

SANTA FE COUNTY
Ordinance No. 2002- 8

2128856

**GOVERNING TOBACCO PRODUCTS PLACEMENT,
DISTRIBUTION, DISPLAY, SALES AND PENALTY FOR
VIOLATION**

WHEREAS, approximately 434,000 Americans die each year of diseases caused by cigarette smoking; and

WHEREAS, the Surgeon General of the Public Health Service has determined that smoking is the leading cause of preventable death in this country; and

WHEREAS, the Surgeon General, the U.S. Department of Health and Human Services, and the Institute of Medicine have concluded that youth access to tobacco products, especially illegal tobacco sales to minors by retail outlets, is a major contributing factor to tobacco inflation, use and addiction among children and adolescents; and

WHEREAS, nicotine in tobacco has been found by the Surgeon General's report entitled "The Health Consequences of Smoking: Nicotine Addiction" to be a powerfully addictive drug, and it is therefore important to prevent young people from using nicotine; and

WHEREAS, most adults who smoke wish to quit, a majority of current adult smokers have tried to quit without success, and one-half of all teenagers who have been smoking for five years or more have made at least one serious but unsuccessful attempt to quit; and

WHEREAS, every day more than 3,000 minors begin smoking: one-half of smokers begin before the age of 18 and 90 percent begin before the age of 21; and

WHEREAS, one-third of New Mexico students have smoked cigarettes in the past month; and

WHEREAS, there is a need in Santa Fe County to control the selling of tobacco products to minors; and

WHEREAS, present methods of prohibiting tobacco sales and distribution to minors have proven ineffective in preventing tobacco sales and distribution to minors; and

WHEREAS, it is in the public interest to regulate the manner of sale and distribution of tobacco products in order to promote retailer compliance with the Tobacco Products Act prohibiting tobacco sales to minors, and to promote the health, safety and welfare of the residents of Santa Fe County and minors under eighteen (18) years of age; and

WHEREAS, the County can enact an ordinance on regulating the sale and distribution of tobacco products intended for smoking pursuant to the authority set forth in the "Tobacco Products Act", 30-49-1 et seq. NMSA 1978, and in NMSA 1978 Section 4-37-1; and

WHEREAS, the County is authorized to enact an ordinance on the sale of tobacco products to persons under the age of eighteen (18) years, and to enforce penalties on those who violate the County Ordinance pursuant and consistent with NMSA 1978, Section 30-49-1, et. seq. NMSA 1978

NOW, THEREFORE, Be it resolved by the Board of County Commissioners of Santa Fe County that:

A "Tobacco Products Placement Ordinance" is titled and enforceable by the following:

Definitions:

Person. Any individual, partnership, firm or corporation and any of the preceding in both the singular and the plural.

Self-service merchandising. The open display of tobacco products that the public has access without the intervention of a store employee.

Tobacco Product. Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

Vendor-assisted. Only a store employee has access to the tobacco products and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

Display Signs.

A person shall display signs prominently in the immediate area at each place at which tobacco products are sold that meets the requirements of this Ordinance.

Provision of signs shall be the responsibility of persons authorized to sell tobacco products under the provisions of this Ordinance.

The signs shall be in accordance with the state Tobacco Products Act, 30-49-9 NMSA 1978.

Prohibited sales: Regulations of the Manner of Sale and Distribution of Tobacco Products.

Prohibition on Sale or Distribution to Individuals Under the Age of eighteen (18) and in certain other cases.

A person or an employee or agent of that person shall not sell or distribute a tobacco product:

To any individual that the employer, employee or agent knows is under 18 years of age;

To any individual (other than an individual who appears without reasonable doubt to be over 18 years of age) who does not present a driver's license or other generally accepted means of identification that describes the individual as 18 years of age or older, contains a likeness of the individual and appears on its face to be valid.

Prohibition on Self-Service Tobacco Merchandising.

No persons who owns, operates or manages a business where tobacco products are sold, nor any person who sells or offers for sale tobacco products or displays tobacco products for sale, shall store any tobacco product by means of self-service merchandising.

No person who owns, operates or manages a business where tobacco products are sold, nor any person who sells or offers for sale tobacco products, shall sell, permit to be sold, offer for sale, display for sale, or store any tobacco product by means other than vendor-assisted sales.

A person is exempt from the requirements of this section if both:

The business where tobacco products are sold prohibits entry of individuals under the age of 18 at all times unless accompanied by an adult; and

Photographic identification is required from an individual who appears to be under 27 years of age.

The sale of tobacco products in any form other than an original factory- wrapped package is prohibited.

Prohibition on Maintaining Vending Machines.

A person or an employee or agent of that person shall not maintain any devices that automatically dispenses tobacco products, except that

Tobacco products may be sold at retail through vending machines only where the machine(s) is in an area not open to the general public, included but not limited to the controlled area of factories, businesses, and offices;

In places to which persons under the age of 18 are not permitted access without a parent or guardian: and

In places where alcoholic beverages are offered for sale or consumption on the premise.

An owner of a device that violates this provision shall remove said device within three months of the effective date of this Ordinance.

Sampling

It shall be unlawful for any person to engage in distributing free samples of a tobacco product to a person under 18 years of age.

Minors

No person under the age of eighteen (18) years of age shall procure or attempt to procure any tobacco product for his/her own use or for the use by any other person.

No person under the age of eighteen (18) years shall present any written, printed, or photostatic or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older that is false for the purpose of procuring or attempting to procure any tobacco product(s).

Penalty

A violation of any of the provisions of this Ordinance by any person over the age of eighteen (18) years shall be a misdemeanor punishable by a fine of up to one thousand dollars (\$1000) or imprisonment of up to one year or both.

A violation of this Ordinance under the age of eighteen (18) years shall be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight (48) hours of community service.

APPROVED, ADOPTED AND PASSED this 14 day of May, 2002.

BOARD OF COUNTY COMMISSIONERS



Paul D. Duran, Chairperson

ATTEST:


Rebecca Bustamante, County Clerk

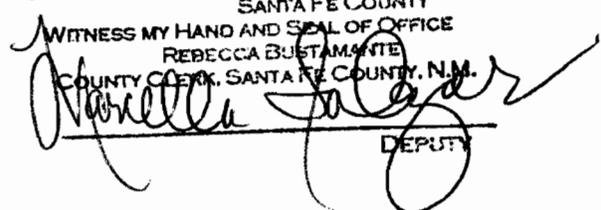


APPROVED AS TO FORM:


Steven Kopelman, County Attorney



1206. 393
COUNTY OF SANTA FE } ss
STATE OF NEW MEXICO
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
FOR RECORD ON THE 15 DAY OF May A.D.
20 02 AT 2:43 O'CLOCK P^M
AND WAS DULY RECORDED IN BOOK 2128
PAGE 856-860 OF THE RECORDS OF

SANTA FE COUNTY
WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.

DEPUTY