

LOCAL LAW NO. "E" FOR 2015

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, PROHIBITING THE USE OF ELECTRONIC CIGARETTES IN PUBLIC PLACES WHERE TRADITIONAL FORMS OF SMOKING ARE PROHIBITED

Introduced: 4/13/15

By Messrs. Nichols and Joyce:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Legislative Intent.

a) This Legislature hereby finds and determines that high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, are presently available to consumers and largely unregulated. Consumers inhale vaporized liquid nicotine through these e-cigarettes which is created by heat through an electronic ignition system. The vapors are expelled through a cartridge that usually contains a concentration of pure nicotine. The cartridge and ignition system are housed in a device that may look like a traditional cigarette, cigar or pipe. After inhaling, the user then exhales the aerosol producing a "cloud" of substances that is virtually indistinguishable from cigarettes, cigars and pipes.

b) This Legislature also finds that the United States Food and Drug Administration has warned that laboratory analysis of electronic cigarette samples has found that they contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze.

c) This Legislature also finds that Andrew Hyland, PhD., Chairman, Department of Health Behavior at Roswell Park Cancer Institute stated in remarks for the New York State Senate Health Committee regarding e-cigarettes and liquid nicotine on May 12, 2014 that, "...exposure to second-hand vapor is also a concern. Work in our labs has shown that e-cigarettes are not emission free. E-cigarette emissions include nicotine, acrolein (which is commonly used as a weed killer), formaldehyde and other chemicals. While this exposure is less than traditional cigarettes, these chemicals are still present. Just because it's a smaller amount of poison than that observed for cigarettes doesn't mean secondhand vapor is safe."

d) This Legislature also finds that the nicotine content in e-cigarettes can vary in doses and presents a significant risk of rapid and/or continual addiction.

e) This Legislature also finds that it is not in the best interests of the County or its residents to permit the use of e-cigarettes in public.

f) This Legislature also determines that protecting Albany County residents from untested Nicotine products like e-cigarettes represents sound public health and fiscal policy.

g) Therefore, the purpose of this Local Law is to prohibit the smoking of e-cigarettes and like products in public places where traditional forms of smoking are already disallowed.

Section 2: Definitions

As used in this Local Law, the following terms shall have the meanings indicated:

a) “Electronic cigarette” or “e-cigarette” shall mean any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or vape pen, or under any other product name or descriptor.

b) “Electronic cigarette cartridge” or “e-cigarette cartridge” means a component of an e-cigarette that may contain liquid nicotine or any other substance.

c) “Business” shall mean a sole proprietorship, corporation, limited liability company, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of e-cigarettes, e-cigarette cartridges, e-cigarette cartridge filler, or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental. A Business shall include but not be limited to a lounge where e-cigarette use is permitted as well as any establishment which sells e-cigarette materials.

d) “Certified E-Cigarette Business” shall mean any Business as defined above in Section 2(c) which the Albany County Health Department registers as a Certified E-Cigarette Business pursuant to the terms and conditions of Section 5 herein.

e) “Commissioner” shall mean the Albany County Commissioner of Health.

f) “Department” shall mean the Albany County Department of Health.

Section 3: Restrictions on the use of E-Cigarettes

The use of electronic cigarettes shall not be permitted and no person shall use electronic cigarettes in indoor areas open to the public in which smoking is prohibited or restricted pursuant to New York State Public Health Law Section 1399-o.

Section 4: Enforcement

a) The Commissioner shall have sole jurisdiction to enforce the provisions of this local law.

b) If the Commissioner determines after notice and hearing that a violation of section 3 of this local law has occurred, the Commissioner may impose a civil penalty in the minimum amount of \$300, but not to exceed \$1,000 for a first

violation, and a minimum of \$500, but not to exceed \$2,000 for each subsequent violation. Nothing herein shall be construed to prohibit the Commissioner from commencing a proceeding for injunctive relief to compel compliance with this local law.

c) Hearings held pursuant to the authority of this local law shall be conducted in accordance with the procedures set forth in the Albany County Sanitary Code by the Commissioner or his or her designee.

d) The decision of the Commissioner shall be reviewable pursuant to Article 78 of the New York Civil Practice Law and Rules.

e) The Albany County Attorney may bring an action in the name of Albany County or the Albany County Commissioner of Health to recover the civil penalty provided by this local law in any court of competent jurisdiction.

Section 5: Business Registration

Any Business which relies on the provision of on-site sampling as a mechanism to market and/or sell e-cigarettes, e-cigarette cartridges or e-cigarette cartridge fillings and accessories may register with the Department as a Certified E-Cigarette Business. The Department shall develop, and make available to Businesses, a certification form by which a Business may certify that it meets the definition of Business contained within this local law. The certification will also include any provisions which the Department finds necessary to protect the health and safety of the residents of Albany County. When a Business completes the certification form to the Department's satisfaction, the Department shall add such Business to a registry of Certified E-Cigarette Businesses which it shall control and maintain.

Section 6: Application

a) The restrictions contained in Section 3 of this local law shall not apply to Businesses registered as Certified E-Cigarette Businesses pursuant to Section 5 above or to individuals while they are patronizing a Certified E-Cigarette Business. Otherwise, the terms and conditions of this local law shall have general effect county-wide.

b) No provisions herein shall be construed to limit or preclude the exercise of any authority of the Commissioner or Department provided by any local, state, or federal law, rule, or regulation.

Section 7: Reverse Preemption

This local law shall be null and void on the day that state-wide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The Albany County Legislature shall determine by resolution whether or not identical or substantially similar state-wide legislation has been enacted for purposes of triggering the provisions of this section.

Section 8: Severability

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or Business 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 specific application.

Section 9. State Environmental Quality Review Act compliance

This County Legislature determines that the adoption of this Local Law constitutes a “Type II action” as said term is defined in the State Environmental Quality Review Act (“SEQRA”), and that no further action with respect to same is required under SEQRA.

Section 10: Effective Date

This local law shall become effective upon filing with the Secretary of State.

Referred to Health Committee. 4/13/15

Favorable Recommendation – Health Committee. 5/27/15

On roll call vote the following voted in favor: Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Commisso, Ms. Connolly, Messrs. Corcoran, Cotrofeld, Dawson, Domalewicz, Ethier, Feeney, Higgins, Hogan, Jacobson, Joyce, Ms. Kinsch, Messrs. Mackey, Mayo, Mss. McKnight, McLean Lane, Messrs. Mendick, Nichols, O’Brien, Rahm, Reilly, Simpson, Stevens and Ward – 30.

Those opposed: Ms. Busch, Messrs. Carman, Clouse, Ms. Lockart, Messrs. Morse and Tunny – 6.

Abstained: Mr. Crouse – 1.

Local Law was adopted. 6/8/15