

# Legislation Meeting Agenda



Committee Chair: Colin Smith

800 Michaelian Office Bldg.  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601  
www.westchesterlegislators.com

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**Tuesday, September 13, 2022**

**1:00 PM**

**Committee Room**

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## CALL TO ORDER

Joint with the Committee on Health

Chairwoman Catherine Borgia will be participating remotely from Clear View School and Day Treatment Center, 480 Albany Post Road, Briarcliff, NY, 10510.

## MINUTES APPROVAL

### I. ITEMS FOR DISCUSSION

[2022-460](#)

**LEGISLATORS WILLIAMS JOHNSON, PIERCE, BARR, SHIMSKY, JOHNSON, BORGIA, PARKER AND GASHI - PH - Prohibiting the Sale or Distribution of Flavored Tobacco Products**

A RESOLUTION to set a Public Hearing on 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. [Public Hearing set for \_\_\_\_\_, 2022 at \_\_\_\_\_.m.]. LOCAL LAW INTRO: 2022-461.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND HEALTH**

Guests: David Chen, Deputy County Attorney, Law Department; Trevor Summerfield, Advocacy Director, American Lung Association; Brianna Durkee, Government Relations Director, American Heart Association; Kevin O'Flaherty, Director of Advocacy, Tobacco-Free Kids; Molly Franco, Community Engagement Coordinator POW'R Against Tobacco, American Lung Association; Jennifer Cofer, Director of the EndTobacco Program MD Anderson Cancer Center; Phillip Gardiner, Dr. P.H., Co-Chair - African American Tobacco Control Leadership Council

[2022-461](#)

**LEGISLATORS WILLIAMS JOHNSON, PIERCE, BARR, SHIMSKY, JOHNSONM BORGIA, PARKER AND GASHI - LL - Prohibiting the Sale or Distribution of Flavored Tobacco Products**

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.

**COMMITTEE REFERRAL: COMMITTEES ON LEGISLATION AND HEALTH**

Guests: David Chen, Deputy County Attorney, Law Department; Trevor Summerfield, Advocacy Director, American Lung Association; Brianna Durkee, Government Relations

Director, American Heart Association; Kevin O'Flaherty, Director of Advocacy, Tobacco-Free Kids; Molly Franco, Community Engagement Coordinator  
POW'R Against Tobacco, American Lung Association; Jennifer Cofer, Director of the EndTobacco Program  
MD Anderson Cancer Center; Phillip Gardiner, Dr. P.H., Co-Chair - African American Tobacco Control Leadership Council

## **II. OTHER BUSINESS**

## **III. RECEIVE & FILE**

## **ADJOURNMENT**



TO: Catherine Borgia, Chairwoman of the Board of Legislators  
Sunday Vanderberg, Clerk of the Board of Legislators

FROM: Jewel Williams Johnson, Legislator, 8<sup>th</sup> District  
Erika Pierce, Legislator, 2<sup>nd</sup> District  
Nancy Barr, Legislator, 6<sup>th</sup> District  
MaryJane Shimsky, 12<sup>th</sup> District

DATE: August 29, 2022

RE: Amending the Laws of Westchester County by adding a new Chapter 539 in relation to prohibiting the sale or distribution of flavored tobacco products

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We request that the attached proposal, 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 added to the agenda for the September 12, 2022 meeting of the Westchester County Board of Legislators so that it may be referred to the appropriate committees.

Thank you.

CC: Marcello Figueroa  
Melanie Montalto

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.

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 modeled after existing laws in San Francisco and New York City. The law in New York City previously survived judicial scrutiny. 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

DHC 8/24/2022

**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.

LOCAL LAW INTRO. NO. -2022

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.

Sec. 532.41 Reverse Preemption.

**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. “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.
3. “Distinguishable” means perceivable by either the sense of smell or taste.
4. “Establishment” means any store, stand, booth, concession or any other enterprise that engages in the retail sale of Tobacco Products, including stores engaging in the retail sale of food items.
5. “Flavored Tobacco Product” means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.
6. “Labeling” means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its Packaging.
7. “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.
8. “Tobacco Product” means 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”), chewing tobacco, or snuff; and any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette. “Tobacco Product” includes any component, part, or accessory of a tobacco product, 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 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 or any of the manufacturer’s agents or employees, 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 has or produces a Characterizing Flavor, including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

**Section 539.21 Enforcement and Penalties.**

1. The Westchester County Board of Health and the Westchester County Department of Public Safety are authorized to enforce this chapter.
2. Any person who 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;
  - (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; and
  - (c) Shall also be subject to any penalty provided for under New York State Public Health Law § 1399-ee and § 1399-ff unless such penalty is expressly provided for herein.
  - (d) If an individual 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 New York State Commissioner of Taxation and Finance shall be contacted in order to suspend the individual's applicable registration in accordance with New York State Public Health Law § 1399-ee.
3. A person shall be guilty of a Class B misdemeanor and subject to penalty as prescribed by law if he or she has violated section 539.11(1) of this chapter more than once.

**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 532.41 Reverse Preemption.**

This local law 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 Westchester. The Board of Legislators may determine via resolution whether or not identical or substantially similar statewide or federal legislation has been enacted, or pertinent state or federal regulations have been promulgated, for the purposes of triggering the provisions of this section.

**Section 2.** This local law shall take effect 30 days after enactment.