

New Laws: Flavored E-Cigarettes and Tobacco Products

1. What are the new laws about?

New York City Council's Local Law 228 of 2019 prohibits the sale of flavored electronic cigarettes (e-cigarettes) and flavored e-liquids of any size or shape. Local Law 228 of 2019 also prohibits the offering for sale or the possession with intent to sell of these items for retailers. This law will help protect youth from becoming addicted to e-cigarettes, as many youth find flavored e-cigarette products appealing.

In April 2020, the New York State budget law included a ban on the sale or offering for sale of these items as well as other changes. See Public Health Law §§ 1399-MM-1, 1399-MM-2 and 1399-MM-3.

2. How does Local Law 228 affect Chapter 28, Restriction on the Sale of Certain Flavored Tobacco Products?

Local Law 228 adds e-cigarettes and e-liquids (sometimes called liquid nicotine) to the original law restricting the sale of flavored tobacco products (with the exception of mint-, menthol-, or wintergreen-flavored tobacco products, passed in 2009). That law covered cigars, cigarillos, little cigars, cigar wraps, smokeless tobacco (including chewing tobacco, snuff and dissolvable tobacco products), loose tobacco (including pipe tobacco and roll-your-own tobacco), snus, and shisha (both tobacco and non-tobacco). Flavors in cigarettes, other than tobacco and menthol, have been prohibited by federal law since 2009. The flavors that are allowed to be sold are different for e-cigarettes and for tobacco products other than cigarettes (other tobacco products or OTP). See questions 4 and 6 below.

3. When do these laws take effect?

The State prohibition on the sale of flavored e-cigarettes went into effect in mid-May 2020. The broader e-cigarette prohibitions in the New York City (NYC) law went into effect July 1, 2020.

4. What do retailers need to know now?

You must stop selling flavored OTP, e-cigarettes or e-liquids in NYC now. You must also stop offering these items for sale or possessing these items for sale in NYC.

- For e-cigarette retailers:
 - E-cigarette retailers are now only allowed to sell, offer for sale or possess with intent to sell e-cigarettes or e-liquids that are tobacco-flavored or unflavored.

- E-cigarette retailers in possession of six or more e-cigarettes or more than 12 ounces of e-liquid in any other flavors are presumed to possess them with intent to sell.
- For tobacco retailers
 - Tobacco retailers are now only allowed to sell, offer for sale or possess with intent to sell OTP that are tobacco, menthol-, mint- or wintergreen-flavored or unflavored.
 - Tobacco retailers in possession of 4 or more OTP in any other flavors are presumed to possess them with intent to sell.

5. What products are covered under the laws?

The laws include all electronic cigarettes, e-liquids/liquid nicotine, and OTP. They go further than the recent federal policy by prohibiting all sizes and shapes of flavored e-cigarettes and e-liquids. The New York City and State laws cover disposable and tank-based products. The New York City law also further limits sales of flavored OTP to those that are tobacco-, menthol-, mint- or wintergreen-flavored or unflavored.

6. How do I know if a product is flavored?

Look at labels, packaging, and/or marketing for signs of flavoring. Consider the descriptions and images used by the manufacturer to describe the products. Flavor may be shown by words, colors, or pictures. Words like “spicy” or “sweet” probably mean it is flavored.

- E-cigarettes or e-liquids can only be sold if they are tobacco-flavored or unflavored.
- OTP can only be sold if they are tobacco-, menthol-, mint- or wintergreen-flavored or unflavored.

In the coming months, we will provide more guidance on which products may and may not be sold.

7. Are there certain types of retailers that can still sell flavored products?

In New York City, no retail sale of flavored electronic cigarettes is permitted.

- Only a registered tobacco bar may sell flavored OTP.
- No new tobacco bar registrations are available.

8. What will enforcement look like for the new laws?

Beginning July 1, 2020, the Sheriff’s Office of the Department of Finance (DOF) and Department of Consumer and Worker Protection (DCWP, formerly DCA) will enforce these laws as part of their regular inspections of retailers. Inspections may be routine or complaint-based.

9. What should retailers do with remaining flavored inventory?

Retailers should plan to dispose of all flavored e-cigarettes and flavored e-liquids product by July 1. Because these products contain hazardous waste in the form of batteries and nicotine, they should not be included with regular garbage. Talk with your waste disposal contractor and your distributor about options for safe disposal.

Any flavored e-cigarettes or flavored e-liquids in the amounts listed in question 4 above are subject to seizure by the DOF Sheriff's Office. Retailers will have an additional 15-day grace period beginning July 1 and ending July 15, 2020 to remove the above items from their premise, provided all of the following:

- 1) The items have been removed from shelves or display cases.
- 2) They are placed in a secure area, not accessible to the public.
- 3) The existence of these items on the premises is immediately disclosed to inspection officers from the DCWP or the DOF Sheriff's Office upon the arrival of these officers at the premises.

10. What are the penalties for violating the law?

Fines for breaking the law range from \$1,000 to \$5,000 for each violation. Retailers may also have their license suspended for one year if they receive three violations within a three-year period. Retailers may also face additional penalties of up to \$100 per package of flavored electronic cigarettes for violating the New York State ban on flavored electronic cigarettes.

11. Where can retailers find more information about these laws?

For more information about NYC tobacco and e-cigarette control laws, visit nyc.gov/health and search "tobacco laws" or call **311** and say that you are a tobacco or electronic cigarette retail dealer.

The New York State Department of Health provides information for retailers on its website. Visit health.ny.gov/prevention/tobacco_control/educational_materials.htm to learn more about increased fines, and new restrictions on displays and discounts as guidance is developed.