

ORDINANCE NO. 2014-2

AN ORDINANCE OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AMENDING SECTION 010-030, "TERMS DEFINED," TO PROVIDE FOR A DEFINITION OF "NICOTINE VAPORIZER," AND "LIQUID NICOTINE," AND CREATING SECTION 015-140, "SALE OF NICOTINE VAPORIZER OR LIQUID VAPORIZERS TO MINORS PROHIBITED;" PROVIDING FOR INCLUSION IN THE TOWN'S CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Unregulated high-tech nicotine vaporizers, sometimes referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers, including minors. These devices have 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. After inhaling, the user then blows out the heated vapors producing a "cloud" of undetermined substances; and

WHEREAS, Nicotine is a known neurotoxin that is also one of the most highly addictive substances available for public consumption; and

WHEREAS, The manufacturers and marketers of nicotine vaporizers purposefully and intentionally advertise their products as safe nicotine delivery devices and smoking cessation modalities; and

WHEREAS, These safety and smoking cessation assertions made by nicotine vaporizer companies have been questioned or disproven by laboratory tests conducted by the U.S. Food and Drug Administration ("FDA"); and

WHEREAS, The FDA conducted laboratory analysis of nicotine vaporizer cartridges and found the following:

- Diethylene glycol, an ingredient used in antifreeze and toxic to humans, was found in one cartridge;
- Certain tobacco-specific nitrosamines, which are human carcinogens, were detected in half of the samples tested;
- Tobacco-specific impurities suspected of being harmful to humans were detected in a majority of the samples tested;
- All but one tested cartridge labeled as containing no nicotine did in fact contain low levels of nicotine;

- Three identically labeled cartridges emitted markedly different amounts of nicotine with each puff. Nicotine levels per 100 mL puff ranged dramatically from 26.38 to 43.2 mcg nicotine;
- One high-nicotine cartridge delivered twice as much nicotine to users as was delivered by a nicotine inhalation product approved by FDA for use as a smoking cessation aid which was used as a control; and

WHEREAS, A study published in the American Journal of Public Health found similar results to the FDA testing and concluded that the nicotine vaporizers tested so far have demonstrated “poor quality control; toxic contaminants, albeit at low levels; misrepresentation of the nicotine delivered; and insufficient evidence of the overall public health benefit;” and

WHEREAS, Along with the FDA’s publicly expressed concerns over the safety of these devices, the FDA is continuing its official investigation into the nicotine vaporizer devices and has refused to allow nicotine vaporizers to cross the border in the United States because they are considered new drugs and drug delivery devices that require FDA approval; and

WHEREAS, According to the Centers for Disease Control and Prevention (“CDC”),

Although some e-cigarettes have been marketed as smoking cessation aids, there is no conclusive scientific evidence that e-cigarettes promote successful long-term quitting. However, there are proven cessation strategies and treatments, including counseling and FDA-approved cessation medications.; and

WHEREAS, Clinical studies about the safety and efficacy of nicotine vaporizers for their intended use have not been submitted to the FDA, and for this reason, consumers currently have no way of knowing:

- Whether nicotine vaporizers are safe for their intended use;
- What types or concentrations of potentially harmful chemicals the products contain;
- What dose of nicotine the products deliver;
- How its secondhand smoke affects non-users; and

WHEREAS, The World Medical Association has determined that nicotine vaporizers “are not comparable to scientifically-proven methods of smoking

cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established”; and

WHEREAS, Concurrent with this lack of suitable information, nicotine vaporizer 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. In fact, this strategy has been embraced by tobacco companies in the past and represents a repeat of prior reprehensible strategies meant to hook minors into the addiction cycle of nicotine and smoking; and

WHEREAS, 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 nicotine vaporizers can lead young people into a lifetime of nicotine addiction; and

WHEREAS, The FDA has also raised concerns that nicotine vaporizers are marketed and sold to young people and are readily accessible online and via mall kiosks; and

WHEREAS, According to the Centers for Disease Control and Prevention:

“Electronic cigarettes, or e-cigarettes, are battery-powered devices that provide doses of nicotine and other additives to the user in an aerosol. Depending on the brand, e-cigarette cartridges typically contain nicotine, a component to produce the aerosol (e.g., propylene glycol or glycerol), and flavorings (e.g., fruit, mint, or chocolate). Potentially harmful constituents also have been documented in some e-cigarette cartridges, including irritants, genotoxins, and animal carcinogens. E-cigarettes that are not marketed for therapeutic purposes are currently unregulated by the Food and Drug Administration, and in most states there are no restrictions on the sale of e-cigarettes to minors. Use of e-cigarettes has increased among U.S. adult current and former smokers in recent years; however, the extent of use among youths is uncertain.”; and

WHEREAS, In the September 6, 2013 Morbidity and Mortality Weekly Report of the Centers for Disease Control and Prevention, the CDC announced the alarming results of 2011-2012 National Youth Tobacco Survey:

Data from the 2011 and 2012 National Youth Tobacco Survey (NYTS), a school-based, pencil-and-paper questionnaire given to U.S. middle school (grades 6-8) and high school (grades 9-12) students, were used to estimate the prevalence of ever and current (≥ 1 day in the past 30 days) use of e-cigarettes, ever and current (≥ 1 day in the past 30 days) use of conventional cigarettes, and use of both. NYTS consists of a cross-sectional, nationally representative sample of students in grades 6 – 12 from all 50 states and the District of Columbia.

During 2011-2012, among all students in grades 6-12, ever e-cigarette use increased from 3.3% to 6.8% ($p < 0.05$) (Figure); current e-cigarette use increased from 1.1% to 2.1% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 0.8% to 1.6% ($p < 0.05$). In 2012, among ever e-cigarette users, 9.3% reported never smoking conventional cigarettes; among current e-cigarette users, 76.3% reported current conventional cigarette smoking.

Among middle school students, ever e-cigarette use increased from 1.4% to 2.7% during 2011-2012 ($p < 0.05$) (Figure); current e-cigarette use increased from 0.6% to 1.1% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 0.3% to 0.7% ($p < 0.05$). In 2012, among middle school ever e-cigarette users, 20.3% reported never smoking conventional cigarettes; among middle school current e-cigarette users, 61.1% reported current conventional cigarette smoking.

Among high school students, ever e-cigarette use increased from 4.7% to 10.0% during 2011-2012 ($p < 0.05$) (Figure); current e-cigarette use increased from 1.5% to 2.8% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 1.2% to 2.2% ($p < 0.05$). In 2012, among high school ever e-cigarette users, 7.2% reported never smoking conventional cigarettes; among high school

current e-cigarette users, 80.5% reported current conventional cigarette smoking.

E-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011-2012, resulting in an estimated 1.78 million students having ever used e-cigarettes as of 2012. Moreover, in 2012, an estimated 160,000 students who reported ever using e-cigarettes had never used conventional cigarettes. This is a serious concern because the overall impact of e-cigarette use on public health remains uncertain. In youths, concerns include the potential negative impact of nicotine on adolescent brain development, as well as the risk for nicotine addiction and initiation of the use of conventional cigarettes or other tobacco products; and

WHEREAS, The federal law restricting the sale of tobacco products to minors currently applies only to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, not nicotine vaporizers; and

WHEREAS, Because these devices are presently unregulated, the nicotine content in nicotine vaporizers is unknown, unspecified, unpredictable, varied and presents a significant risk of rapid addiction or overdose; and

WHEREAS, According to the Director of the CDC: "The increased use of e-cigarettes by teens is deeply troubling," said CDC Director Tom Frieden, M.D., M.P.H. "Nicotine is a highly addictive drug. Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."; and

WHEREAS, According to the Director of the CDC Office on Smoking and Health, Tim McAfee, M.D., M.P.H., "About 90 percent of all smokers begin smoking as teenagers." Further, "We must keep our youth from experimenting or using any tobacco product. These dramatic increases suggest that developing strategies to prevent marketing, sales, and use of e-cigarettes among youth is critical."; and

WHEREAS, Nicotine vaporizers often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

WHEREAS, Some manufacturers, concerned about the backlash associated with the image of smoking and use in young adults, have begun to market devices that look more like iPods or MP3 music devices; and

WHEREAS, A study published in the Journal of Environmental and Public Health suggests that nicotine vaporizers “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant denormalization of tobacco use previously;” and

WHEREAS, The use of nicotine vaporizers in smokefree locations threatens to undermine compliance with smoking regulations, reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment and generate fear, stress and confusion given the uncertainties surrounding the health effects for those in the vicinity of the devices; and

WHEREAS, Other governments and public health organizations have joined the FDA in speaking out about the actual dangers posed by nicotine vaporizers. These entities are also calling on 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; and

WHEREAS, 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; and

WHEREAS, The Town Council is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products; and

WHEREAS, Currently the Town Code does not provide for a regulation regarding the sale of nicotine vaporizers and liquid nicotine; and

WHEREAS, The Town Council desires to amend the Code to create a prohibition regarding the sale of nicotine vaporizers and liquid nicotine to minors; and

WHEREAS, The Town Council finds that this legislation is in the best interest of the health, safety, and welfare residents of the Town of Southwest Ranches.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. The foregoing "WHEREAS" clauses are ratified and incorporated as the legislative intent and factual findings underlying this Ordinance.

Section 2. Amendment to Section 010-030 "Terms defined".

Section 010-030, "Terms defined" of the Town's Unified Land Development Code, is amended to read as follows:

Sec. 01-030 – Terms defined

* * *

LIQUID NICOTINE. Any liquid product composed either in whole or in part of pure nicotine which can be used with Nicotine Vaporizers.

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NICOTINE VAPORIZER. Any electronic or battery-operated device that can be used to deliver an inhaled dose of nicotine or other substances and includes those composed of a mouthpiece, heating element, and battery or electronic circuits that provide a vapor of Liquid Nicotine and/or other substances to the user. This term shall include such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, an e-cigarette, an e-cigar, e-cigarillo, an e-pipe an e-hookah or under any other product name.

Section 3. Creation of Section 015-140.

Section 015-140 of the Town's Unified Land Development Code is hereby created to read as follows:

Sec. 015 – 140. Sale of nicotine vaporizer or liquid vaporizers to minors prohibited.

(A) **Sale Prohibited.** No Person shall sell, give or furnish a Nicotine Vaporizer or Liquid Nicotine to a Person under the age of 18 years old. The buyer or recipient's identification shall be examined to confirm that the buyer or recipient is at least 18 years of age.

- (B) **Self-service Vending Machines.** In order to minimize the physical accessibility to minors, no Person shall offer Nicotine Vaporizers or Liquid Nicotine in vending machines.

Section 4. Codification. It is the intention of the Town Council that the provisions of this Ordinance become and be made part of the Town's Unified Land Development Code, and that the Sections of this Ordinance and Code may be renumbered or relettered and the word "ordinance" may be changed to "section" or such other appropriate word or phrase to accomplish such intentions.

Section 5. Severability. Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

Section 6. Conflict. That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this ordinance are repealed to the extent of such conflict.

Section 7. Effective Date. This Ordinance shall become effective upon passage and adoption.

[Signatures on Following Page]

PASSED ON FIRST READING this 27th day of February, 2014 on a motion made by Vice Mayor Jablonski and seconded by Council Member McKay.

PASSED AND ADOPTED ON SECOND READING this 27 day of March, 2014 on a motion made by Vice Mayor Jablonski and seconded by Council Member Breitkreuz.

Nelson	<u>Y</u>	Ayes	<u>5</u>
Jablonski	<u>Y</u>	Nays	<u>0</u>
McKay	<u>Y</u>	Absent	<u>0</u>
Fisikelli	<u>Y</u>	Abstaining	<u>0</u>
Breitkreuz	<u>Y</u>		

Jeff Nelson, Mayor

ATTEST:

Russell Muñiz, MMC, Town Clerk

Approved as to Form and Correctness:

Keith M. Poliakoff, J.D., Town Attorney
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