

**Adopt Local Law "F" of 2013 A Local Law Prohibiting Within Cortland County the Possession, Purchase, Attempted Purchase in Excess of the Federal Limits, of Pseudophedrine and Products Containing Pseudophedrine**

Be it enacted by the Cortland County Legislature of the County of Cortland as follows:

Section 1: WHEREAS, this Legislature hereby finds and determines that the County has a duty to preserve peace and order and secure freedom from dangerous or noxious activities, and to that end, the Legislature of Cortland County, has determined that certain enterprises and individuals within Cortland County, New York, are contemplating or engaged in the purchase, attempted purchase, and/or possession of pseudoephedrine and other products containing pseudoephedrine (PSE) in quantities which exceed the established federal limits; and

WHEREAS, the possession and purchase of excessive quantities of PSE is leading to the manufacture, sale, use and possession of methamphetamine, a controlled substance under New York State Public Health Law § 3306, Schedule II, (d)(2); and

WHEREAS, the substances, which are more specifically described below, are often used as an essential ingredient to manufacture methamphetamine, and further, the purchase and possession of excessive quantities of PSE by individuals leads to the unlawful sharing, sale and/or other illegal or unintended use of PSE to manufacture methamphetamine; and

WHEREAS, it has been determined that the said effects of these purchases, attempted purchases and/or possession pose an actual and imminent threat to the safety of the citizens of Cortland County, New York.

NOW THEREFORE, BE IT ORDERED BY THE LEGISLATURE OF CORTLAND COUNTY, NEW YORK AS FOLLOWS:

Section 2: It is hereby declared to be unlawful for any person to possess, purchase and/or attempt to purchase any one or more of the following substances in the quantities enumerated below within the boundaries of Cortland County, New York:

The factors outlined in *USA Patriot Act, Title VII, Combat Methamphetamine Epidemic Act of 2005* is incorporated into this Local Law to limit the purchase, attempted purchase and/or possession of PSE, as follows:

1. Daily Sales Limit on Retailers: Retail sales may not exceed 3.6 grams PSE per day per purchaser, regardless of the number of transactions.

2. 30-Day Purchase Limits on Consumers: Individuals are prohibited from purchasing more than 9 grams PSE per 30-day period.

3. Non-Liquid Forms: All non-liquid forms (including gelcaps) of PSE products must be sold in blister packs with not more than two dosages or in unit-dose packets or pouches.

4. Mail Order Limits: Mail-order companies may not sell more than 7.5 grams to a customer within a 30-day period.

5. Behind-the-Counter Placement: All PSE products must be placed behind a counter (any counter, not necessarily the pharmacy counter) that is not accessible to purchasing consumers or in a locked display case that is located on the selling floor. Retailers must give the product directly to the purchaser; therefore, a retailer without a pharmacy may still sell the combination PSE products from behind a counter or locked display case.

6. Logbook: Retailers must maintain a logbook of information on transactions involving PSE products. The logbook must be available for inspection and copying by a law enforcement officer upon request to the retailer. The logbook may be maintained in either written or electronic form. The logbooks must capture the following information:

a. Purchaser's signature;

b. Purchaser's name and address, legibly entered or written;

c. Date and time of sale;

d. Name of product sold; and

e. Quantity sold. Logbooks must provide notice to purchasers that entering false statements or misrepresentations in the logbook may subject purchasers to criminal penalties federally under 18 United States Code §1001 and locally under this local law. The purchaser must sign the logbook and enter the name, address, and date and time of sale. The retailer must check the information entered by the purchaser against the photo ID and enter the name and quantity of product sold. Logbook requirements do not apply to purchases of single sales packages that contain no more than 60mg of PSE. Each entry must be maintained for two years following the date of entry and the format may be written or electronic.

7. Photo ID: In conjunction with the logbook requirement, retailers will be required to ask for photo identification (ID) issued by either a state or the federal government or other appropriate ID.

8. Training and Certification: Retailers must train applicable sales personnel to ensure that they understand the requirements of PSE product sales and submit self-certifications to the attorney general in this regard. The Drug Enforcement Administration will issue regulations on the training criteria.

Section 3: This law shall be enforced by any certified law enforcement officer within his/her respective jurisdiction within the geographical boundaries of Cortland County. Further, this law shall apply and be enforced in all unincorporated areas, or other municipal entities within the geographical boundaries of Cortland County. If any of the aforementioned substances, *pseudoephedrine, its compounds, salts or isomers, or products containing ephedrine, pseudoephedrine, or phenylpropanolamine*, in excess of these quantities enumerated above, are found to purchased, attempted to be purchased and/or in the possession of any person, (a) such substances may be confiscated and destroyed by law enforcement officials, or (b) such substances may be maintained as evidence, or (c) the person purchasing, attempting to purchase or possessing such substances in excess of such quantities may be charged with a class “A” misdemeanor.

Section 4: Possession is defined pursuant to the New York State Penal Law §10 (8) “to have physical possession or otherwise to exercise dominion or control over tangible property.” The term “possess” includes actual or constructive possession of tangible property (See *People v. Manini*, 79 NY2d 561, 573). For the purposes of this Local Law, it shall be unlawful for any person to purchase, attempt to purchase and/or possess more than the quantities as set forth in section 2, above and as set forth in *USA Patriot Act, Title VII, Combat Methamphetamine Epidemic Act of 2005* and are subject to charges as stated in Section 3 of this Local Law.

Section 5: It is not an offense under Section 2 above of this law if the person was acting at the direction of an authorized law enforcement agent to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substance.

Section 6: Jurisdiction- It should be noted that under New York State Criminal Procedure Law section 20.40(4)(c) & (g), an offense committed within 500 yards of the boundary of a particular county, and in an adjoining county of this state, may be prosecuted in either such county; or an offense committed in a private vehicle during a trip thereof extending through more than one county may be prosecuted in any county through which such vehicle passed in the course of such trip.

Section 7: Any person found to be in violation of this law will be guilty of a Class A Misdemeanor and subject to a term of imprisonment not to exceed one year and a fine not to exceed \$1,000.00.

Section 8: This law shall apply to all actions occurring on or after the effective date of this article. This law may be enforced by any law enforcement agency having jurisdiction to act in the County of Cortland, by either the arrest of or the issuance of a summons to a party violating the provisions of this act and requiring their appearance before a court of competent jurisdiction.

Section 9: This law shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Cortland. The county legislature may determine by resolution whether or not identical or substantially similar statewide legislation or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 10: Severability- If any provision of this law is held invalid, such invalidity shall not affect the remaining provisions of the law which shall remain effective absent the invalid provision, and to this end, the provisions of the law are declared to be severable.

Section 11: Emergency Clause- It is hereby declared that an emergency exists and this law, being necessary for the preservation of the health, safety and welfare of citizens of Cortland County , New York, shall be effective immediately upon its passage and approval and filing with the New York State Secretary of State.

STATE OF NEW YORK ) SS:  
COUNTY OF CORTLAND )

This is to certify that I, the undersigned, Clerk of the Cortland County Legislature, have compared the foregoing copy with the original now on file in this office, and that the above actions were passed by the Cortland County Legislature on the 26th day of September, 2013 and that the same is a correct and true transcript of such actions taken.

IN WITNESS WHEREOF I have hereunto set my hand  
and the official seal of the CORTLAND COUNTY  
LEGISLATURE, this 26th day of September, 2013.

  
\_\_\_\_\_  
Jeremy D. Boylan, Clerk of the Legislature  
Cortland County