

LOCAL LAW NO. "G" FOR 2010

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK BANNING THE SALE OF E-CIGARETTES TO PERSONS UNDER THE AGE OF 18

Introduced: 7/12/10

By Messrs. Clenahan, Scavo, Domalewicz, Joyce, Horstmyer, Nichols, Ms. Willingham, Messrs. Gordon, Aylward, Higgins, Mss. Chapman and Maffia-Tobler:

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ALBANY, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds that while state and federal governments have been slow to respond meaningfully to the public health crisis caused by smoking, the Albany County Legislature has a long and proud history of being at the forefront of the efforts to curb smoking and its inherent dangerous effects on the general public's health.

This Legislature recognizes that dangers posed by tobacco are not limited to cigarettes, pipes or other traditional forms of smoking.

This Legislature also finds and determines that new, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers. These devices closely resemble and purposefully mimic the art of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. The vapors are expelled via a cartridge that usually contains a concentration of pure nicotine. The cartridge and ignition system are housed in a device created to look exactly like a traditional cigarette, cigar or pipe. After inhaling, the user then blows out the heated vapors producing a "cloud" of undetermined substances that is virtually indistinguishable from traditional cigarettes, cigars and pipes.

This Legislature also finds and determines that nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption.

This Legislature finds that the manufacturers and marketers of e-cigarettes purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities.

This Legislature also finds that these safety and smoking cessation assertions made by e-cigarettes companies have been disproven by laboratory tests conducted by the U. S. Food and Drug Administration ("FDA"). This testing has shown that e-cigarettes do contain carcinogens, including nitrosamines. Further, the FDA tests showed that e-cigarettes were found to contain toxic chemicals such as diethylene glycol. This compound is a common ingredient in antifreeze and, in 2007, was also surreptitiously substituted for glycerin by several Chinese

manufacturing companies in the making of toothpaste which resulted in the deaths of hundreds of people worldwide. While some e-cigarette manufacturers dispute the FDA's findings as limited in scope and sample, these manufacturers have not submitted for independent peer review any of their findings that purportedly support their safety and smoking cessation claims.

This Legislature also finds that along with the FDA's publicly expressed concerns over the safety of these devices, the FDA is continuing its official investigation into the e-smoking devices and has refused to allow e-cigarettes, e-cigars and e-pipes to cross the border in our country because they're considered new drugs and drug delivery devices that require FDA approval.

This Legislature further finds that concurrent with this lack of suitable information, e-cigarette manufacturers offer their nicotine cartridges in a variety of flavors, including cherry, chocolate, and vanilla. The FDA and public health advocates warn these flavorings are purposefully meant to appeal to and attract young people and are commonly referred to as "training wheels" for traditional cigarettes.

This Legislature also finds that studies show that adolescents can become addicted to nicotine after ingesting the equivalent of 20 traditional cigarettes (the amount traditionally available in a single pack). The appeal created by the flavored e-cigarette can lead young people into a lifetime of nicotine addiction.

This Legislature also finds that the nicotine content in e-cigarettes is unknown and unspecified and presents a significant risk of rapid addiction or overdose.

This Legislature also determines that protecting Albany County residents against an untested nicotine product like e-cigarettes represents sound public health and fiscal policy.

Therefore, the purpose of this law is to ban the sale of e-cigarettes and like products in Albany County to persons under the age of 18.

Section 2. Definitions.

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

A) "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.

B) "LIQUID NICOTINE" shall mean any liquid product composed either in whole or part of pure nicotine and propylene glycol and manufactured for use with e-cigarettes.

C) "PERSON" shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity of business of any kind.

Section 3. Prohibition.

No person shall sell or offer for sale e-cigarettes or liquid nicotine within the County of Albany to persons under eighteen (18) years of age.

Section 4. Penalties.

Any person who intentionally violates the provisions of Section 3 of this law shall be guilty of an unclassified misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000.00). Each violation shall constitute a separate and distinct offense.

Section 5. Reverse Preemption.

This law shall be null and void on the day that Statewide 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 County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions in this section.

Section 6. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 7. 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.

Section 8. Effective Date.

This law shall take effect sixty (60) days after its filing in the Office of the Secretary of State.

Referred to Health Committee. 7/12/10

Favorable Recommendation - Health Committee. 9/29/10

On roll call vote the following voted in favor: Mr. Aylward, Ms. Benedict, Messrs. Beston, Bullock, Carman, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Cotrofeld, Dawson, Domalewicz, Ethier, Gordon,

Higgins, Horstmyer, Houghtaling, Infante, Joyce, Mss. Lockart, Maffia-Tobler, Messrs. Mayo, McCoy, Mendick, Morse, Nichols, Rahm, Reilly, Scavo, Steck, Timmins, Tunny, Ward and Ms. Willingham – 36.

Those opposed: - 0.

Local Law was adopted. 10/12/10