

ORDINANCE 2019-_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO THE REGULATION OF TOBACCO RETAIL SALES AND SMOKING; AMENDING THE PIMA COUNTY CODE BY AMENDING CHAPTERS 8.04 AND 8.50 AND ADDING A NEW CHAPTER 8.52

The Board of Supervisors of Pima County, Arizona finds that:

1. The Board of Supervisors of Pima County, Arizona, has authority under A.R.S. §§ 11-251(17) and 36-136(J) 36-186 et seq to adopt provisions necessary to preserve the health of the county and provide for the expenses thereof, and under A.R.S. § 11-251.05(A)(2) to prescribe penalties for violation of an ordinance.
2. It is in the public interest to protect youth and young adults from the health risks associated with tobacco use by encouraging responsible retailing of all tobacco products, increasing the minimum legal sales age to 21, and ensuring provisions for assurance, compliance and ongoing tobacco prevention education for the community.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

SECTION 1. Pima County Code Section 8.04.110 is amended by adding "Tobacco retail establishments" to the list of establishments requiring an operating permit, as follows:

8.04.110 - Operating permit required.

...

G. An operating permit is required for the following:

...

9. Tobacco retail establishments.

SECTION 2. The Pima County Code is amended by adding a new Chapter 8.52 as follows:

Chapter 8.52
TOBACCO RETAIL ESTABLISHMENTS

8.52.010 Definitions

- A. "Electronic smoking device" means a device that can be used to deliver aerosolized or vaporized nicotine to a person who inhales from the device, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah, and any component, part, or accessory of such a device, whether or not sold separately.
- B. "Operating permit" means a permit required for operating a tobacco retail establishment under section 8.04.110(G)(9) of this code.
- C. "Tobacco product" means:
 - 1. any product made or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including cigarettes, cigars, pipe tobacco, chewing tobacco, shisha, snuff, snus, and liquid nicotine solution; and
 - 2. any component, accessory, instrument, or paraphernalia that is used in the consumption of a tobacco product or that is solely designed for the smoking or ingesting of tobacco or shisha, including a hookah, water pipe, filter, rolling papers, pipe, or electronic smoking device; except that
 - 3. the term "tobacco product" does not include drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.
- D. "Tobacco retailer" means an individual engaged in selling, furnishing, giving, or providing tobacco products directly to consumers either on their own behalf or on behalf of a dealer, distributor, supervisor or employer.
- E. "Tobacco retail establishment" means an entity that sells tobacco products directly to consumers.

8.52.020 Tobacco retailing – Generally

- A. No person may sell, furnish, give, or provide tobacco products directly to consumers except on the premises of a tobacco retail establishment with a valid operating permit.

- B. It is the responsibility of the owner or operator of each tobacco retail establishment to be informed of all laws applicable to tobacco retailing, including those laws affecting the issuance of an operating permit, and to provide appropriate training to any persons who interact with customers on its premises. The issuance of an operating permit is not a determination by the county or the department that the tobacco retail establishment has complied with any laws applicable to tobacco retailing.
- C. During any period that it lacks a valid operating permit, a tobacco retail establishment must:
1. Not sell, furnish, give, or provide any tobacco product to consumers.
 2. Remove all tobacco products from the relevant tobacco retail establishment's retail area.
 3. Remove the operating permit from public view.
 4. Display signage, provided by the department, in a conspicuous manner visible to the general public and within a 5 foot radius of any tobacco product point of sale area, indicating that the tobacco retailer does not possess a current permit to sell tobacco products. If multiple tobacco product point of sale areas exist in a single tobacco retail establishment, such signage must be displayed in each area.
 5. Remove all tobacco advertising that is not permanently affixed to the tobacco retail establishment's structure.
- D. It is a violation of this chapter for any tobacco retail establishment or for any tobacco retailer on its premises to violate any local or state law applicable to tobacco products or tobacco retailing.

8.52.030 Accessibility of tobacco products

- A. All tobacco products at any tobacco retail establishment to which persons under twenty one years old are permitted entry must be maintained:
1. Behind a counter in an area accessible only to employees of the tobacco retail establishment; or
 2. In a locked container accessible only to employees of the tobacco retail establishment; or
 3. Otherwise out of physical reach of any consumer and only accessible to employees of the tobacco retail establishment.

8.52.040 Minimum legal sales age for tobacco products

- A. No tobacco retailer may sell, furnish, give, or provide any tobacco product to any person under the age of 21, unless the person was 18 years old before January 1, 2020.
- B. Before selling, furnishing, giving, or providing a tobacco product to any person who appears to be under the age of 30, a tobacco retailer must examine an approved form of identification and verify that the person is at least 21 years of age or is

exempted under subsection (A).

- C. For the purposes of this section, the following forms of identification, if valid, unexpired, and including a picture of the person and the person's date of birth, are approved for age verification:
1. A driver license or nonoperating identification card issued by any state or territory of the United States or Canada;
 2. A United States Armed Forces identification card;
 3. A passport;
 4. A resident alien card.

8.52.050 Signage

- A. A tobacco retail establishment must post a clearly visible sign stating "No tobacco products or electronic smoking devices will be sold to persons under the age of 21" at every location where such products are available for purchase.
- B. The department will provide signs at the time of the operating permit approval or renewal, or upon request.
- C. Signs must be no smaller than 4 inches by 6 inches, and include the appropriate department website and phone number.
- D. Failure to comply with this section is a violation under section 8.52.060 only after the tobacco retail establishment has failed to correct any deficiency at the department's request.

8.52.060 Violation—Penalty.

- A. A person violating any provision in this chapter is subject to the penalties prescribed in Chapter 8.04 of this code.
- B. If any court of competent jurisdiction determines, or the department finds, that a tobacco retail establishment with a valid operating permit, or any of its agents or employees, has violated a local, state, or federal law regulating tobacco sales or does not comply with this chapter, the following penalties also apply:
1. For a first violation at a tobacco retail establishment, the department will issue the tobacco retailer with a written notice of violation requiring the retailer, and the owner, operator, or manager of that retail establishment, as determined by the health officer, to complete a mandatory education course.
 2. For a second violation at a tobacco retail establishment within 36 months of a first violation, the department will assess a fine of \$600 and suspend the operating permit for that establishment for 30 days.
 3. For a third violation at a tobacco retail establishment within 36 months of a first violation, the department will assess a fine of \$1000 and suspend the operating

- permit for that establishment for six months.
4. Any such tobacco retail establishment found in violation will also be assessed a fine for a reinspection that the department will conduct within three months of the violation.
- C. If any court of competent jurisdiction determines, or the department finds, that a tobacco retail establishment operating without a valid operating permit or any of its agents or employees, has violated a local or state law regulating tobacco sales or does not comply with this chapter, the following penalties also apply:
1. For the first violation within a 36-month period, the department will assess a fine of \$1000.
 2. For a second violation within a 36-month period, the department will assess a fine of \$1500 and the tobacco retail establishment will be ineligible to apply for an operating permit for six months.
 3. For each additional violation within a 36-month period, the department will assess a fine of \$2500.
 4. Any tobacco retail establishment operating without a valid operating permit must also comply with section 8.52.020(D) of this chapter.
- D. Multiple violations of this chapter, or of any other local or state law applicable to tobacco products or tobacco retailing, identified during a single inspection are counted as a single violation with respect to penalties imposed under this chapter.
- E. All applicable fees must be paid before an operating permit is issued or renewed.
- F. A tobacco retail establishment may appeal the penalties in this section by submitting a request for appeal under section 8.04.130 of this code.

8.52.070 Applicability of Other Laws

The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Nothing in this chapter prohibits the prosecution of criminal offenses under any applicable law. The department may enforce this chapter in a civil action, including administrative or judicial proceedings, civil code enforcement proceedings, and suits for injunctive relief.

SECTION 3. Pima County Code Section 8.50.010 is amended by amending the definition of "Smoking," as follows:

8.50.010 - Definitions.

In this chapter:

...

6. "Smoking" or "smoke" means ~~the act of burning any tobacco product, weed, filler or~~

plant of any kind in a cigarette, cigar, pipe or in any other device carrying or inhaling from any lighted tobacco product or activated electronic smoking device.

SECTION 4. Pima County Code Section 8.50.030 is amended as follows:

8.50.030 - Exemptions.

A. The following places or circumstances are exempt from the provisions of this chapter:

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5. Retail tobacco stores, including stores that primarily sell electronic smoking devices.

SECTION 5. This Ordinance is effective 30 days after the date of adoption, with the exception of sections 8.52.020 and 8.52.060 which take effect January 1, 2020.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this
_____ day of _____, 2019.

Chairman, Board of Supervisors

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:



Deputy County Attorney