

**SANTA FE COUNTY**

**ORDINANCE NO. 2014** 

**AMENDING AND RESTATING ORDINANCE 2002-08,  
(AN ORDINANCE GOVERNING TOBACCO  
PRODUCTS PLACEMENT, DISTRIBUTION, DISPLAY, AND SALES AND  
ESTABLISHING PENALTIES FOR VIOLATION) TO ENSURE CONFORMITY WITH  
STATE LAW, TO REGULATE E-CIGARETTE SALES TO MINORS AND TO INSERT  
A SEVERABILITY CLAUSE**

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

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

**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 through retail outlets, is a major contributing factor to tobacco use and addiction among children and adolescents;

**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;

**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;

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

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

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

**WHEREAS**, it is in the interest of the public health to regulate the manner of sale and distribution of tobacco products in Santa Fe County 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;

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

**WHEREAS**, the County is authorized to enact an ordinance on the sale of tobacco products to persons under the age of eighteen (18) years, pursuant to NMSA 1978, Section 30-49-1, *et. seq.*;

**WHEREAS**, according to the Centers for Disease Control and Prevention the use of e-cigarettes is on the rise among minors, increasing from 4.7% of students who had tried e-cigarettes in 2011 to 10% in 2012, and confirming that 1.78 million middle and high school students nationwide tried e-cigarettes in 2012;

**WHEREAS**, according to a 2009 report from the U.S. Food and Drug Administration (the FDA), laboratory analysis of e-cigarette products disclosed nicotine, carcinogens and toxic chemicals;

**WHEREAS**, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin;

**WHEREAS**, use of e-cigarettes, which contain nicotine, can lead minors into a nicotine addiction that may lead to daily use of tobacco;

**WHEREAS**, e-cigarettes are not approved by the FDA as smoking cessation devices;

**WHEREAS**, according to a 2009 publication from the FDA the testing of certain e-cigarette cartridges revealed that the quality control processes used to manufacture the products were inconsistent or non-existent, that cartridges which were labeled non-nicotine actually contained nicotine, and that there were deviations from the contents claimed on the label;

**WHEREAS**, according to a 2012 study, the use of an e-cigarette for five minutes was found to have immediate adverse physiological effects similar to some of the effects seen with tobacco smoking (*Short-Term Pulmonary Effects of Using an Electronic Cigarette*, Vardavas CI, Anagnostopoulos N, Kougias M, Evangelopoulou V, Connolly GN, Behrakis PK., Journal of the American College of Chest Physicians, 2012; 141(6):1400-1406);

**WHEREAS**, nicotine raises the heart rate, increases blood pressure, increases cardiac output and constricts blood vessels, all of which lead to long-term hypertension and heart diseases like congestive heart failure and arrhythmias (*Cardiovascular Toxicity of Nicotine: Implications for Nicotine Replacement Therapy*, Neal L. Benowitz, MD, Steven G. Gourlay, MB, BS, PhD, Journal of the American College of Cardiology, Vol.29, No.7, pages 1422-31, June 1997);

**WHEREAS**, the liquid used in e-cigarettes: generally contains nicotine and may appeal to young children because of flavorings like strawberry, chocolate and gummy bear; is sold in canisters which do not contain child-resistant caps; is sold in canisters which may contain lethal amounts of nicotine for young children (*Novel Nicotine Delivery Systems and Public Health: The Rise of the E-Cigarette*, Nathan K. Cobb, MD, M. Justin Byron, MHS, David B. Abrams, PhD, and Peter G. Shields, MD, American Journal of Public Health, December 2010, 100(12):2340-2342);

**WHEREAS**, the estimated lethal dose of nicotine for a child is 10 mg, but a cartridge for an e-cigarette may contain a lethal dose of up to 20 mg of nicotine, and the refill canisters can contain as much as one gram of nicotine (*E-cigarette or Drug Delivery Device? Regulating Novel Nicotine Products*, Nathan K. Cobb, M.D., and David B. Abrams, Ph.D, The New England Journal of Medicine, July 2011);

**WHEREAS**, a study showed that between 2006 and 2008, 13,700 poisonings from tobacco ingestion occurred in children under 6 years of age (*E-Cigarettes: A Rapidly Growing Internet Phenomenon*, Cyrus K. Yamin, Asaf Bitton, MD, MPH, David W. Bates, MD, M.Sc, Annals of Internal Medicine, 2010;153:607-609); and

**WHEREAS**, the serious findings demonstrate that tobacco products and e-cigarettes should be regulated to prevent and prohibit sales to minors.

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

1. **Authority.**

This Ordinance is enacted pursuant to the authority in NMSA 1978, § 4-37-1 (1975) (as amended) to make and publish any ordinance to discharge the powers not inconsistent with statutory or constitutional limitations placed on counties and to exercise powers that are necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County's inhabitants, and NMSA 1978, § 4-37-3 (1993) (as amended) which permits prosecution of violations of County ordinances in any court of competent jurisdiction. This Ordinance is also enacted pursuant to NMSA 1978, § 30-49-1 *et seq.*, which authorizes the County to enact an ordinance on regulating the sale and distribution of tobacco products intended for smoking.

2. **Definitions.**

A. **"E-cigarette"** means any product containing or delivering nicotine or any substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. E-cigarette includes any component part of such product whether or not sold separately. E-cigarette does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.

B. **“Minor”** means an individual who is less than eighteen years of age;

C. **“Self-service display”** means a display to which the public has access without the assistance of the seller or the seller’s employee.

**3. Display Signs.**

A person, firm, corporation, partnership or other entity engaged in the retail sale of tobacco products shall obtain and display signs prominently in the place where tobacco products are sold and where a tobacco product vending machine is located. The signs shall reads as follows:

A. A person less than 18 years of age who purchases a tobacco or e-cigarette product is subject to a fine of up to \$300;

B. A person who sells a tobacco or e-cigarette product to a person less than 18 years of age is subject to a fine of up to \$300.

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

A. No person shall knowingly sell, offer to sell, barter or give any tobacco product to a minor.

B. No person shall sell, offer to sell or deliver a tobacco product in a form other than an original factory-sealed package.

C. No person shall sell a tobacco product to a person who is unable to produce an identity card as evidence that the person is eighteen years of age or over, unless the person appears without reasonable doubt to be over the age of eighteen. Any person selling goods at retail or wholesale may refuse to sell tobacco products to any person who is unable to produce an identity card as evidence that the individual is eighteen years of age or over.

**5. Self-Service Tobacco 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:

A. Sell, permit to be sold, offer for sale, display for sale, or store any tobacco product by means other than vendor assisted sales;

B. Maintain any devices that automatically dispense tobacco products, except that tobacco products may be sold by vending machines in the following locations:

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- i. In locations not held open to the public, including controlled areas within factories, businesses and offices;
- ii. In locations in which the vending machine is equipped with a remote-controlled lock-out device; or
- iii. In age-controlled locations where minors are not permitted unless accompanied by a parent or guardian.

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

**6. 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, except that this provision shall not apply to an individual who provides free samples of tobacco products to a family member or to an acquaintance on private property not held open to the public.

**7. Minors.**

A. 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 use by any other minor.

B. No minor shall present any written, printed or photostatic evidence of age or identity that is false for the purpose of procuring or attempting to procure any tobacco products.

**8. Evidence of Age and Identity.**

Evidence of the age and identity of the person may be shown by any document that contains a picture of the person issued by a federal, state, county or municipal government, including a motor vehicle driver's license or an identification card issued to a member of the armed forces.

**9. E-cigarettes.**

All provisions of this Ordinance governing tobacco products shall also govern e-cigarettes and the liquid utilized in e-cigarettes.

**10. Penalty.**

A. A violation of any of the provisions of this Ordinance by any person over the age of eighteen (18) years shall be punishable by a fine of up to three hundred dollars (\$300), imprisonment of up to ninety days, or both a fine and imprisonment.

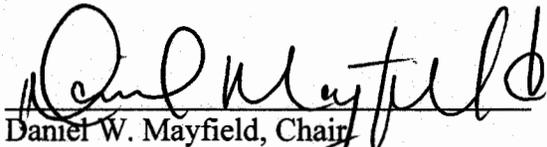
B. A violation of this Ordinance by any person under the age of eighteen (18) years shall be punished by a fine not to exceed one hundred dollars (\$100), forty-eight (48) hours of community service or both a fine and community service.

11. **Severability.**

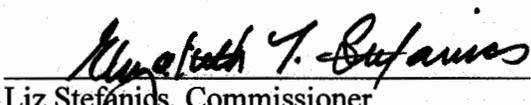
The requirements and provisions of this Ordinance are severable. In the event that any requirement, provision, part, subpart or clause of this Ordinance, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the Board that the remainder of the Ordinance be enforced to the maximum extent possible consistent with the objective of preventing the sale of tobacco products and e-cigarettes to minors.

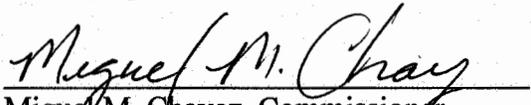
APPROVED, ADOPTED AND PASSED this 25<sup>th</sup> day of February, 2014.

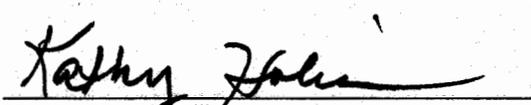
**SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS**

  
Daniel W. Mayfield, Chair

  
Robert A. Anaya, Vice-Chair

  
Liz Stefanics, Commissioner

  
Miguel M. Chavez, Commissioner

  
Kathy Holian, Commissioner

PDF CLERK RECORDED 02/25/2014

ATTEST:

*Geraldine Salazar*  
Geraldine Salazar, Santa Fe County Clerk

2/25/2014



APPROVED AS TO FORM:

*Stephen C. Ross*  
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE ) BCC ORDINANCE  
STATE OF NEW MEXICO ) ss PAGES: 7

I Hereby Certify That This Instrument Was Filed for  
Record On The 26TH Day Of February, 2014 at 02:45:49 PM  
And Was Duly Recorded as Instrument # 1730878  
Of The Records Of Santa Fe County

Deputy *Maxwell* )  
Witness My Hand And Seal Of Office  
Geraldine Salazar  
County Clerk, Santa Fe, NM

FILED 02/25/2014