

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: October 17, 2022  
White Plains, New York

COMMITTEE ON

*Janet Zeller Johnson*  
*WJR*  
*Colin J. Smith*  
*Nancy E. Bauer*  
*Mary Jane Almaraz*  
*Vedat Janki*

DHC 8/24/2022

HEALTH

*L. De. M. M.*  
*Margaret A. Cijio (WOP)*  
*Colin J. Smith*  
*Nancy E. Bauer*  
*Mary Jane Almaraz*  
*Vedat Janki*

LEGISLATION

Dated: October 17, 2022

White Plains, New York

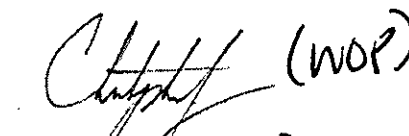

***The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.***

Committee(s) on:

HEALTH COMMITTEE



LEGISLATION COMMITTEE

# 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: 

MM Budget Director

Date: 9/14/22

A LOCAL LAW amending the Laws of Westchester County by adding a new Chapter 539 in relation to prohibiting the sale or distribution of flavored tobacco products.

BE IT ENACTED by the County Board of the County of Westchester as follows:

**Section 1.** The Laws of Westchester County are hereby amended to include a new Chapter 539 to read as follows:

**CHAPTER 539**  
**BAN ON SALE OR DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS**

Sec. 539.01 Definitions.

Sec. 539.11 Sale or Distribution of Flavored Tobacco Products Prohibited.

Sec. 539.21 Enforcement and Penalties.

Sec. 539.31 Severability.

**Section 539.01 Definitions.**

1. “Characterizing Flavor” means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma or both, as described in the first sentence of this definition that constitutes a Characterizing Flavor.
2. “Distinguishable” means perceivable by either the sense of smell or taste.
3. “Establishment” means any store, business, stand, booth, or concession, or any other commercial enterprise, which engages in any retail sale of Tobacco Products, including but not limited to entities engaging in the retail sale of food items.
4. “Flavored Tobacco Product” means any Tobacco Product that imparts a

Characterizing Flavor.

5. “Labeling” means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.
6. “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.
7. “Tobacco Product” means (a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, little cigars (“cigarillos”), pipe tobacco, chewing tobacco, or snuff; (b) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, and any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine and whether or not sold separately; or (c) any component, part, or accessory of (a) or (b), whether or not sold separately. For purposes of this Chapter, “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

**Section 539.11 Sale or Distribution of Flavored Tobacco Products Prohibited.**

1. The sale, distribution, display, offer for sale or distribution, or marketing for sale or distribution, by an Establishment of any Flavored Tobacco Product is prohibited.
2. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer, retailer, or distributor of the Tobacco Product, or any agent or employee thereof in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product imparts a Characterizing Flavor, including, but not limited to, text, color, and/or images on the Tobacco Product’s Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product imparts a Characterizing Flavor.
3. The 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 by the Establishment.

**Section 539.21 Enforcement and Penalties.**

1. The Westchester County Department of Health is solely authorized to enforce this Chapter.
2. Any Establishment that violates any provision of this Chapter:
  - (a) Shall be subject to a fine or civil penalty of a minimum of \$300.00, but not to exceed \$1,000.00, for a first violation within a two-year period; and
  - (b) Shall be subject to a fine or civil penalty of a minimum of \$500.00, but not to exceed \$1,500.00, for each subsequent violation within a two-year period.
3. If an Establishment violates a provision of this Chapter three times or more within a two- year period, then, in addition to any other penalty permitted by this Section, the Westchester County Department of Health shall request that the New York State Commissioner of Taxation and Finance suspend the Establishment's applicable registration(s) for six months.
4. Nothing in this Section is intended to conflict with any provision of New York State Public Health Law § 1399-ee. No Establishment shall be penalized for the same violation under both this Section and New York State Public Health Law § 1399-ee.
5. Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any person not engaged in the retail sale of Tobacco Products.

**Section 539.31 Severability.**

If any clause, sentence, paragraph, or section of this Chapter shall be held invalid by any court of competent jurisdiction, or the application of this Chapter to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

paragraph, section, or operation of this Chapter directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this Chapter are hereby declared to be severable.

**Section 2.** This local law shall take effect six (6) months after enactment.