

ORDINANCE 2016 – 08

AN ORDINANCE OF THE COCONINO COUNTY BOARD OF SUPERVISORS FOR COCONINO COUNTY, ARIZONA, AMENDING ORDINANCE 2000-08 REGULATING THE PLACEMENT, STORAGE, AND DISPLAY OF TOBACCO PRODUCTS AND VENDING MACHINES THAT DISPENSE TOBACCO PRODUCTS TO ADDRESS VAPOR PRODUCTS WITHIN THE UNINCORPORATED AREAS OF COCONINO COUNTY

WHEREAS substantial scientific evidence exists to conclude that tobacco products cause cancer, heart disease, other medical problems, and affect public health; and

WHEREAS the National Centers for Disease Control have found that more than four hundred eighty thousand (480,000) Americans die each year from tobacco-related disorders; and

WHEREAS the Surgeon General of the United States and the United States Department of Health and Human Services have found that a majority of those Americans who die of tobacco-related disorders became addicted to nicotine in tobacco products as adolescents before the age of legal consent; and

WHEREAS minors' easy access to tobacco products, vapor products, and Electronic Nicotine Delivery System from open self-service promotional displays, vending machines and open store shelves promotes shoplifting of said products by minors and/or sales to minors; and

WHEREAS it is in the public interest to protect the health of minors by limiting the unauthorized access of minors to tobacco products, vapor products, and Electronic Nicotine Delivery Systems ; and

WHEREAS the vapor released from vapor products contains propylene glycol, which is linked to the development of asthma in youth, some level of at least 10 chemicals that cause cancer or birth defects, flavoring chemicals of which some are harmful if inhaled, and nicotine, which is highly addictive; and

WHEREAS youth who have used a vapor product are more likely to use conventional tobacco products; and

WHEREAS the Coconino County Board of Supervisors is authorized under A.R.S. § 11-251(17) to adopt provisions necessary to preserve the health of the county; and

WHEREAS A.R.S. § 13-3622 prohibits the furnishing of tobacco products, vapor products or tobacco or shisha instruments or paraphernalia to minors; minors accepting or receiving tobacco products, vapor products or tobacco or shisha instruments or paraphernalia; illegally obtaining tobacco products, vapor products, tobacco or shisha instruments or paraphernalia by underage persons, but does not regulate the placement or storage of these products in a business where they are sold; and

WHEREAS the Federal Tobacco Control Act gives the United States Food and Drug Administration the authority to prohibit vending machines or retail self-service displays of cigarettes, cigarette tobacco, smokeless tobacco and roll your own tobacco, but does not regulate retail self-service displays of other forms of tobacco such as cigars, pipe tobacco, and vapor products; and

WHEREAS nationally the number of people reporting exposure to nicotine from e-liquid rose from 271 in 2011 to 3,783 in 2015, with about half of the exposures occurring in children. In Maricopa County, the number of people reporting nicotine exposure from e-liquid rose from 5 in 2011 to 48 in 2014.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF COCONINO, TO BE EFFECTIVE IN THE UNINCORPORATED AND INCORPORATED AREAS OF COCONINO COUNTY, EXCLUDING SOVEREIGN TRIBAL NATIONS:

1. As used in this Ordinance, unless the context requires otherwise:
 - a. Person means the state, county, city, any political subdivision of the state, any governmental entity, a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual or sole proprietorship, trustee, receiver, assignee or similar representative.
 - b. "Tobacco product" means any of the following:
 - (a) Cigars.
 - (b) Cigarettes.
 - (c) Cigarette papers of any kind.
 - (d) Smoking tobacco of any kind.
 - (e) Chewing tobacco of any kind.
 - c. "Vapor product" means a noncombustible product that employs a mechanical heating element, battery or circuit, regardless of shape or size that can be used to heat a liquid solution contained in cartridges. Vapor product does not include any product that is regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug and Cosmetic Act.
 - d. "Electronic Nicotine Delivery System (E.N.D.S.)" or "Electronic Cigarette" means any product containing or delivering vapor product, intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes, without limitation, the electronic device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
 - e. Vending machine means any mechanical, electrical, or electronic device that, on insertion of money, tokens, or any other form of payment, dispenses tobacco products, vapor products, or E.N.D.S.

2. Prohibited Conduct

- a. No person who owns, conducts, operates, or manages a business where tobacco products, vapor products, or E.N.D.S. are sold, or are available for sale from a vending machine, nor any person who sells or offers for sale tobacco products, vapor products, or E.N.D.S., shall place, store, or display, or cause to be placed, stored, or displayed, such tobacco products, vapor products, E.N.D. S., or vending machines in an area or manner that is accessible to the public without employee assistance.
- b. A person is exempt from the requirements of this section if both:
 - i. The business where tobacco products, vapor products, or E.N.D.S. are sold prohibits entry of individuals under the age of eighteen (18) years at all times; and,
 - ii. Photographic identification is required from any individual who appears to be twenty-seven (27) years of age or younger prior to entering the business where tobacco products, vapor products, or E.N.D.S. are sold.

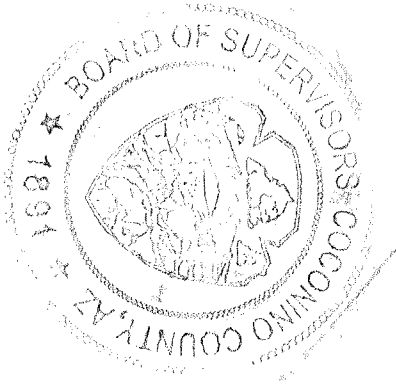
3. Penalty

- a. A violation of this chapter is a civil offense, and shall subject the offending party to the following penalties:
 - i. For the first offense, a fine of one hundred dollars (\$100)
 - ii. For a second offense, a fine of not more than three hundred dollars (\$300)
 - iii. For each subsequent offense, a fine of not more than five hundred dollars (\$500)
 - iv. If the alleged violator has been found responsible on three or more violations pursuant to this chapter, a third or subsequent violation under this chapter by such violator may be charged as a class 3 misdemeanor.
4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.
5. The provisions of this Ordinance shall become effective 60 days after adoption by the Board of Supervisors.


PASSED and ADOPTED by the Board of Supervisors for Coconino County on the 15th day of November, 2016.



Lena Fowler, Chair




ATTEST:



Wendy Escoffier, Clerk of the Board

APPROVED AS TO FORM:



Rose Winkeler, Deputy County Attorney