

ORDINANCE NO. 2014-004

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, ESTABLISHING AND CREATING REGULATIONS WHICH PERTAIN TO THE SALE AND USE OF E-CIGARETTES AND LIQUID NICOTINE AND PROVIDING THEREIN FOR DEFINITIONS, FOR A PROHIBITION ON THE SALE WITHIN THE COUNTY OF E-CIGARETTES AND LIQUID NICOTINE TO PERSONS UNDER EIGHTEEN YEARS OF AGE, FOR A PROHIBITION ON THE USE WITHIN THE COUNTY OF AN E-CIGARETTE WHERE SMOKING IS PROHIBITED, FOR A PROHIBITION ON SELF-SERVICE MERCHANDISING IN THE SALE OF E-CIGARETTES AND LIQUID NICOTINE, AND FOR ENFORCEMENT AND PENALTIES; PROVIDING FINDINGS IN SUPPORT OF THE ADOPTION OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be it Ordained by the Board of County Commissioners of Nassau County, Florida:

SECTION 1. FINDINGS.

In support of the adoption of this ordinance, the Board makes the following findings:

- (a) The state and federal governments have been slow to respond meaningfully to the public health crisis caused by smoking, and to implement measures to curb smoking and its inherent dangerous effects on the general public's health.
- (b) The dangers posed by tobacco are not limited to cigarettes, pipes or other traditional forms of smoking.
- (c) New, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers. These devices closely resemble and purposefully mimic the art of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. The vapors are expelled via a cartridge that usually contains a concentration of pure nicotine. The cartridge and ignition system are housed in a device created to look exactly like a traditional cigarette, cigar or pipe. After inhaling, the user then blows out the heated vapors producing a "cloud" of undetermined substances that is virtually indistinguishable from traditional cigarettes, cigars and pipes.
- (d) Nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption.

- (e) The manufacturers and marketers of e-cigarettes purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities.
- (f) These safety and smoking cessation assertions made by e-cigarettes companies have been disproven by laboratory tests conducted by the U.S. Food and Drug Administration (FDA). Indeed, this testing has shown that e-cigarettes do contain carcinogens, including nitrosamines. Further, the FDA tests showed that e-cigarettes were found to contain toxic chemicals such as diethylene glycol. This compound is a common ingredient in antifreeze and, in 2007, was also surreptitiously substituted for glycerin by several Chinese manufacturing companies in the making of toothpaste which resulted in the deaths of hundreds of people worldwide. While some e-cigarette manufacturers dispute the FDA's findings as limited in scope and sample, these manufacturers have not submitted for independent peer review any of their findings that purportedly support their safety and smoking cessation claims.
- (g) Along with the FDA's publicly expressed concerns over the safety of these devices, the FDA is continuing its official investigation into the e-smoking devices and has refused to allow e-cigarettes, e-cigars and e-pipes to cross the border in the United States because they are considered new drugs and drug delivery devices that require FDA approval.
- (h) Concurrent with this lack of suitable information, e-cigarette manufacturers offer their nicotine cartridges in a variety of flavors, including cherry, chocolate, and vanilla. The FDA and public health advocates warn these flavorings are purposefully meant to appeal to and attract young people and are commonly referred to as "training wheels" for traditional cigarettes.
- (i) Studies show that adolescents can become addicted to nicotine after ingesting the equivalent of 20 traditional cigarettes, the amount traditionally available in a single pack. The appeal created by the flavored e-cigarette can lead young people into a lifetime of nicotine addiction.
- (j) The nicotine content in e-cigarettes is unknown and unspecified and presents a significant risk of rapid addiction or overdose.
- (k) When consumed in public places where traditional tobacco products are banned, the use of e-cigarettes causes fear, stress and confusion among patrons and workers alike. E-cigarettes also seriously compromise the State's current public health laws governing indoor smoking bans.
- (l) Other governments and public health organizations have joined the FDA in speaking out about the potential dangers posed by e-cigarettes. These entities are also calling on e-cigarette manufacturers to discontinue their safety claims until these products have been independently tested. These groups include the World

Health Organization and the Canadian government's FDA equivalent, the Health Products and Food Branch Inspectorate.

- (m) Every year tobacco products siphon off more than \$268 billion in directly related healthcare and lost worker productivity costs and lead to the deaths of almost one-half million Americans. The Board is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products.
- (n) Protecting Nassau County residents against an untested nicotine product like e-cigarettes represents sound public health and fiscal policy. Therefore, the purpose of this ordinance is to ban the sale of e-cigarettes and like products in Nassau County to persons under the age of 18, to prohibit the use of e-cigarettes and like products in public places where traditional forms of smoking are already disallowed, and to prohibit self-service merchandising in the retail sale of e-cigarettes and like products in order to minimize the physical accessibility of e-cigarettes and like products to minors.

SECTION 2. TITLE.

This ordinance shall be known as the "E-Cigarette Sales and Use" Ordinance.

SECTION 3. DEFINITIONS.

For the purpose of this section, the following words and terms shall have the meanings given herein:

County means Nassau County, Florida.

E-cigarette means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provide a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user that he or she inhales in simulation of smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Liquid Nicotine means any liquid product composed either in whole or part of pure nicotine and propylene glycol and manufactured for use with e-cigarettes.

Open Display Unit, in the context of the retail sale of e-cigarettes and liquid nicotine, means any device, furniture or furnishing within or upon which e-cigarettes or liquid nicotine are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table, desk, kiosk, booth, stand and other surface.

Person means any natural person or artificial entity capable of suing and being sued in the State of Florida.

Self-service Merchandising, in the context of the retail sale of e-cigarettes and liquid nicotine, means the open display of e-cigarettes and liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention or assistance of the retailer or the retailer's owner, employee or agent. Such open display includes the use of an Open Display Unit.

Smoking means smoking as defined in Section 386.203, Florida Statutes, and any successor thereto.

Use of e-cigarette means the heating or ignition of an e-cigarette which creates a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user that he or she can inhale in simulation of smoking.

SECTION 4. SALE OF E-CIGARETTES TO MINORS PROHIBITED.

It is prohibited for any person to sell or offer for sale e-cigarettes or liquid nicotine within the County to a person under eighteen years of age.

SECTION 5. USE OF AN E-CIGARETTE WHERE SMOKING PROHIBITED.

The use of an e-cigarette is prohibited at all locations within the County at which smoking is prohibited under Chapter 386, Florida Statutes.

SECTION 6. SELF-SERVICE MERCHANDISING PROHIBITED.

- (a) No person engaged in the retail sale of e-cigarettes or liquid nicotine shall sell, permit to be sold, offer for sale, or display for sale e-cigarettes or liquid nicotine by means of self-service merchandising.
- (b) No person engaged in the retail sale of e-cigarettes or liquid nicotine shall place e-cigarettes or liquid nicotine in an open display unit unless the same is located in an area that is inaccessible to customers.

SECTION 7. ENFORCEMENT; PENALTIES.

A person committing an act prohibited under this section shall be guilty of an offense that, pursuant to Section 125.69, Florida Statutes, and any successor thereto, shall be prosecuted in the same manner as misdemeanors are prosecuted, and upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail, not to exceed sixty (60) days, or by both such fine and imprisonment.

SECTION 8. CONFLICT AND SEVERABILITY.

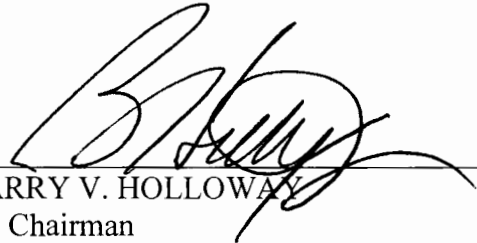
If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 9. EFFECTIVE DATE.

This ordinance shall become effective as provided under Florida general law.


DULY ADOPTED this 10th day of February, 2014.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA



BARRY V. HOLLOWAY
Its: Chairman

ATTEST AS TO CHAIRMAN'S
SIGNATURE:



JOHN A. CRAWFORD
Its: Ex-Officio Clerk

MES
02.11.14

Approved as to form by the
Nassau County Attorney:



DAVID A. HALLMAN