

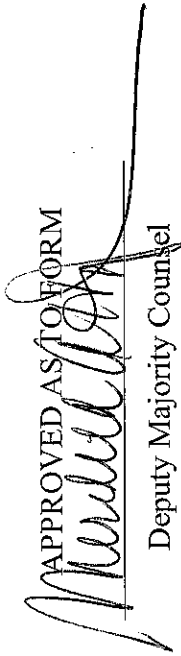
AMENDMENT IN THE NATURE OF A SUBSTITUTION – Clerk Item Number 173-18

Introduced by Presiding Officer Richard Nicoletto, Deputy Presiding Officer Howard Kopel, Alt. Dep. Presiding Officer Denise Ford, Minority Leader Kevan Abrahams, Legislator Siela Bynoe, Legislator Carriè Solages, Legislator Debra Mule, Legislator C. William Gaylor, Legislator Vincent Muscarella, Legislator Ellen Birnbaum, Legislator Delia DeRiggi-Whitton, Legislator James Kennedy, Legislator Thomas McKevitt, Legislator Laura Schaefer, Legislator John Ferretti, Legislator Arnold Drucker, Legislator Rose Marie Walker, Legislator Joshua Lafazan, and Legislator Steve Rhoads

LOCAL LAW 8 -2018

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE IN RELATION TO PROHIBITING THE SALE OF AGE RESTRICTED PRODUCTS TO INDIVIDUALS UNDER THE AGE OF TWENTY-ONE

Passed by the Nassau County Legislature on May 23, 2018
Voting: Ayes:19, Nays:0, Abstained:0
Became a law on June 4, 2018 with approval of the County Executive.

APPROVED AS TO FORM

Deputy Majority Counsel

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF NASSAU AS FOLLOWS:

Section 1. Chapter IX of Chapter 272 of the Laws of 1939 constituting the Nassau County Administrative Code, Title H is amended to read as follows:

§ 9-25.1 Legislative Intent. This Legislature hereby finds that tobacco use is the leading cause of preventable death and disease in New York State. Adolescents and young adults are uniquely vulnerable to the effects of nicotine, and a young age of initiation is strongly associated with greater nicotine dependence and greater intensity and persistence of smoking into adulthood. Underage users rely primarily on social sources, such as friends and family, to acquire tobacco, and most of these sources are likely to be between eighteen and twenty-one years old. Accordingly, raising the minimum legal age to twenty-one will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students. Additionally, the use of electronic cigarettes, or “e-cigarettes” has become widespread amongst young people, and not only do these devices contain chemicals that can cause respiratory and heart distress, but their prevalence has normalized tobacco use. Accordingly, the purpose of this legislation is to expand its scope to include electronic aerosol delivery systems products, smoking paraphernalia, shisha, and all other products prohibited from being sold to minors by New York State Public Health Law Article 13-F (“age restricted products”), and increasing the age limitation from under age nineteen to under age twenty-one.

§ 9-25.2. Definitions. As used in this title:

- A. “Accessory”: any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; 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 (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product, but solely controls moisture and/or temperature of a stored tobacco product; or

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.

B. “Age-restricted products”:

- i. Tobacco products, shisha, herbal cigarettes, electronic aerosol delivery systems, and smoking paraphernalia; and
- ii. All other products prohibited from being sold to minors by New York State Public Health Law Article 13-F, as the same may be amended from time to time.

C. “Bidis”: A product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendra leaf (*diospyros exculpra*), or any other product offered to consumers as “beedies” or “bidis.”

D. “Component or Part”: Any software or assembly of materials intended or reasonably expected (1) to alter or affect the tobacco product’s performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco product. Component or part excludes anything that is an accessory of a tobacco product and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for Electronic Aerosol Delivery Systems.

E. “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 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 the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- F. "Enforcement officer": Any police officer, public safety officer, inspector, county health inspector or other employee of the County of Nassau authorized to enforce this Title.
- G. "Gutka": a product containing lime paste, spices, areca and tobacco.
- H. "Herbal Cigarette": any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but limited to, as a cigarette, cigar or pipe filler.
- I. "Nicotine Water": Water that is laced with nicotine.
- J. "Shisha": Any product made primarily of tobacco or other leaf or herbs, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe.
- K. "Smoking Paraphernalia": Any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco
- L. "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 adsorption, including cigarettes, cigars, chewing tobacco, powdered tobacco, bidis, gutka, other tobacco products, or nicotine water. Tobacco product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- M. "Tobacco retail dealer": Any person who owns or operates a business in the County of Nassau at which tobacco products are sold or offered for sale to the public.

- N. "Tobacco Vendor Education Certificate": A certificate issued by the Nassau County Department of Health.
- O. "Commissioner": The Commissioner of the Nassau County Department of Health.
- P. "Department": The Nassau County Department of Health.

§ 9-25.3. Prohibitions.

- A. No person shall sell or permit the sale of age-restricted products to any person under the age of twenty-one.
- B. The identification requirements contained in New York State Public Health Law Article 13-F Section 1399-cc(3), as the same may be amended from time to time, are hereby incorporated into this chapter by reference, except that the age to be proven by such identification shall be twenty-one.
- C. Age-restricted products may not be sold in vending machines located in the County.
- D. No person operating or employed in a place of business wherein age-restricted products are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any age-restricted product in any manner, unless such age-restricted product is stored for sale (a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container; provided, however, such restriction shall not apply to tobacco businesses as defined in subdivision eight of § 1399-aa of New York State Public Health Law Article 13-F, as the same may be amended from item to time, and to places to which admission is restricted to persons twenty-one years of age or older.

§ 9-25.4. Posting of Signs.

- A. No person shall sell or permit the sale of an age-restricted product in the County unless a notice is posted in a conspicuous place at the location where the age-restricted product is sold.
- B. The sign shall provide notice, which shall state: “SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA, BIDIS, GUTKA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS, OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE, IS PROHIBITED BY LOCAL LAW.”
- C. Such sign shall be printed on a white card in red letters at least one-half inch in height. Signs shall be protected from tampering, damage, removal or concealment.

§ 9-25.5. Enforcement.

- A. The Commissioner and the Commissioner of the Department of Consumer Affairs are charged with ensuring compliance with this section. This section shall not apply to violation of sections 9-25.7 and 9-25.8 of this Title.
- B. This local law shall be enforced in accordance with Article I of the Nassau County Public Health Ordinance.
- C. Enforcement officers from the Department of Health and the Department of Consumer Affairs shall be authorized to serve official notices of violation of this Title.

§ 9-25.6. Violations and Penalties

Violations of any provision of this Title, exclusive of sections 9-25.7 and 9-25.8 of this Title, shall be punishable by a civil penalty of a minimum of three hundred dollars, but not to

exceed one thousand dollars for a first violation, and a minimum of five hundred dollars, but not to exceed one thousand five hundred dollars for each subsequent violation.

§ 9-25.7. New York State Retailer Dealer Certificate of Registration and Tobacco Vendor Education Certification of Tobacco Retail Dealers

- A. No tobacco retail dealer shall sell or offer for sale tobacco products within Nassau County without first complying with section four hundred eighty-a of the New York State Tax Law and having obtained a valid New York State Retail Dealer Certificate of Registration for tobacco products and a valid Tobacco Vendor Education Certificate issued by the Commissioner in accordance with section 9-25.8 of this Title.
- B. Every retailer tobacco dealer shall conspicuously post within his or her place of business a New York State Retailer Dealer Certificate of Registration for tobacco products and the Tobacco Vendor Education Certificate issued to such dealer.
- C. A copy of such certificates shall be filed with the Commissioner as proof of compliance with section four hundred eighty-a of the New York State Tax Law and this Title.

§9-25.8 Certification requirements; recertification

- A. Every tobacco retail dealer shall attend and satisfactorily complete a tobacco sales training program given and administered pursuant to section thirteen hundred ninety nine-ee of the New York State Public Health Law.
- B. Upon presentation by a tobacco retailer dealer to the Commissioner of proof of attendance and satisfactory completion of such training program, the Commissioner shall issue to such retailer dealer a Tobacco Vendor Education Certificate.

C. A tobacco retail dealer shall obtain re-certification during each third year thereafter, within thirty days after the anniversary of the previous certification, for as long as such dealer remains in business;

§ 9-25.9 Penalties

A. Any tobacco retailer dealer who sells tobacco products in violation of sections 9-25.7 and 9-25.8 of this Title shall for the first and second offense be subject to civil penalty of up to one thousand dollars and for the third offense within a period of thirty six months, be subject to a civil penalty of up to one thousand dollars and suspension of his or her Tobacco Vendor Education Certification for six months, which fine and certificate may be imposed and suspended, respectively, following notice and an opportunity to be heard in a proceeding before the Commissioner.

B. The Commissioner may, at his or her own discretion, deny, refuse to renew or revoke a Tobacco Vendor Education Certificate if the applicant for state registration or any person listed on the application was listed on a previous application where the registration was revoked for violations of ATUPA, or for violations of this Title.

§ 9-25.10 Rules and procedures. The Commissioner shall promulgate such rules and procedures as are necessary to effectuate the provisions of this Title.

Section 3. Severability

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individuals, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision,

section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 4. SEQRA Determination. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L., section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R. and section 1611 of the County Government Law of Nassau County, that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

Section 5. Effective Date

This Local Law shall take effect sixty days from the date that this legislation is enacted.

APPROVED
Juan Cuman

County Executive
DATE 6/4/2018