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NASSAU COUNTY LEGISLATURE  
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### Inter-Departmental Memo

To: Hon. Richard Nicoletto, Presiding Officer  
Hon. Kevan Abrahams, Minority Leader  
All Members of the Nassau County Legislature

From: Maurice Chalmers, Director  
Office of Legislative Budget Review 

Date: October 25, 2019

Re: Clerk Item 197-19

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Attached is a copy of the Fiscal Impact Statement for Clerk Item 197-19 which will be on the Legislative Calendar for the October 28, 2019 hearing.

197-19: A Local Law to Limit the Sale of Flavored E-Cigarette and Liquid Nicotine Products Sold in Nassau County.



THE NASSAU COUNTY LEGISLATURE  
OFFICE OF LEGISLATIVE BUDGET REVIEW  
MAURICE CHALMERS, DIRECTOR  
FISCAL IMPACT STATEMENT

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**TITLE:**

A Local Law to limit the sale of flavored e-cigarette and liquid nicotine products sold in Nassau County.

**SUMMARY OF LEGISLATION:**

The proposed legislation creates Title H-1 of the Nassau County Administrative Code to limit the sale of flavored e-cigarettes and liquid nicotine to only flavorless or tobacco, mint or menthol flavored. It has been found that the increase in e-cigarette and nicotine use among youth has a correlation to the variety of flavors. The Centers for Disease Control and Prevention (CDC) has determined there are ingredients in e-cigarette aerosols that may be harmful to the lungs in the long-term and flavorings may be unsafe to inhale because lungs cannot process certain substances, regardless of the age of the flavored e-cigarette and liquid nicotine user. This Local Law seeks to protect the health, safety, and welfare of the public, especially young people, within Nassau County by restricting the sale of flavored e-cigarettes and liquid nicotine.

Suffolk County and the Town of Hempstead have also proposed similar legislation. In addition, New York State proposed regulations that was set to ban all but tobacco and menthol flavored vape products for 90 days on October 4, 2019.<sup>1</sup> However, a state appellate court put a hold on the ban until they rule on a preliminary injunction.<sup>2</sup> The court's order prevents the statewide ban from taking effect until a lower court reviews the request for an injunction from the trade group representing the vape shop owners who sell these products. Besides the ban on flavored e-cigarettes, NYS also plans to raise the age people can buy tobacco and e-cigarette products from 18 to 21 years old.

Throughout the nation, several states have also taken steps to ban the sale of flavored vaping products. Michigan was the first state to ban flavored e-cigarettes and liquid nicotine products prohibiting the sale of all flavors except tobacco.<sup>3</sup> However the state has faced several lawsuits in response to the ban and a judge has since temporarily blocked it, two weeks after the effective date.<sup>4</sup> Federal legislation has also been introduced including the Stopping Appealing Flavors in E-cigarettes for (SAFE) Kids Act prohibiting the sale of "kid friendly" flavored vaping products with the exception of menthol.<sup>5</sup>

This Title can be removed from the Administrative Code on the day that any State or Federal legislation goes into effect, incorporating either the same or substantially similar provisions. The County Executive

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<sup>1</sup> Christensen, Jen, "New York State bans most flavors of e-cigarettes", [CNN Health](#), September 17, 2019.

<sup>2</sup> West, Melanie Grayce "Court Temporarily Halts New York's Ban on Sale of Flavored E-Cigarettes", [WSJ.com](#), October 3, 2019.

<sup>3</sup> "2<sup>nd</sup> Business sues over state's flavored vaping ban", [DetroitNews.com](#), September 27, 2019.

<sup>4</sup> Channel 7 WXYZ Detroit News. "Judge blocks Michigan's ban on flavored e-cigarettes", October 16, 2019.

<sup>5</sup> Brodsky, Robert "Schumer, on LI, calls for banning sales of flavored e-cigarettes", [Newsday.com](#), October 8, 2019.

has the authority to make the determination of whether the State or Federal legislation incorporates the same or substantially similar provisions and must advise the Legislature 30 days prior to triggering the reverse preemption.

The Nassau County Department of Health in consultation with the Office of Consumer of Affairs (OCA) is charged with ensuring compliance of this Local Law. Enforcement officers authorized to serve official notices of violations include police officers, public safety officers, inspectors and county health inspectors, as well as any other employee from the OCA. Any violation of this law shall be punishable by a civil penalty with a minimum of \$500 but not to exceed \$1,000 for the first violation and a minimum of \$1,000 but not to exceed \$2,000 for each subsequent violation.

**EFFECTIVE DATE:**

This law shall take effect thirty days after enactment by the Legislature.

**FISCAL IMPACT:**

The fiscal impact to implement this law should be minimal. According to the Health department, they plan to enforce this law on their routine compliance and certification inspection checks which they conduct for the State’s Adolescent Tobacco Use Prevention Act Program (ATUPA) law that prohibits the sale of these products to minors. The department currently inspects approximately 1,223 registered tobacco retail dealers. Many of these tobacco retailers also sell e-cigarette and vaping products, however this figure does not capture the vape shops and e-cigarette businesses that do not sell tobacco products. Under the proposed State law, all e-cigarette and vaping companies will be required to register their business’ and if that goes into effect, a better count could be gauged from registrations.

Minimal revenue is expected to be generated from violations related to enforcing this law. The Health department anticipates that most shops will conform expeditiously with the law, due to the recent heightened media coverage regarding the banning of these products as a result of their negative health effects. The recent health concerns have already triggered the E-cigarette behemoth Juul to stop selling all fruity flavored products nationwide.

**ECONOMIC IMPACT:**

From an economic perspective, the proposed Nassau County health care savings anticipated from the proposed local law are expected to outweigh the dollar value of Nassau County e-cigarette sales. To estimate the cost, OLBR used the Centers for Disease Control (CDC) and Census data, and found that on an annual basis, the **total** estimated health care costs of smoking in Nassau County to be \$722.3 million. Conversely, using Statista data on the dollar value of e-cigarettes sales in the United States (US), CDC data on NYS e-cigarette sales and Census data, the annual dollar value of Nassau County e-cigarette sales was estimated to be \$6.9 million.

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**SOURCES:**

Department of Health