

ORDINANCE NUMBER 14-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AMENDING CHAPTERS 9.24 AND 9.26 OF THE TOWN OF MAMMOTH LAKES MUNICIPAL CODE RELATED TO TOBACCO REGULATIONS

WHEREAS, Chapters 9.24 and 9.26 of the Municipal Code regulate the use of tobacco in certain locations; and

WHEREAS, the Municipal Code's existing provisions do not address the use of electronic cigarettes or "e-cigarettes," battery-powered devices allowing a user to inhale a vapor containing nicotine and/or other substances; and

WHEREAS, existing California law (Health & Safety Code Section 119405) acknowledges the risks of e-cigarettes by prohibiting the sale or furnishing of e-cigarettes to minors; and

WHEREAS, all legal prerequisites for the adoption of this ordinance have occurred.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The above recitals are all true and correct.

Section 2. Amendments to Chapter 9.24. The Town Council hereby amends Chapter 9.24 of the Mammoth Lakes Municipal Code to read as set forth in Exhibit "A."

Section 3. Amendments to Chapter 9.26. The Town Council hereby amends Section 9.26.010 of the Mammoth Lakes Municipal Code by amending the definitions of "significant tobacco retailer" and "smoking" to read as follows:

"Significant tobacco retailer" means any tobacco retailer that derives seventy-five percent or more of gross sales receipts from the sale or exchange of tobacco products, smoking paraphernalia, and/or e-cigarettes.

"Smoking" means possessing a lighted pipe, lighted cigar, lighted cigarette, or e-cigarette of any kind, or the lighting of a pipe, cigar, cigarette, or e-cigarette of any kind, including but not limited to those containing tobacco or any other weed or plant.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or any part thereof, is held invalid or unconstitutional, then such decision shall not affect the validity of the remaining sections or portions of this ordinance or part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the fact that any one or more sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

Section 5. Effective Date. The Mayor shall sign and the Town Clerk shall certify passage and adoption of this ordinance, and shall cause the same to be published and posted pursuant to the provisions of law in this regard, and this ordinance shall take effect thirty days after its final passage.

ADOPTED, SIGNED and APPROVED this 16th day of April, 2014.



RICK WOOD, Mayor

ATTEST:


JAMIE GRAY, Town Clerk

EXHIBIT “A”

AMENDMENTS TO MUNICIPAL CODE CHAPTER 9.24

Chapter 9.24 TOBACCO REGULATIONS

Sections:

9.24.010 Findings and Purpose.

9.24.020 Definitions.

9.24.030 Prohibitions—Tobacco sales.

9.24.040 Prohibitions—Parks.

9.24.050 Other applicable laws.

9.24.060 Violation, enforcement and penalties.

9.24.070 Non-retaliation.

9.24.010 Findings and Purpose.

The town council finds that substantial scientific evidence exists that the use of tobacco products and electronic cigarettes causes cancer, heart disease, and various other medical diseases. The Surgeon General of the United States has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S. Accordingly, the town council finds and declares it in the public interest to: 1) prohibit self-service sales and self-service displays, racks and shelves of smoking products; 2) require the posting of warning signs at the point of purchase stating the legal age of sale and that identification is required to purchase smoking products; 3) prohibit vending machine sales of smoking products; 4) require all cigarettes, other tobacco or smoking products to be sold in their original packaging with all required health warnings; and 5) prohibit the use and/or discarding of lighted or unlighted smoking products in town parks, including playgrounds, skate parks, or other structures built or installed in the town for public use by children.

9.24.020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

"Council" or "town council" means the town council of Mammoth Lakes.

"E-cigarette" means a device capable of providing an inhalable dose of nicotine by delivering an aerosol or vaporized solution.

"Employee" means any person who is employed by any employer in consideration for direct or indirect wages or profit and any person who volunteers his or her services for a nonprofit entity.

"Minor, child or children" means any individual or individuals who is/are less than eighteen years old.

"Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

"Park" shall mean park and recreation facilities operated by the Town of Mammoth Lakes, including Shady Rest Park, Mammoth Creek Park, Community Center Park and Whitmore Park.

"Person" means any natural person, individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

"Self-service merchandising, sales or displays" means open display of smoking products and point-of-sale smoking-related promotional products that the public has access to without the intervention of an employee.

"Smoke or smoking" means the carrying or holding of a lighted pipe, cigar, cigarette, or e-cigarette of any kind or the lighting, emitting or exhaling the smoke of a pipe, cigar, cigarette, or e-cigarette of any kind.

"Smoking paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines and any other item designed for the smoking or ingestion of smoking products.

"Smoking product" means any substance containing tobacco leaf or meant to be used in conjunction with an e-cigarette, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco or any other preparation of tobacco, including Indian cigarettes called "bidis", and cartridges and liquid solutions for e-cigarettes, which may be utilized for smoking, chewing, inhaling or other manner of ingestion.

"Smoking retailer" means any person or governmental entity that operates a store, stand, booth, concession or other place at which sales of smoking products are made to purchasers for consumption or use.

"Smoking vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency or other things representative of value, which dispenses or releases a smoking product.

"Town" means the town of Mammoth Lakes.

"Vendor-assisted" means only a store employee has access to the smoking product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

9.24.030 Prohibitions—Smoking product sales.

A. No person or business shall engage in the sale of a smoking product without first posting a plainly visible sign at the point of purchase of smoking products which states "THE SALE OF SMOKING PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID IS REQUIRED TO PURCHASE SMOKING PRODUCTS." The letters of the sign shall be at least one-quarter-inch high.

B. No person, business, smoking retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any smoking product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some reasonable basis for determining the buyer's age.

C. No person, business, smoking retailer or other establishment shall sell or offer for sale cigarettes or other tobacco or smoking products not in the original packaging provided by the manufacturer and with all required health warnings.

D. It shall be unlawful for any person, business or smoking retailer to sell, permit to be sold, offer for sale or display for sale any smoking product by means of self-service merchandising or by means other than vendor-assisted sales.

E. No person, business or smoking retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any smoking vending machine for the purposes of selling or distributing any smoking product.

9.24.040 Prohibitions—Parks.

The use of smoking products of any kind, including but not limited to, chewing tobacco, cigars and cigarettes, e-cigarettes, and the discarding of lighted or unlighted cigarettes cigars, or

discarding of e-cigarettes is prohibited in town parks which contain children's parks (playgrounds, pools, skate parks) or other structures built or installed for public use by children.

9.24.050 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking vending machines and distribution of smoking product samples where they are otherwise restricted by other applicable laws. Nor shall this article be construed to cause for breach of any pre-existing private contract, or cause for interference with regulations imposed by state or federal law or related to interstate commerce.

9.24.060 Violation, enforcement and penalties.

- A. Any person, business or tobacco, retailer who violates any provision of this chapter shall, upon conviction thereof, be punished as specified in Chapter 1.12 of this code.
- B. The owner, operator or manager of any public place or place of employment within the purview of this chapter shall comply herewith. Such owner, operator or manager shall post or cause to be posted all signage required by this chapter.
- C. It shall be the responsibility of employers to disseminate information concerning the provisions of this chapter to employees.

9.24.070 Non-retaliation.

- A. No person or employee shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant agrees to abide by the provisions of this chapter.
- B. No person shall intimidate or threaten any reprisal or effect any reprisal for the purpose of retaliating against another person because such other person seeks to attain compliance with provisions of this chapter.


TOWN OF MAMMOTH LAKES

Notice is hereby given that on March 19, 2014 the Town Council introduced an Ordinance entitled:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES,
STATE OF CALIFORNIA, AMENDING CHAPTERS 9.24 AND 9.26 OF THE TOWN OF
MAMMOTH LAKES MUNICIPAL CODE RELATED TO
TOBACCO REGULATIONS.

A copy of the complete text of the Ordinance is posted and may be read at the Town Offices, Minaret Mall, Old Mammoth Road, Mammoth Lakes, and/or a copy may be obtained from the office of the Town Clerk at a nominal charge.

Dated: March 20, 2014



JAMIE GRAY, Town Clerk
Town of Mammoth Lakes

TOWN OF MAMMOTH LAKES

Notice is hereby given that on April 16, 2014 the Town Council adopted an Ordinance entitled:

ORDINANCE NO. 14-04

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES,
STATE OF CALIFORNIA, AMENDING CHAPTERS 9.24 AND 9.26 OF THE MAMMOTH
LAKES MUNICIPAL CODE RELATED TO TOBACCO REGULATIONS.

by the following vote:

AYES: Councilmembers Eastman, Lehman, Raimondo, Mayor Pro Tem Bacon, and
Mayor Wood

NOES: None


ABSENT: None

ABSTAIN: None

DISQUALIFICATION: None

A certified copy of the complete text of the Ordinance is posted and may be read at the Town
Offices, Minaret Mall, Old Mammoth Road, Mammoth Lakes, and /or a copy may be obtained
from the office of the Town Clerk at a nominal charge.

Dated: April 17, 2014



JAMIE GRAY, Town Clerk
Town of Mammoth Lakes

STATE OF CALIFORNIA)
COUNTY OF MONO)
TOWN OF MAMMOTH LAKES) ss.

I, JAMIE GRAY, Town Clerk of the Town of Mammoth Lakes, DO HEREBY CERTIFY under penalty of perjury that the foregoing is a true and correct copy of Ordinance No. 14-04, which was introduced at a meeting of the Town Council of the Town of Mammoth Lakes, California, held on March 19, 2014 by the following vote:

AYES: Councilmember Eastman, Mayor Pro Tem Bacon, and Mayor Wood

NOES: Councilmembers Lehman and Raimondo

ABSENT: None

DISQUALIFICATION: None


and adopted at a meeting held on April 16, 2014 by the following vote:

AYES: Councilmembers Eastman, Lehman, Raimondo, Mayor Pro Tem Bacon, and Mayor Wood

NOES: None

ABSENT: None

DISQUALIFICATION: None


JAMIE GRAY, Town Clerk

STATE OF CALIFORNIA)
COUNTY OF MONO)
TOWN OF MAMMOTH LAKES) ss.

AFFIDAVIT
OF PUBLISHING
AND POSTING

JAMIE GRAY, being first duly sworn, deposes and says: That she is the duly appointed Town Clerk of the Town of Mammoth Lakes; that in compliance with State laws of the State of California, Ordinance No. 14-04 being:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES,
STATE OF CALIFORNIA, AMENDING CHAPTERS 9.24 AND 9.26 OF THE MAMMOTH LAKES
MUNICIPAL CODE RELATED TO TOBACCO REGULATIONS.

was published in summary in The Sheet newspaper on March 28, and April 25, 2014, and was posted at the Town Administrative Offices.


JAMIE GRAY, Town Clerk