Police Chief, who shall promptly cause an investigation to be made into the criminal background and prior bad acts or code violations of the applicant. The applicant must provide fingerprints to support this investigation. The Chief must report the findings to the Commissioner, and make a recommendation as to whether or not approval of the license is recommended. If approval is not recommended, the report shall state the reasons therefor.

Section 438-3. License.

A. Within sixty (60) days of receipt of a complete application, unless extended by the Commissioner’s request for additional information, the Commissioner shall issue a written determination on the application.

B. All licenses issued pursuant to this Chapter shall contain the following:

(1). The license is valid for one (1) year only, measured from the date of its issuance;

(2). The license is for the subject establishment only, and is nontransferable;

(3). There shall be no dispensing, processing, cultivation, sale, handling, distributing, or gifting of cannabis, cannabinoids, cannabinoid hemp, cannabis flower, cannabis products, cannabis-infused products, hemp and hemp extract, as those terms are defined in Section 3 of the New York Cannabis Law, within, upon, or in relation to the subject establishment.

Section 438-4. Grounds for Denial. An application for a license may be denied by the Commissioner, following a public hearing, based on any one of the following:

A. The Report of the Police Chief.

B. Any past or present demonstration by the applicant of an unwillingness to comply with the Middletown City Codes.

C. The lack of a current tobacco and/or vapor product registration from the New York State Department of Taxation.

D. An indication that the location of the proposed establishment is more likely than not to negatively impact the neighborhood based upon its proximity to a school, or other form of educational facility, place of worship or assembly, or public park.

E. If the applicant is not satisfied with the final determination of the Commissioner, he/she/it may file an Article 78 proceeding pursuant to the provisions of the New York Civil Practice Law and Rules.

Section 438-5. Conditions For Operation.

A. Hours of operation. Store hours operation shall be between 7:00 a.m. and 11:00 p.m. from Sunday to Thursday, and 7:00 a.m. to 12:00 a.m. on Friday and Saturday. The specific hours of operation for each store shall be set by the Planning Board.

B. Signage.

(1). Store hours shall be posted in a conspicuous place within public view.

(2). There shall be no public display of advertisements for electronic cigarettes, vapor products, smoking paraphernalia, or tobacco products, within 1,500 feet of a school or place of worship, in accordance with NY Public Health Law Article 13-F, Section 1399-DD-1.

(3). Windows shall be unobstructed by advertisements and/or any other materials.

C. Equipment.

(1). Each store shall have working surveillance cameras in the interior and exterior of the building. Footage from said cameras shall be stored for thirty (30) days.

(2). All broken windows must be replaced within three (3) days.

(3). Smoking or vaping of any kind is prohibited within the store unless expressly authorized in the license.

(4). All graffiti must be removed within three (3) business days following verbal or written notice from the Department of Public Works or Fire Inspector.

D. Inspection. All Tobacco/Hookah/Vaping establishments shall be inspected annually by the Department of Public Works or Fire Inspector.

E. Compliance with codes. The owner, operator, agents or employees of any Tobacco/Hookah/Vaping establishment shall comply with all provisions of applicable Federal, State, and City statutes, ordinances and codes.

Section 438-6. Suspension and Revocation of License.

A. Any owner, operator, agent or employee of any Tobacco/Hookah/Vaping establishment found to violate any of the provisions of this Chapter may be liable for the penalties prescribed in Section 438-8 of this Chapter and other applicable provisions of the City Code, and may in addition subject the license of the establishment to immediate suspension in the discretion of the Commissioner.

B. The owner, operator, agent or employee of any establishment whose license is suspended shall be entitled to a public hearing before the Middletown Common Council within fifteen (15) days of such suspension. Such owner, operator, agent or employee may be represented at such hearing by counsel of his/her/its choosing and at his/her/its expense. Such owner, operator, agent or employee shall also be entitled to call witnesses to testify on his/her/its behalf at such hearing. Within fifteen (15) days of such hearing, the Common Council shall issue a written final determination and provide a copy thereof to violating establishment. Pending such final determination, there shall be no sale, distribution, or dispensing of goods or merchandise at the violating establishment.

C. If the Common Council determines that there has been a violation of this Chapter, it may in its discretion revoke the license of the subject establishment for a period of one (1) year. If the subject owner, operator, agent or employee is not satisfied with the final determination, he/she/it may file an Article 78 proceeding pursuant to the provisions of the New York Civil Practice Law and Rules.

Section 438-7. License Renewal.

A. An application to renew any license issued under this Chapter shall be filed with the Department of Public Works no more than ninety (90) days and no less than sixty (60) days prior to the expiration of the current license. An application to renew a license which has been revoked pursuant to the provisions of Section 438-6 may be made no more than ninety (90)

days prior to the expiration of the revocation period and may be made at any time subsequent to such expiration.

B. Every day of operation without a license renewal shall constitute a separate violation punishable as provided in Section 438-8 of this Chapter.

C. Renewal applications shall be accompanied by a non-refundable fee of Two Hundred Dollars (\$200.00).

D. The application must include the information required in Subsections A, B, C, and D of Section 438-2.

E. The Commissioner may, but is not required to, submit a renewal application to the Police Chief for the investigation described in Subsection E of Section 438-2.

F. The Commissioner may consider the licensed establishment's compliance with all applicable laws, codes, rules and regulations governing the activities of the establishment, including but not limited to, building codes, noise ordinances, and any other information deemed applicable when considering a renewal application.

G. Within thirty (30) days of receipt of a complete application, unless extended by the Commissioner's request for additional information, the Commissioner shall issue a written determination on the renewal application. The Commissioner shall not deny the renewal application without first affording the applicant a public hearing before the Commissioner.

H. If the applicant is not satisfied with the final determination of the Commissioner, he/she/it may file an Article 78 proceeding pursuant to the provisions of the New York Civil Practice Law and Rules.

Section 438-8. Penalties. In addition to the penalties proscribed by Section 438-6, a person who shall violate any provision of this Chapter shall be guilty, upon conviction, of an offense punishable by a fine not less than \$250 nor more than \$1,000 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment.

Section 2. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional or illegal by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Section 3. This Ordinance shall take effect immediately.

Prepared by:

Attachments:

1. Tobacco Licenses
2. PH Affidavit
3. PH Minutes Tobacco Licenses

**CITY OF MIDDLETOWN
NOTICE OF PUBLIC HEARING**

Notice is hereby given that the City of Middletown will hold a public hearing on Tuesday, December 19, 2023, on or as near to 7:30 p.m. as possible, Common Council Chambers, 2nd floor, 16 James Street, to hear any and all persons wishing to be heard on the proposed creation of licenses for smoke shops, as well as providing guidelines for obtaining and retaining such licenses.

Any and all persons wishing to be heard will be given an opportunity to speak either for or against the proposed changes to the parking regulations.

The proposed legislation is available in the office of the Common Council Clerk, City Hall, 16 James Street, room 12, and on the City Website.

For any person unable to participate at the time of the public hearing, email comments may be submitted in advance to rmccormack@middletownny.gov

By the order of the Common Council.

Richard P. McCormack
Clerk of the Common Council

Publish: 12/14/23
City Website

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STATE OF NEW YORK, COUNTY OF ORANGE

The Times Herald-Record, a daily newspaper distributed in the Orange, Ulster, Pike, PA and Sullivan Counties, published in the English language in the City of Middletown, County of Orange, State of New York printed and published and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issues dated on:

12/14/2023

and that the fees charged are legal.
Sworn to and subscribed before on 12/14/2023

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Richard P. McCormack
Clerk of the Common Council
Publish: 12/14/23
City Website

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PUBLIC HEARING
December 19, 2023

Acting Council President Johnson opened the public hearing.
The City Clerk read the following notice:

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Attendance: Mayor DeStefano, Acting Common Council President Johnson, City Aldermen, Richard P. McCormack, City Clerk & Various Department Heads.

There were no speakers.

Mayor DeStefano recommended the Council leave the public hearing open for an additional two weeks to receive further written comments.

No additional comments were received.

On January 2, 2024 on a motion by Alderman Johnson, seconded by Alderman Witt and approved unanimously by the Common Council the public hearing was closed.

Respectfully submitted,

Richard P. McCormack
City Clerk

