

LOCAL LAW NUMBER 16 - 2011
COUNTY OF CATTARAUGUS, NEW YORK

Pursuant to Article 13F of the Public Health Law.

**A LOCAL LAW REGULATING ELECTRONIC
CIGARETTES (“E-CIGARETTES”) AND HERBAL CIGARETTES**

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

SECTION 1. Legislative Intent: The Legislature hereby makes the following findings and determinations:

a) The Legislature hereby 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. To “smoke” e-cigarettes, users inhale vaporized liquid nicotine 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 created to look like a traditional cigarette, cigar or pipe. After inhaling, the user then exhales the heated vapors producing a “cloud” of undetermined substances that is virtually indistinguishable from cigarettes, cigars and pipes.

b) The 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.

c) The Legislature also determines that protecting Cattaraugus County residents from an untested nicotine product like e-cigarettes represents sound public health and fiscal policy.

d) Therefore, the purpose of this Local Law is to prohibit the smoking of e-cigarettes, herbal 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 battery operated device designed to emit a nicotine vapor upon inhalation without being lit. E-cigarettes are composed of a battery, a heating element or atomizer, and a cartridge. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name or style.

b) “electronic cigarette cartridge” or “e-cigarette cartridge” means a component of an e-cigarette that contains liquid nicotine.

c) “food service establishment” and “person” shall, for the purpose of this local law, be defined as such terms are defined in Public Health Law Section 1399-aa.

d) “herbal cigarettes” (also called tobacco free cigarettes or nicotine-free cigarettes) shall mean 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 cigarette, cigar or pipe filler.

e) “Board” shall mean the Cattaraugus County Board of Health.

f) “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.

g) “Director” shall mean the Director of the Cattaraugus County Department of Health.

h) “Department” shall mean the Cattaraugus County Department of Health”.

SECTION 3. Restrictions on Smoking Herbal or E-Cigarettes. The smoking of herbal and electronic cigarettes shall not be permitted and no person shall smoke electronic or herbal cigarettes in any areas in which smoking tobacco products is prohibited or restricted pursuant to the Public Health Law. For violations of this section, it shall be an affirmative defense that during the relevant time period actual control of the indoor area open to the public was not exercised by the respondent, but rather by a lessee, a sub-lessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the Board within 30 days of receipt of such notice of violation.

SECTION 4. 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 Cattaraugus 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 5. Application. The restrictions contained in Section 3 of this local law shall not apply to Businesses registered as Certified E-Cigarette Businesses pursuant to Section 4 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.

SECTION 6. Enforcement:

- a) The Board shall have sole jurisdiction to enforce the provisions of this local law.
- b) If the Board determines after a hearing that a violation of section 3 of this local law has occurred, the Board may impose a civil penalty in the same amount as provided in Public Health Law Section 1399-ee(2), as the same may be amended from time to time. Presently, such civil penalties are as follows: 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. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit the Board from commencing a proceeding for injunctive relief to compel compliance with this local law.
- c) If the Board determines after a hearing that a violation of Section 4 of this local law has occurred, the Board may impose a civil penalty in the same amount as provided in Public Health Law Section 1399-ee(2), as the same may be amended from time to time. Presently, such civil penalties are as follows: 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. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit the Board from commencing a proceeding for injunctive relief to compel compliance with this local law, and in addition thereto, may suspend or revoke any certification issued to the Business committing such violation.
- d) Hearings held pursuant to the authority of this local law shall be conducted pursuant to the procedures set forth in the Cattaraugus County Sanitary Code by the Board or its designee.
- e) The decision of the Board shall be reviewable pursuant to Article 78 of the Civil Practice law and Rules.
- f) The County Attorney may bring an action in the name of Cattaraugus County and/or the Board to recover the civil penalty provided by this local law in any court of competent jurisdiction.

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 Cattaraugus. The County

Legislature may 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. Applicability: This law shall apply to all actions occurring on or after the effective date of this Local 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 entered.

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) (20), (21), and/or (27) of Title VI of the New York Code of Rules and Regulations 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 County Administrator 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 sixty days after its filing in the Office of the Secretary of State.

Adopted by Act No. 530-2011 (Local Law Number 10-2011, Intro Number 16-2011) of the County Legislature of the County of Cattaraugus on December 14, 2011, effective December 29, 2011, as amended by Act 306-2015 (Local Law Number 4-2015, Intro Number 6-2015) on June 24, 2015, effective August 29, 2015.