

Amendment in the Nature of a Substitution – Clerk Item Number #197-19

Introduced by: Legislator Arnold W. Drucker

LOCAL LAW NO. 29 -2019

A LOCAL LAW TO LIMIT THE SALE OF FLAVORED E-CIGARETTE AND LIQUID NICOTINE PRODUCTS SOLD IN NASSAU COUNTY

Passed by the Nassau County Legislature on November 25, 2019

Voting: ayes: 18, naves: 0, abstained: 0

Became a law on December 16, 2019 with the approval of the County Executive.

APPROVED AS TO FORM

Majority Counsel

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

Section 1. A new Title H-1 is added to Chapter IX, Department of Health, of the Administrative Code of Nassau County as follows:

Title H-1

Limitation on Sale of Flavored E-Cigarettes and Liquid Nicotine

§ 9-25.11 Legislative Intent. This Legislature finds that although steps have been taken to educate the public, especially young people, regarding the dangers of smoking and nicotine addiction, e-cigarette and liquid nicotine usage has increased. The increase in e-cigarettes and liquid nicotine use among youth has a correlation to the variety of flavors. In addition, flavored liquid nicotine has also been marketed to adults as a viable smoking cessation alternative. However, studies have revealed that the large number of available flavors disproportionately attracts youth to the e-cigarette market. The flavors are also sold in pods that are promoted in the vape industry as longer lasting, higher quality, and offering stronger nicotine levels than a vape pen. The Centers for Disease Control and Prevention (“CDC”) has determined that there are

ingredients in e-cigarette aerosols that may also 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. For instance, the CDC has warned e-cigarette users that the aerosol that is inhaled from the device can contain flavoring agents such as diacetyl, a chemical that has a buttery or butterscotch flavor, that has been linked to a serious lung disease.

The May 2019 issue of *Pediatrics*, the official journal of the American Academy of Pediatrics, published a study conducted by the Department of Pediatrics, Renaissance School of Medicine at Stony Brook University of tobacco, e-cigarette, and marijuana use by adolescents between the ages of twelve and twenty-one. The study reveals very disconcerting data: out of the five hundred and seventeen participants, thirteen-point nine percent reported use of tobacco but almost three times as many youths, thirty-six percent, reported that they have tried e-cigarettes. In the study, researchers also analyzed two hundred and sixty-five urine samples to measure the levels of cotinine, a substance associated with e-cigarette use. Cotinine is a toxic alkaloid that metabolizes in the body from nicotine exposure. Data indicates that significantly higher cotinine levels were present in the samples taken from e-cigarette users, and unfortunately, users in the study with the highest cotinine levels either believed or did not know their e-cigarette contained nicotine. Almost eighty percent of daily e-cigarette users in the study were more likely to use the pod systems that have higher nicotine content resulting in higher levels of cotinine in their samples than nonpod users. Thus, an increase in e-cigarette use, especially the use of devices that have the highest concentration of nicotine, drastically increases the likelihood of adolescent nicotine addiction and dependence.

To protect the health, safety, and welfare of the public, especially young people, within Nassau County, it is necessary to restrict the sale of flavored e-cigarettes and liquid nicotine.

§9-25.12 Definitions.

- A. "Accessory" shall have the meaning set forth in section 9-25.2 (A) of Title H of this chapter.
- B. "Component or Part" shall have the meaning set forth in section 9-25.2(D) of Title H of this chapter.
- C. "Commissioner" shall mean the Commissioner of the Nassau County Department of Health.
- D. "E-cigarette" shall mean any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user as he or she simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name. The term "E-cigarette" shall also include an "Electronic aerosol delivery system" as defined in section 9-25.2 (E) of Title H of this chapter.

E. "Enforcement officer" shall have the meaning set forth in section 9-25.2 (F) of Title H of this chapter and shall include any other employee the Nassau County Department of Consumer Affairs authorized to enforce this Title

F. "Tobacco Product" shall have the meaning set forth in section 9-25.2 (L) of Title H of this chapter.

§ 9-25.13 Sale Restrictions.

E-cigarette and liquid nicotine products may only be offered for sale within the County of Nassau if they are flavorless or tobacco, mint, or menthol flavored.

§ 9-25.14 Enforcement

A. Notwithstanding any other provision of this Title, the Nassau County Department of Health and the Nassau County Department of Consumer Affairs shall have concurrent authority to enforce this Title.

B. Enforcement officers shall be authorized to serve official notices of violation of this Title.

§ 9-25.15 Violations and Penalties

Violations of any provision of this Title shall be punishable by a civil penalty of a minimum of five hundred dollars (\$500.00), but not to exceed one thousand dollars (\$1,000) for a first violation, and a minimum of one thousand dollars (\$1,000), but not to exceed two thousand dollars (\$2,000) for each subsequent violations.

*\$1,000 → \$500
2,000 → \$1,000*

§ 9-25.16 Rules and Procedures.

The Commissioner, in consultation with the Commissioner of Consumer Affairs, shall promulgate such rules and procedures as are necessary to effectuate the provisions of this Title.

§ 9-25.17 Reverse Preemption.

This Title shall be null and void and deemed repealed and removed from this Administrative Code on the day that any state or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Title. The County Executive shall determine whether or not identical or substantially similar state or federal legislation has been enacted for the purposes of triggering the provisions of this section and shall advise this Legislature thirty (30) days prior to the triggering of the provisions of this section.

Section 2. Severability. If any clause, sentence, paragraph, subdivision, section or part of this local 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 order or judgment shall be rendered.

Section 3. SEQRA Determination. This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) and (33) of Title 6 of the New York Code of Rules and Regulations (NYCRR) and within the meaning of section 8-0109(2) of the New York Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection.

Section 4. Effective Date. This law shall take effect on January 1, 2020.

APPROVED



County Executive

DATE Dec. 16, 2019