

Introduced by: Legislator Arnold W. Drucker, Presiding Officer Richard J. Nicoletto, Minority Leader Kevan Abrahams, Deputy Presiding Officer Howard J. Kopel, Alternate Deputy Presiding Officer Denise Ford, and Legislators Siela A. Bynoe, Carrié Solages, Debra Mulé, C. William Gaylor III, Vincent T. Muscarella, Ellen Birnbaum, Delia DeRiggi-Whitton, James Kennedy, Thomas McKevitt, Laura Schaefer, John R. Ferretti, Jr., Rose Marie Walker, Joshua Lafazan and Steven Rhoads.

LOCAL LAW NO. 25-2019

A LOCAL LAW TO AMEND NASSAU COUNTY MISCELLANEOUS LAWS IN RELATION TO RESTRICTING ADVERTISING OF AGE-RESTRICTED PRODUCTS

Passed by the Nassau County Legislature on September 23, 2019

Voting: ayes: 18, nays: 0, abstained: 0

Became a law on October 23, 2019 with the approval of the County Executive

PETER J. CLINES MINORITY COUNSEL
APPROVED AS TO FORM

Section 1. Legislative Intent.

It is recognized that children are especially susceptible to cigarette advertising that makes smoking appear to be glamorous and attractive. With the advent of e-cigarettes, children are now exposed to intensive commercial marketing of an entirely new set of products containing nicotine. The harmful and addictive effects of nicotine are well documented and scientifically established beyond any question. Most e-cigarettes contain this substance. Some e-cigarette brands and devices are owned by tobacco companies, while others are independently owned. According to data collected by the website Statista, e-cigarette sales in the United States was \$3.2 billion in 2018; almost double the number of sales from \$1.9 billion in 2015. As the development and marketplace for e-cigarettes has grown drastically, so has aggressive marketing and promotion of these products. Based on data collected by the Centers for Disease Control (CDC), spending to advertise e-cigarettes has increased rapidly since 2011. The CDC estimates that about sixty-nine percent of “middle and high school students were exposed to e-cigarette advertisements in retail stores, on the Internet, in magazines/newspapers, or on TV/movies.” According to the United States Surgeon General, in 2018, more than 3.6 million youth, including one in five high school students and one in twenty middle school students, currently use e-cigarettes. According to the American Cancer Society, a study published February 1, 2019 in the Journal of the American Medical Association Network Open found that young people in the United States age ten to nineteen who use e-cigarettes are more than four times as likely to try a regular

cigarette than those who never tried e-cigarettes. Thus, increased exposure to e-cigarette advertisements may have a direct correlation to increases in e-cigarette use among youth and may contribute to teens using cigarettes.

This Legislature, acting upon its power to protect the health, safety, and welfare of the public hereby determines that the County's overriding interest in protecting the well-being of its children will be directly advanced by restricting the advertising of age restricted products. Accordingly, this law also restricts advertising of age restricted products in any outdoor area within one thousand feet of any school, including but not limited to schools and facilities for developmentally disabled children and adults, park, playground, or duly licensed child day-care center as well as within the interior of any building or structure which is within one thousand feet of any school, including but not limited to schools and facilities for developmentally disabled children and adults, park, playground, or duly licensed child day-care center, when such advertisement is within five feet of any exterior window or any door which is used for entry or egress to the building or structure by the public.

BE IT ENACTED by the Legislature of the County of Nassau as follows:

Section 2. Title 38 of the Miscellaneous Laws of Nassau County is amended as follows:

TITLE 38
TOBACCO ADVERTISING

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| Section | 1. Legislative intent |
| | 2. Definitions |
| | 3. Limitations and restrictions |
| | 4. Advertising Restrictions of Age-Restricted Products in Certain Outdoor and Indoor Areas |
| | 5. Penalties |
| | 6. Severability |
| | 7. Effective date |

Section 1. **Legislative intent.** The purpose of this law is to limit access to age restricted products by Nassau County's children and youth and to protect children and young people against the dangers of smoking and inhaling or ingesting aerosol produced by an electronic aerosol delivery system encouraged by tobacco and electronic aerosol delivery system related marketing. In addition, this Legislature finds that candy products that mimic the packaging of tobacco brands and the likeness of tobacco products promote smoking among young people, and that candy cigarettes effectively serve to advertise smoking and tobacco brands to future smokers. This law therefore also seeks to limit access by Nassau County's children to candy products that mimic tobacco products in order to discourage them from smoking.

Section 2. **Definitions.**

1. "Point of sale advertising" shall mean all printed and/or graphic materials bearing brand name, logo, symbol, motto, selling message or any other identifiable description of the product which when used for its intended purpose can reasonably be anticipated to be seen by customers at a location at which tobacco products are offered for sale.

2. "Tobacco business" shall mean a sole proprietorship, corporation, partnership or other entity in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail and in which, the sale, manufacture or promotion of other products is merely incidental.

3. "Candy cigarettes" shall mean a facsimile cigarette, cigar or pipe, made of chocolate, a sugar confection containing chocolate, a sugar confection, or bubblegum or a similar confection meant for chewing but not ingesting, or any combination thereof.

4. "Accessory" shall mean 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.

5. "Advertisement" shall mean any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of age-restricted product as defined in this Chapter, or any combination thereof, the purpose or effect of which is to promote the use, sale or distribution of an age-restricted product through such means as, but not limited to, the identification of a brand of an age-restricted product, a trademark of an age-restricted product or a trade name associated exclusively with an age-restricted product.

6. "Age-restricted products" shall mean (i) Tobacco products, shisha, herbal cigarettes, tobacco water, bidis, gutka, 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.

7. "Bidis": A product containing tobacco that is wrapped in temburni leaf (diospyrosmelanoxylon) or tendra leaf (diospyros exculpra), or any other product offered to consumers as "beedies" or "bidis."

8. "Child Day-Care Center" shall include the following: (1) any child-care arrangement, public, private or parochial child-care center, school-age child-care program, day nursery school, kindergarten, play school or other similar school or service operating pursuant to authorization, license or permit of New York State; (2) any facility that provides child-care services as defined in section 410-p of the New York State Social Services Law; or (3) any child day-care center as defined in section 390 of the New York State Social Services Law.

9. "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.

10. "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.

11. "Gutka": a product containing lime paste, spices, areca and tobacco.

12. "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.

13. "Nicotine Water": Water that is laced with nicotine.

14. "Park" shall include the following: active and passive public lands designated for park purposes by the County of Nassau, State of New York, United States of America or any other subdivision of government.

15. "Protected zone" shall include:

i. any outdoor area within one thousand feet, in any direction, of a school, park, playground, or duly licensed child daycare center; and

ii. The interior of a building or structure which is within one thousand feet, in any direction, of a school, park, playground, or duly licensed child daycare center to the extent such interior is within five feet of any exterior window or public entryway.

16. "School" shall include the following: buildings, structures, premises or places, together with the grounds thereof, which are used primarily for public or private

educational facilities as recognized and defined by the New York State Department of Education, including but not limited to preschools; kindergartens; nursery, elementary, primary, intermediate, junior high, middle, secondary, high, vocational and special schools; colleges and universities.

17. "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.

18. "Smoking Paraphernalia": Any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco.

19. "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.

Section 3. Limitations and restrictions.

a) i. Age-restricted products for over-the-counter sale at establishments within the County of Nassau, other than establishments where access is restricted to adults 21 years of age or older or in a tobacco business, shall be stored for sale 1) behind the counter in an area accessible only to establishment personnel or 2) under lock and key or other security device (e.g. buzzer system) by which access to such products or accessories is restricted and controlled by establishment personnel.

ii. Candy cigarettes for over-the-counter sale at establishments within the County of Nassau, other than establishments where access is restricted to adults twenty one (21) years of age or older or a tobacco business, shall be stored for sale behind the counter in an area accessible only to establishment personnel.

b) Any establishment selling cigarettes, cigars, chewing tobacco, powdered tobacco, or any age-restricted products within the County of Nassau, excluding adults-only facilities or a tobacco business, shall not engage in point of sale advertising of age-restricted products except in an area greater than two (2) feet from any fixture upon or within which candy, trading cards, or toys are displayed for sale.

c) Audio and visual formats for age-restricted products otherwise permitted under the Federal Food and Drug Administration (FDA) may be distributed to adult consumers at the point of sale, but may not be played or shown at the point of sale (i.e. no "static video displays") except in establishments where access is restricted to adults 21 years of age or older or in a tobacco business.

Section 4. Advertising Restrictions of Age-Restricted Products in Certain Outdoor and Indoor Areas.

a) No person shall place, caused to be placed, maintain or cause to be maintained any advertisement for an age-restricted product, as defined in this Title, in a protected zone.

b) Anything to the contrary in this section notwithstanding, the restrictions set forth in section 4(a) of this Title shall not apply to:

- i. an advertisement that is five by eight inches or less in size, and in black, white, and grayscale; or
- ii. an advertisement placed or maintained in the interior of any premises where such advertisement is not visible from windows or public entryways and faces inward.

c) Nothing in this section shall prevent an age-restricted product manufacturer, distributor or retailer from placing, causing to be placed, maintaining or causing to be maintained, its corporate or other business name on a building or structure, in any location, where such building or structure or a portion thereof is owned, operated, or leased by such manufacturer, distributor or retailer.; provided, however, the corporate or other business name must be registered or filed in the United States and/or such manufacturer, distributor or retailer is duly authorized to do business in New York State and said corporate or business name does not include any advertisement, as defined in this section.

d) Nothing contained in this section shall be construed to authorize the placement of any age-restricted product advertisement, as defined in this section, in a location where such placement is otherwise prohibited by the County of Nassau or other applicable law.

e) The owner, operator, and/or lessee of any location or premises containing age-restricted product advertisements shall have thirty days from the effective date of this restriction to remove any noncompliant age-restricted product advertisements.

Section 5. Enforcement and Penalties.

a) This law shall be enforced by the Nassau County Department of Health and the Nassau County Department of Consumer Affairs.

b) Any violation of any provision of this Law shall be punishable by a fine not exceeding one thousand five hundred dollars; except that a violation of subparagraph ii of paragraph a of section three if this law shall be punishable by a fine not exceeding two hundred fifty dollars. Each day or part of day in which any such violation continues shall constitute a separate violation.

c) Any revenues generated in excess of the administrative costs attributed to the enforcement of this law shall be used for the Nassau County Department of Health anti-smoking education efforts.

Section 6. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, 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 2. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, 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 3. 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 at 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.

APPROVED



County Executive

DATE 10-23-19