

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW adding a new Chapter 539 of the Laws of Westchester County in relation to prohibiting the sale or distribution of flavored tobacco products.” Your Committee has determined that Chapter 539 will have the effect of mitigating the impact of the public health crisis caused by tobacco use on Westchester County residents.

As your Committee is aware, tobacco use remains the leading cause of preventable death in the United States. It causes or contributes to many forms of cancer, as well as heart and respiratory diseases and other health disorders. The financial cost of tobacco use in New York alone amounts to \$17.72 billion per year in direct healthcare expenses and lost productivity.

Your Committee is informed that each year in New York, 5,800 children become smokers. Flavored tobacco products promote the initiation of tobacco use among young people, and help turn occasional smokers into daily smokers, by reducing or masking the natural harshness and taste of tobacco smoke. As tobacco companies know, menthol in particular cools and numbs the throat to reduce throat irritation. This makes menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings in their products as part of a “graduation strategy” to encourage new users to progress to products with increasingly higher levels of nicotine. It is therefore unsurprising that young people are much more likely

than adults to use menthol-, candy-, and fruit-flavored tobacco products, including cigarettes and cigarillos. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle-school and high-school smokers report using such flavored tobacco products.

Your Committee is further informed that menthol-flavored tobacco products are aggressively, and disproportionately, marketed towards racial minorities. It is important to address this discriminatory practice without exacerbating other issues that disproportionately and adversely affect minority communities. To ensure this bill does not lead to increased negative interactions between law enforcement and minority communities, particularly the black community, this bill makes clear that its provisions are to be enforced solely by the county Department of Health. The bill does not provide for any criminal penalties. The provisions of this proposed law can only be enforced by civil fine and such fines can only be issued against establishments, as opposed to individuals. Additionally, the proposed law contains language that specifically states its provisions shall not be construed to penalize any person who purchases, uses, or is in possession of a tobacco product.

Your Committee finds that in order to improve the safety and well-being of the residents of Westchester County, a new law that prohibits the sale or distribution of flavored tobacco products is needed. This proposed legislation is based-off similar laws in San Francisco and New York City, however, there are a few notable differences. For example, this proposed legislation makes clear that its provisions can only be enforced against establishments, as opposed to persons. This bill also addresses important loopholes left open by the state's flavored

e-cigarette ban by stating "...presence of a Flavored Tobacco Product on the premises of an Establishment shall create a rebuttable presumption that the Flavored Tobacco Product is being offered for sale" Additionally, this proposed legislation prohibits the sale or distribution of flavored tobacco products as well as the offer for sale or distribution and the marketing for sale or distribution of flavored tobacco products. The implementation of these new legislative provisions will help to protect the public health, avoid losses in workforce productivity, and save taxpayer money.

Your Committee notes that a 2020 New York State law, Section 1399-mm-1 of the Public Health law, bans the sale of flavored vapor products, but does not apply to other tobacco products such as cigarettes. Your Committee further notes that while the federal Food and Drug Administration has advanced two proposed tobacco product standards – one prohibiting menthol as a characterizing flavor in cigarettes and another prohibiting all characterizing flavors (including menthol) in cigars – final rules based on those proposals have yet to be published. Additionally, the final rules will not take effect until one year after they are published.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). The proposed Local Law does not meet the definition of an action under SEQRA and its implementing regulations, 6 NYCRR Part 617. Please refer to the January 14, 2022 Department of Planning memorandum, which is on file with

the Clerk of the Board of Legislators.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2022
White Plains, New York

COMMITTEE ON

FISCAL IMPACT STATEMENT

SUBJECT: Local Law Chapter 539

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ TBD

Total Current Year Revenue \$ TBD

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: Revenue Other Fines 27-101-0010-8000-9583

Potential Related Operating Budget Expenses: Annual Amount \$ TBD

Describe: Westchester County Board of Health and the Westchester County Department of Public Safety are authorized to enforce Local Law Chapter 539

Potential Related Operating Budget Revenues: Annual Amount \$ TBD

Describe: The sale or distribution by an establishment of any flavored tobacco product is prohibited. Any person who violates any provision of Local Law Chapter 539 shall be subject to a fine or civil penalty.

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Mark Medwid

Title: Associated Budget Director

Department: Budget

Date: September 14, 2022

Reviewed By: 
Budget Director

Date: 9/14/22

Resolution No. -2022

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. - 2022, entitled "A LOCAL LAW in relation to prohibiting the sale or distribution of flavored tobacco products." The public hearing will be held at ____ .m. on the _____ day of ____, 2022 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.