



Memorandum

Jewel Williams Johnson

Legislator, District 8

Chair, Committee on Health

Michaelian Office Building

To: Sunday Vanderburgh

From: Jewel Williams Johnson

Date: May 18, 2026

Re.: Proposal to Establish a Westchester County Tobacco and Vapor Product Permit Program

TITLE: A LOCAL LAW adding a new Article to Chapter 535 of the Laws of Westchester County requiring a permit to sell, offer for sale, or commercially distribute tobacco products, vapor products, electronic cigarettes, and related nicotine products in Westchester County.

SPONSOR: Legislator Jewel Williams Johnson

PURPOSE OR GENERAL

IDEA OF BILL: A LOCAL LAW adding a new Article to Chapter 535 of the Laws of Westchester County to require a County permit for the sale, offer for sale, or commercial distribution of tobacco products, vapor products, electronic cigarettes, and related nicotine products in Westchester County.

INTENT:

The purpose of this proposed Local Law is to establish a Westchester County permitting system for businesses that sell, offer for sale, permit the sale of, or commercially distribute tobacco products, vapor products, electronic cigarettes, liquid nicotine, herbal cigarettes, shisha, smoking paraphernalia, and related nicotine-delivery products.

This law would strengthen local enforcement, improve retailer accountability, protect youth from unlawful tobacco and vaping sales, and close enforcement gaps that allow retailers to evade the State's flavored vapor product ban by claiming that flavored products stored on-site are only intended for online or out-of-state sales.

New York State already prohibits the retail sale of flavored vapor products intended or reasonably expected to be used with or for the consumption of nicotine, and defines "flavored"

broadly to include distinguishable tastes or aromas other than tobacco, including fruit, candy, mint, menthol, dessert, and similar concept flavors.

JUSTIFICATION:

This proposal draws from three New York county models:

Dutchess County: Uses a “Permit to Sell or Distribute Tobacco & Vaping Products” framework; requires a permit for each location and/or event where sales or distribution occurs; includes signage, inspections, and permit suspension.

*Strongest Feature to Borrow/Recommendation: The Dutchess “sell or distribute” model so Westchester can regulate not only traditional retail sales, but also commercial distribution, events, and promotional activity.

Ulster County: Requires a tobacco retail license for each specific address; makes licenses nontransferable; requires annual renewal; prohibits new licenses within 1,000 feet of a K-12 school, with narrow grandfathering.

*Strongest Feature to Borrow/Recommendation: Adoption of the 1,000-foot school buffer for new permits and require a separate, nontransferable permit for every location.

Cayuga County: Requires a County tobacco retail license; prohibits licenses for non-fixed locations; requires unannounced compliance inspections; includes meaningful penalties, suspension, revocation, and possible closure for unlicensed sales.

*Strongest Feature to Borrow/Recommendation: Include inspection consent, meaningful penalties, suspension/revocation authority, and closure authority for selling without a valid permit or while suspended.

Local tobacco retailer licensing is recognized as a best-practice enforcement tool because it allows local governments to create stricter and more comprehensive rules than state or federal law, including enforcement mechanisms, location limits, and fees sufficient to cover program administration.

Despite the State’s flavored vapor product ban, local enforcement remains difficult when businesses possess flavored products and claim that the inventory is not for local sale. Your existing Westchester draft addresses this by creating a rebuttable presumption that possession of four or more flavored vapor products on the premises of a tobacco business or retail establishment indicates intent to sell, while allowing a dealer to rebut that presumption by proving the products are solely for lawful online or out-of-state sales.

A County permit system would strengthen that approach by giving the Department of Health a direct local enforcement mechanism: permits could be denied, suspended, revoked, or conditioned based on violations of state, federal, or local tobacco and vaping laws.

Youth access remains a public health concern. CDC data from the 2024 National Youth Tobacco Survey reported that 1.63 million middle and high school students currently used e-cigarettes, and among youth current e-cigarette users, 87.6% used flavored e-cigarettes.

COMMITTEE REFERRAL:

Committee on Health; Committee on Legislation; Committee on Budget & Appropriations, as needed for fee structure and implementation costs.

SUMMARY OF PROPOSED LOCAL LAW

1. Permit Required

No person, business, corporation, partnership, association, or other entity shall sell, offer for sale, permit the sale of, or commercially distribute any tobacco product, vapor product, electronic cigarette, liquid nicotine, herbal cigarette, shisha, smoking paraphernalia, or related nicotine-delivery product in Westchester County without a valid permit issued by the Westchester County Department of Health.

A separate permit shall be required for each location, address, vending machine, temporary event, or other site at which such products are sold, offered for sale, or commercially distributed.

Wholesale dealers who sell exclusively to licensed retail dealers for resale and do not sell, offer for sale, or distribute directly to consumers should be exempt from the retail permit requirement, consistent with the Cayuga and Ulster models, but must remain subject to applicable state tax, licensing, and recordkeeping laws.

2. Covered Products

The proposed law should cover:

Tobacco products; cigarettes; cigars; pipe tobacco; chewing tobacco; snuff; snus; bidis; shisha; herbal cigarettes; rolling papers; smoking paraphernalia; electronic cigarettes; e-liquids; liquid nicotine; vapor products; nicotine pouches; electronic cigarette cartridges; disposable vapes; refill cartridges; and any other tobacco, nicotine, or vapor product regulated under New York State Public Health Law Article 13-F or New York State Tax Law Articles 20 and 28-C.

New York State already requires retail dealers selling cigarettes or tobacco products to publicly display a state certificate of registration for each place of business, and separately requires vapor product dealers to register before selling vapor products.

3. Application Requirements

Each applicant should be required to submit:

The legal name of the owner and operator; DBA name; physical address; mailing address; contact information; proof of New York State tobacco retail dealer registration and/or vapor products dealer certificate; certificate of authority to collect sales tax; workers' compensation and disability coverage documentation where applicable; identification of all owners, officers, managers, and responsible parties; history of prior tobacco, vapor, tax, or public health

violations; and a signed acknowledgment of all federal, state, and local tobacco and vaping laws.

The application should also require a disclosure of whether the business maintains any flavored vapor product inventory on-site and, if so, whether the applicant claims such inventory is solely for lawful online or out-of-state sales.

4. Permit Duration and Renewal

Recommended Westchester model: Annual permit, expiring December 31 of each year.

Ulster's annual model is stronger for enforcement than Dutchess County's two-year permit because it gives the County a regular accountability checkpoint. Dutchess requires renewal applications at least 30 days prior to expiration, and Ulster also requires renewal applications at least 30 days prior to expiration. ([dutchessny.gov][7])

5. Permit Fee

The permit fee should be set by the Board of Legislators or Board of Health fee schedule in an amount sufficient to defray the cost of administration, inspections, compliance checks, enforcement, hearings, and public education.

A defensible starting point would be \$300 per location per year, because New York State already charges \$300 for retail tobacco registrations and \$300 for vapor products dealer registration per retail or online location.

The County may also include: replacement permit fee; late renewal fee; returned check fee; event permit fee; and re-inspection fee after a failed inspection.

6. Location Restrictions

No new permit should be issued to any tobacco or vapor product retailer located within 1,000 feet of the nearest point of the property line of any public or private K-12 school or BOCES facility.

Existing retailers within 1,000 feet of a school may be grandfathered only so long as they maintain continuous permit compliance. The permit should not transfer to a new owner, new entity, or new location. Ulster uses a 1,000-foot school buffer for new licenses, while Cayuga uses a 100-foot buffer; the Ulster standard is stronger and more appropriate for Westchester's youth-protection goals. ([eCode360][8])

7. Non-transferability

Each permit shall be valid only for the permittee, the specific location, and the specific business entity identified in the permit application.

A permit shall not be sold, assigned, transferred, inherited, pledged, or moved to another location. A change in ownership, legal entity, corporate control, or location shall require a new permit application.

This mirrors the Ulster and Dutchess approaches, which make permits/licenses specific to the applicant and location and nontransferable. ([eCode360][8])

8. Display Requirement

The permit must be displayed prominently at the location where tobacco or vapor products are sold or distributed so that it is readily visible to customers and inspectors.

Ulster, Cayuga, and Dutchess all require visible display of the local license or permit.

9. Required Signage

Every permit holder shall post all signage required by New York State law, including age-restriction signage, and any additional public health warning signage produced or approved by the Westchester County Department of Health.

Dutchess requires local public health signage warning of the harms of tobacco use in addition to state ATUPA requirements.

10. Inspections and Compliance Checks

As a condition of receiving and maintaining a permit, each permit holder must consent to unannounced inspections by the Westchester County Department of Health or its authorized designee.

Inspections may include review of: products offered for sale; products stored on premises; flavored vapor product inventory; invoices; receipts; shipping records; online sales records; out-of-state sales records; age-verification procedures; signage; licenses; permits; and compliance with federal, state, and local law.

Cayuga requires retailers to consent to unannounced compliance inspections of the retail establishment and the tobacco products therein, and Dutchess authorizes regular inspections to determine compliance with State Public Health Law Article 13-F and local permit requirements.

11. Flavored Vapor Product Inventory and Rebuttable Presumption

The Local Law should incorporate and strengthen your existing flavored-vape presumption language:

There shall be a rebuttable presumption that a vapor products dealer in possession of four or more flavored vapor products in or on the premises of a tobacco business, retail establishment, storage area, or permitted location possesses such products with intent to sell, offer for sale, or transfer such products in violation of New York State Public Health Law § 1399-mm-1.

A permittee may rebut this presumption only by producing competent, contemporaneous business records showing by a preponderance of the evidence that the products are for lawful sale solely to consumers online and residing in states or jurisdictions where such sale is lawful, and not for sale, offer for sale, or transfer in New York State or Westchester County.

Required proof should include invoices, inventory logs, online order records, age-verification records, shipping records, destination addresses, payment records, and proof that the products were not displayed, advertised, offered, sampled, promoted, or otherwise made available to consumers in Westchester County.

12. Grounds for Denial, Suspension, or Revocation

The Department of Health may deny, suspend, revoke, or refuse to renew a permit if:

The application is incomplete, false, inaccurate, or misleading; the applicant lacks required New York State tax or vapor product registrations; the applicant owes outstanding County fines or penalties; the applicant has violated federal, state, or local tobacco, vapor, tax, public health, or consumer protection laws; the applicant previously had a tobacco or vapor permit revoked; the location is prohibited under the school-buffer provision; the applicant refuses inspection; the applicant fails to produce required records; or the applicant stores flavored vapor products without adequate proof of lawful non-Westchester sales.

Ulster expressly allows denial for incomplete or misleading applications, lack of state registration, prior revocation, violations involving contraband tobacco, tax compliance, display, or sale of tobacco products, unpaid County charges, or other written criteria tied to the purposes of the law. ([eCode360][8])

13. Penalties

Recommended Westchester penalty structure:

For a first violation: civil penalty of \$1,500 and/or suspension up to three months.

For a second violation within a three-year period: civil penalty of \$2,500 and/or suspension up to six months.

For a third violation within a three-year period: revocation.

For sale without a permit, sale while suspended, or sale after revocation: closure of the retail establishment for up to 120 days, after notice and opportunity to be heard.

Cayuga uses civil penalties of \$1,500 for a first violation and \$2,500 for subsequent violations, with suspension up to three months for a first violation, up to six months for a second violation,

revocation for a third violation, and possible closure up to 120 days for sales without a valid license or while suspended or revoked.

For an underage sale, the law may also require a temporary suspension and public notice at the entrance of the business during the suspension period, modeled on Dutchess County's requirement that a sign be placed at the business entrance after an administrative finding of an underage sale.

14. Hearings and Due Process

No permit shall be suspended, revoked, or finally denied without notice and an opportunity to be heard before the Westchester County Board of Health, Commissioner of Health, or designated administrative hearing officer, as determined by Law Department review.

Emergency suspension authority may be included where continued operation presents an imminent threat to public health, subject to prompt post-suspension hearing procedures.

15. Enforcement Agency

The Westchester County Department of Health should serve as the primary permitting and enforcement agency, with authority to coordinate with the Department of Consumer Protection, County Attorney, local police departments, school districts, municipal code officials, and New York State enforcement agencies as appropriate.

16. Implementation Timeline

The law should take effect 90 days after filing with the Secretary of State.

Existing retailers should be required to apply for a Westchester County permit within 90 days of the effective date. New retailers should be prohibited from selling or distributing covered products unless and until a permit is issued.

The Department of Health should be authorized to develop forms, regulations, public education materials, inspection protocols, and written criteria for permit denial, suspension, revocation, and renewal.

17. Fiscal Impact

TBD. However, it is recommended the proposed permit fee should offset the costs of implementation, administration, inspections, compliance checks, enforcement, hearings, and educational materials. Any net revenue should be dedicated to tobacco and vaping enforcement, youth prevention, cessation programming, and public health education.

18. SEQRA

This proposed legislation should be referred to the Department of Planning for SEQRA review. It is anticipated that the legislation may be classified as not constituting an “action” or as otherwise exempt/Type II, but that determination should be made by the appropriate County department.

CORE POLICY MESSAGE:

This legislation is not about creating another layer of bureaucracy for responsible businesses. It is about accountability. It says that if a business wants to profit from the sale or distribution of tobacco and vaping products in Westchester County, then that business must be known to the County, permitted by the County, inspected by the County, and answerable to the County when it violates the law.

Westchester should not have to chase loopholes after harm has already reached our young people. A permit system gives the County a clear, enforceable, local tool to prevent illegal sales, address flavored-vape evasion, and protect the health and well-being of our residents—especially our children.

PRESENT LAW:

There is currently no local law in Westchester County prohibiting the sale or distribution of kratom.

cc: James Silverberg, Legislative Director
Dylan Tragni, Chief of Staff