

**RESOLUTION NO. 717 -2009, ADOPTING LOCAL LAW
NO. 29 -2009, A LOCAL LAW BANNING THE SALE OF E-
CIGARETTES TO PERSONS UNDER THE AGE OF 19**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on April 28, 2009, a proposed local law entitled, "**A LOCAL LAW BANNING THE SALE OF E-CIGARETTES TO PERSONS UNDER THE AGE OF 19;**" now, therefore be it

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

LOCAL LAW NO. 29 -2009, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW BANNING THE SALE OF E-CIGARETTES TO
PERSONS UNDER THE AGE OF 19**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, 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 Suffolk 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 finds that Suffolk County was one of the first municipalities in the nation to ban smoking in restaurants and other public places and one of the first municipalities to limit the access school age children have to tobacco products by passing "Tobacco 19", which raised to 19 the legal age for the purchase of tobacco products.

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-cigarette companies have been disproven by laboratory tests conducted by the U. S. Food and Drug Administration ("FDA"). Indeed, 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 finds that when consumed in public places where traditional tobacco products are banned, the use of e-cigarettes causes fear, stress and confusion among patrons and workers alike. E-cigarettes also seriously compromise the County's current public health laws governing indoor smoking bans and create an enforcement nightmare for the Department of Health Services' Tobacco Enforcement Unit.

This Legislature is encouraged that other governments and public health organizations have joined the FDA in speaking out about the potential dangers posed by e-cigarettes. These entities are also calling on e-cigarette manufacturers to discontinue their safety claims until these products have been independently tested. These groups include the World Health Organization and the Canadian government's FDA equivalent, the Health Products and Food Branch Inspectorate.

This Legislature further finds that every year tobacco products siphon off more than \$268 billion in directly related healthcare and lost worker productivity costs and lead to the

deaths of almost one-half million Americans. This Legislature is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products.

This Legislature also determines that protecting Suffolk 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 Suffolk County to persons under the age of 19 and to prohibit the use of e-cigarettes and like products in public places where traditional forms of smoking are already disallowed.

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 Suffolk to persons under nineteen (19) years of age.

Section 4. Amendment.

Chapter 437 of the SUFFOLK COUNTY CODE is hereby amended as follows:

Chapter 437, SMOKING

* * * *

§ 437-2. Definitions.

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

BAR or TAVERN -- Any indoor area open to the public devoted to the sale and service of alcoholic beverages for on-premises consumption regardless of the quantity of food served to patrons for on-premises consumption.

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.

* * * *

SMOKING -- The combustion of any cigar, cigarette, tobacco or any similar article or any other combustible substance in any manner or in any form or the heating or ignition of an e-cigarette which creates a vapor.

* * * *

Section 5. 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 6. Reverse Preemption.

This law, with the exception of Section 4, 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 Suffolk. 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 7. Applicability.

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

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, 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 9. 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)(20), (21), and/or (27) 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 a promulgation of regulations, rules, policies,

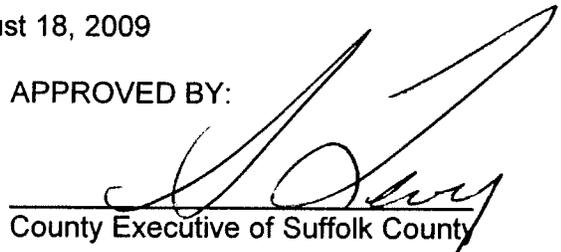
procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 10. Effective Date.

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

DATED: August 18, 2009

APPROVED BY:



County Executive of Suffolk County

Date: 9-1-2009

After a public hearing duly held on September 1, 2009
Filed with the Secretary of State on September 15, 2009

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the
of the County of Suffolk, have compared the foregoing copy of resolution with the
original resolution now on file in this office, and which was duly adopted by the
County Legislature of said County, on August 18, 2009, and signed by the
County Executive on September 1, 2009, after a public hearing duly held on
September 1, 2009 and filed with the Secretary of State on September 15, 2009
and that the same is a true and correct transcript of said resolution and of the whole
thereof.

In Witness Whereof, I have hereunto set my hand and the official
Seal of the County Legislature of the County of Suffolk on

Tim Laube

Clerk of the County Legislature

Intro. Res. 1347

Res. No. 717

August 18, 2009

Motion:

Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:

Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:

Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE			/		
2	Jay H. SCHNEIDERMAN			/		
3	Kate M. BROWNING			/		
4	Brian BEEDENBENDER	/				
6	Daniel P. LOSQUADRO	/				
7	Jack EDDINGTON	/				
9	Ricardo MONTANO	/				
10	Cameron ALDEN			/		
11	Thomas F. BARRAGA	/				
12	John M. KENNEDY, JR.	/				
13	Lynne C. NOWICK	/				
14	Wayne R. HORSLEY	/				
15	DuWayne GREGORY	/				
16	Steven H. STERN	/				
17	Lou D'AMARO	/				
18	Jon COOPER	/				
5	Vivian VILORIA-FISHER, D.P.O.			/		
8	William J. LINDSAY, P.O.		/	/		
Totals		12	1	4	1	

MOTION	
<input checked="" type="checkbox"/>	Approve
Table: _____	
<input type="checkbox"/>	Send To Committee
<input type="checkbox"/>	Table Subject To Call
<input type="checkbox"/>	Lay On The Table
<input type="checkbox"/>	Discharge
<input type="checkbox"/>	Take Out of Order
<input type="checkbox"/>	Reconsider
<input type="checkbox"/>	Waive Rule _____
<input type="checkbox"/>	Override Veto
<input type="checkbox"/>	Close
<input type="checkbox"/>	Recess
APPROVED <input checked="" type="checkbox"/>	FAILED _____
No Motion _____	No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Tim Laube

Tim Laube, Clerk of the Legislature

Roll Call _____ Voice Vote