

AMENDMENT IN THE NATURE OF A SUBSTITUTION – CLERK ITEM NO. 264-18

Introduced by: Presiding Officer Richard J. Nicoletto, Deputy Presiding Officer Howard J. Kopel, Alternate Deputy Presiding Officer Denise Ford, and Legislators C. William Gaylor, III, Vincent T. Muscarella, James Kennedy, Thomas McKevitt, Laura Schaefer, John R. Ferretti, Jr., Rose Marie Walker, and Steven D. Rhoads

LOCAL LAW 12-2018

A LOCAL TO AMEND TITLE 38 OF THE MISCELLANEOUS LAWS OF
NASSAU COUNTY

APPROVED AS TO FORM



Majority Counsel

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

Section 1. Title 38 of the Miscellaneous Laws of Nassau County is amended to read as follows:

TITLE 38
TOBACCO ADVERTISING

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| Section | 1. | Legislative intent |
| | 2. | Definitions |

3. Limitations and Restrictions
4. Penalties
5. Severability
6. 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. "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.

6. "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."

7. "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.

8. "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.

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

10. "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.

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

12. "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.

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

14. "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 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 Drugs 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. 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 of 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.

§ 2. 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.

§ 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 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 IP" 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.

§ 4. Effective Date.

This local law shall take effect immediately.