

Introduced by: Legislator Corbin

Local Law No. 4 -2009

A LOCAL LAW to amend local law no. 4-2000, in relation to storing candy cigarettes behind store counters.

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

Section 1. Section one of local law no. 4-2000, and amended by local law no. 23-2000, is amended to read as follows:

Section 1. Legislative intent. The purpose of this law is to limit access to tobacco products by Nassau County's children and youth and to protect children and young people against the dangers of smoking encouraged by tobacco 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.

§ 2. Section two of such local law is amended to read as follows:

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 generates less than 10 percent of total annual gross sales.

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.

§ 3. Section three of such local law is amended to read as follows:

Section 3. Limitations and restrictions.

a) i. Cigarettes, cigars, chewing tobacco, powdered tobacco, or any other tobacco product or accessories 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 tobacco product within the County of Nassau, excluding adults-only facilities or a tobacco business, shall not engage in point of sale advertising of tobacco 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 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.

§ 4. Section four of such local law is amended to read as follows:

Section 4. Enforcement and Penalties.

- a) This law shall be enforced by the Nassau County Department of Health.
- b) Any violation of any provision of this Law shall be punishable by a fine not exceeding one thousand two hundred fifty 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.

§ 5. 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.

§ 6. SEQRA. This legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this action is an unlisted action under the provisions of Title 6 NYCRR Part 617, and that based on an evaluation of the environmental criteria set forth in §617.7(c) that are considered to be indicia of significant adverse environmental impacts, along with the recommendation of the Nassau County Planning Commission acting in its advisory capacity to the legislature, that such action will not have significant adverse impacts on the environment, and that no additional environmental review or action is necessary.

§ 7. Effective Date. This local law shall take effect one hundred twenty days after it shall have become a law.