

Intro. Res. No. 1855-2019

Laid on Table 9/4/2019

Introduced by Legislators Spencer, Gonzalez, Fleming, Sunderman, Calarco, Kennedy, Gregory, Anker and Muratore

RESOLUTION NO. 1234-2019, ADOPTING LOCAL LAW NO. 2 -2020, A LOCAL LAW TO PROHIBIT THE ADVERTISEMENT OF AGE-RESTRICTED PRODUCTS NEAR SCHOOLS AND PLAYGROUNDS

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on September 4, 2019, a proposed local law entitled, "**A LOCAL LAW TO PROHIBIT THE ADVERTISEMENT OF AGE-RESTRICTED PRODUCTS NEAR SCHOOLS AND PLAYGROUNDS**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 2 -2020, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO PROHIBIT THE ADVERTISEMENT OF AGE-RESTRICTED PRODUCTS NEAR SCHOOLS AND PLAYGROUNDS

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

Section 1. Legislative Intent.

This Legislature finds and determines that schools, parks, playgrounds, and child day-care facilities are frequented by a significant number of young children each day in Suffolk County.

This Legislature finds and determines that minors are especially susceptible to the cognitive effects of persuasive advertising.

This Legislature further finds and determines that advertisements attempt to sell products to the public. Advertisements for age-restricted products such as tobacco, alcohol, and vaping products are targeted to adults, but children can see these ads and be enticed to try these products.

This Legislature finds that the placement of advertisements for age-restricted products in the vicinity of locations utilized primarily by children is particularly concerning.

This Legislature determines that the areas in and around these spaces should be free of advertisements for age-restricted products to decrease exposure of minors to such products and reduce the likelihood that children try products intended for adult consumption.

Therefore, the purpose of this law is to prohibit the advertisement of age-restricted products within one thousand feet of schools, parks, playgrounds, and licensed child day-care facilities.

Section 2. Definitions.

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

AGE RESTRICTED PRODUCTS - Tobacco products, shisha, herbal cigarettes, electronic nicotine delivery systems, vaping and smoking paraphernalia, and vaping hoodies and accessories; and 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, or any products subject to New York State Alcoholic Beverage Control Law.

CHILD DAY-CARE CENTER - Any program or facility caring for children for more than three hours per day per child, as those terms are defined in §390 of the New York Social Services Law.

COMMISSIONER – Commissioner of the Suffolk County Department of Health Services.

ELECTRONIC NICOTINE DELIVERY SYSTEM - 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. This term shall include the component parts designed for such systems, including, but not limited to: liquid nicotine and other e-liquids, glass or plastic vials containing e-liquid, cartridges, atomizers, batteries, cartomizers and clearomizers, digital displays/lights that adjust settings, tank systems, drip tips, flavoring for ENDS and programmable software.

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 not limited to, as a cigarette, cigar or pipe filler.

PARK OR PARK PROPERTY - Any park, play area, beach, recreation area, or other such area in Suffolk County designated by New York State, Suffolk County, or any other municipality located therein for park or recreation purposes.

PERSON - A natural individual, firm, company, corporation, partnership, sole proprietor, limited partnership or association, or other business organization of any kind.

PLAYGROUND - Any public land designated for recreational or athletic purposes by any school district, library district, or any municipality located wholly within the County of Suffolk.

SCHOOL - Any institution, building or structure used for teaching children or imparting an education.

SCHOOL PREMISES - That area designated as "school grounds," according to § 220.00, Subdivision 14, of the New York Penal Law, meaning the area in or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational or high school, or any area accessible to the public located within 1,000 feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within 1,000 feet of the real property boundary line comprising such school. For the purposes of this definition, an "area accessible to the public" shall mean sidewalks, streets,

parking lots, parks, playgrounds, stores, restaurants, vacant or abandoned properties, public easements, utility easements and drainage areas.

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.

SMOKING PARAPHERNALIA – Any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco products or other substances.

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 absorption, 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. Prohibitions.

No person shall post visual advertisements for any age-restricted product within 1,000 feet of the following areas:

1. any school or school premises;
2. any park or park property;
3. any playgrounds; or
4. any duly licensed child day-care centers.

Section 4. Penalties.

- A. Violation(s) of this law shall be punishable by a fine of at least \$250 with a maximum of \$1,000 per occurrence. Each day that the violation shall exist shall be considered a separate and distinct violation.
- B. No civil penalty or fine shall be imposed under this law until after a formal hearing has been held, upon at least 15 days' notice, before the Commissioner, or his or her designee. Such notice shall be served either personally or by certified mail, return receipt requested, to the address of the person violating this law and shall state the date, time and place of the formal hearing as well as enumerate the grounds constituting the alleged violation by the person. The violator may produce witnesses on his or her own behalf. A record of the formal hearing shall be taken and preserved. For the purpose of such formal hearing, the Commissioner or his designee may administer oaths, subpoena witnesses and compel the production of books, papers, records and other documents deemed pertinent to the subject of the hearing.
- C. In addition to the fines set forth herein, the County shall have jurisdiction to maintain an action in any court of competent jurisdiction to enjoin such violation and/or to obtain any other form of equitable relief which as to such court appears just and proper for the purpose of eliminating the violation(s).

Section 5. Enforcement.

This law shall be enforced by the Suffolk County Department of Health Services.

Section 6. Rules and Regulations.

The Department of Health Services shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provisions of this law.

Section 7. Exemption.

Nothing in this law shall prohibit any business located within 1,000 feet from a school or school premises, park or park property, playground, or duly licensed child day-care facility from advertising age-restricted products within the business's enclosed building.

Section 8. Applicability.

This law shall apply to advertisements currently existing or subsequently created and/or posted on or after the effective date of this law.

Section 9. 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 10. 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) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect on the 120th day immediately subsequent to filing in the Office of the Secretary of State.

DATED: December 17, 2019

APPROVED BY:

/s/ Dennis M. Cohen
Chief Deputy County Executive of Suffolk County

Date: January 2, 2020

After a public hearing duly held on January 2, 2020
Filed with the Secretary of State on January 14, 2020