

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

BILL NO. 2014-3

Electronic Smoking Devices – Santa Fe Smoke Free Ordinance

SPONSOR(S): Trujillo

SUMMARY:

The bill relates to Santa Fe Smoke Free Ordinance, Section 10-6 SFCC 1987 and proposes to amend:

- Subsection 10-6.2 to include findings related to electronic smoking devices; and
- Subsection 10-6.3 to include definitions for “electronic smoking device” and “tobacco product”

At the December 17, 2013 Public Safety Committee meeting, the Committee proposed amendments to the bill that would remove the following language:

1. “Electronic smoking device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.”
2. “Tobacco product does not include any product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose.”

PREPARED BY: Rebecca Seligman, Legislative Liaison Assistant

FISCAL IMPACT: No

DATE: December 17, 2013

ATTACHMENTS: Bill
FIR

**ACTION SHEET
ITEM FROM PUBLIC SAFETY COMMITTEE MEETING OF 12/17/13**

ISSUE: Proposed ordinance relating to Santa Fe Smoke Free ordinance relating to electronic smoking devices and amending subsection 10-6.3 to include definitions for "electronic smoking device" and "tobacco product"

PUBLIC SAFETY COMMITTEE ACTION: Recommend approval with amendments

SPECIAL CONDITIONS OR AMENDMENTS: strike language page 4, line 4 - 6, page 7, line 3 - 6.

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO	X		
VICE-CHAIPERSON HARRIS	X		
MEMBER MIKE MIER	X		
MEMBER NANCY OWEN-LEWIS	X		
MEMBER PETER MIZRAHI	X		
MEMBER MIKE BOWEN	ABSENT		
MEMBER CHRIS RIVERA	X		

DISK fc1/fcmissue

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2014-3
Electronic Smoking Devices – Santa Fe Smoke Free Ordinance

Mayor and Members of the City Council:

We propose the following amendment(s) to Bill No. 2014-3:

1. On page 4, lines 4 – 6, *delete* “‘Electronic smoking device’ does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.”

2. On page 7, lines 3 – 6, *delete* “‘Tobacco product’ does not include any product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold solely for the approved purpose.”

Respectfully submitted,

Public Safety Committee

ADOPTED: _____
NOT ADOPTED: _____
DATE: _____

Yolanda Y. Vigil, City Clerk

1 function, including asthmatics and those with obstructive airway disease; and health hazards induced
2 by breathing secondhand smoke include emphysema, bronchoconstriction and bronchospasm.

3 B. Nonsmokers who suffer ill effects from secondhand smoke may experience a drop in
4 productivity and an increase in sick leave.

5 C. The separation of people and tobacco smoke within the same air space may reduce
6 but does not eliminate exposure to environmental tobacco smoke.

7 D. The increasing popularity and use in public buildings of electronic smoking devices
8 has led the United States Food and Drug Administration ("FDA") to propose regulating electronic
9 smoking devices as tobacco products, a move supported by forty state attorneys general, including the
10 New Mexico attorney general. The FDA and healthcare providers question the safety of electronic
11 smoking devices to both users and those in close proximity to users, despite the claims of
12 harmlessness by manufacturers, similar to claims made by the tobacco industry in years past. The
13 governing body believes it should be proactive in protecting the health of all residents of Santa Fe.

14 E. The use of electronic smoking devices, with or without nicotine as an ingredient,
15 models smoking behavior to our youth in a way that suggests smoking any substance is acceptable,
16 regardless of potential or unknown health threats to the user and others.

17 [D]F. It is necessary to restrict smoking in areas not covered by the 1995 New Mexico State
18 Clean Indoor Air Act, which calls for no smoking in state, county and city-owned buildings except in
19 certain designated areas.

20 [E]G. Accordingly, the city council finds and declares that the purposes of this section are
21 (1) to protect the public health and welfare by prohibiting smoking in public places of employment;
22 (2) to guarantee the right of nonsmokers to breathe smoke-free air; and (3) to recognize that the need
23 to breathe smoke-free air shall have priority over the desire to smoke.

24 **Section 2. Subsection 10-6.3 SFCC 1987 (being Ord. #1997-47, §3, as amended) is**
25 **amended to read:**

1 **10-6.3 Definitions.**

2 As used in this section:

3 *Bar* means an establishment that is devoted to the serving of alcoholic beverages for
4 consumption by guests on the premises and in which the serving of food generates fifteen percent
5 (15%) or less of the total gross annual income of the bar in any calendar year. Bars include, but are
6 not limited to, taverns, nightclubs, cocktail lounges, and cabarets. "Bar" does not include the dining
7 areas of a restaurant, regardless of whether alcoholic beverages are served therein.

8 *Business* means any sole proprietorship, partnership, joint venture, corporation or other
9 business entity, either for-profit or not-for-profit, including retail establishments where goods or
10 services are sold; professional corporations or other entities where legal, medical, dental, engineering,
11 architectural, or other professional services are delivered; and private clubs.

12 *Cigar bar* means an establishment that:

13 A. Is a bar, as defined in this section, except that it serves only complementary snacks;

14 and

15 B. Is engaged in the business of selling cigars for consumption by patrons on the
16 premises and generates ten percent (10%) or more of its total annual gross revenue or at least ten
17 thousand dollars (\$10,000.) in annual sales from the sale of cigars, not including any sales from
18 vending machines. A cigar bar that fails to generate at least ten percent (10%) of its total annual sales
19 from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending
20 machines, shall not be defined as a cigar bar and shall not thereafter be known as such regardless of
21 sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the city's
22 satisfaction compliance with this definition.

23 *Cigarette vending machine* means any self-service device, which, upon insertion of money or
24 tokens, dispenses cigarettes without the necessity of replenishing the device between each vending
25 operation.

1 Electronic smoking device means any product containing or delivering nicotine or any
2 substance intended for human consumption that can be used by a person to simulate smoking through
3 inhalation of vapor or aerosol from the product. Electronic smoking device includes any component
4 part of such product whether or not sold separately. Electronic smoking device does not include any
5 product that has been approved by the United States Food and Drug Administration for sale as a
6 tobacco cessation product and is being marketed and sold solely for the approved purpose.

7 *Employee* means any person who is employed by any employer in the consideration for direct
8 or indirect monetary wages or profit, and any person who volunteers his or her services for a
9 nonprofit entity.

10 *Employer* means any person, partnership, corporation, including a municipal corporation or
11 nonprofit entity, who employs the services of one (1) or more individual persons.

12 *Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by
13 walls, partitions or windows (exclusive of doors or passage ways), whether partially or fully
14 extending from the floor towards to ceiling, and whether the walls or partitions are solid or not and
15 compose a room, vestibule or cubicle.

16 *Group home* means a dwelling unit where full-time shelter, habilitation, care and supervision
17 is given on a non-institutional basis to neglected, abandoned, physically handicapped, retarded,
18 mentally disabled and substance or alcohol dependent children or adults on a private, nonprofit basis
19 licensed by the appropriate governing body.

20 *Health care facility* means an office or institution providing care or treatment of diseases,
21 whether physical, mental, or emotional, or other medical, physiological, or psychological conditions,
22 including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight
23 control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of
24 surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these
25 professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate

1 rooms, and wards within health care facilities.

2 *Health spa or health club* means any place where therapeutic, rehabilitative or health
3 maintenance services or equipment, with or without swimming facilities, saunas, steam rooms, and
4 similar facilities, are available for use by patrons whether membership is required or not.

5 *Hotel or motel* means any building, or portion thereof, containing six (6) or more guest rooms
6 designed, used or intended to be used by six (6) or more guests.

7 *Nursing care facilities* means any establishment devoted and maintained for the long term or
8 hospice care of the aged, infirm, chronic or terminally ill.

9 *Place of employment* means any enclosed area under the control of a public or private
10 employer which employees normally frequent during the course of employment. The area shall
11 include but not be limited to work areas, lounges and restrooms, conference and classrooms,
12 employee or public cafeterias, snack stands and coffee shops, and hallways. A private residence is not
13 a "place of employment" unless it is used as a child care, adult day care or health care facility.

14 *Private club* means an organization, whether incorporated or not, which is the owner, lessee,
15 or occupant of a building or portion thereof used exclusively for club purposes at all times, which is
16 operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose,
17 but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The
18 affairs and management of the organization are conducted by a board of directors, executive
19 committee, or similar body chosen by the members at an annual meeting. The organization has
20 established bylaws and/or a constitution to govern its activities. The organization has been granted an
21 exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

22 *Public places or public spaces* means any enclosed area to which the public is invited or in
23 which the public is permitted, including but not limited to banks and credit unions, bars, taverns and
24 pubs, educational facilities, health facilities, commercial laundries, self-serve laundries, and dry
25 cleaning establishments, public transportation facilities including airports, bus stations, buses, taxi

1 cabs and paratransit vehicles, reception areas, restaurants, retail food production and marketing
2 establishments, retail service establishments, retail stores, theaters, museums and galleries, hospital,
3 medical clinic and laboratory waiting rooms. A private residence is not a "public place" unless it is
4 used as a child care, adult day care or health care facility.

5 *Restaurant or eating establishment* means any coffee shop, cafeteria, sandwich stand,
6 luncheonette, short-order cafe, soda fountain, private or public school cafeteria and any other indoor
7 eating establishment which gives or offers for sale food to the public, guests or employees, as well as
8 kitchens in which food is prepared on the premises for service elsewhere, including catering facilities.
9 The term "restaurant" shall include a bar area within the restaurant as well as all outdoor eating areas.

10 *Retail store* means a store which carries, as its principal business, the selling of tangible
11 commodities in small quantities directly to consumers.

12 *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products
13 and accessories in which the sale of other product is merely incidental.

14 *Service line* means any indoor line at which one (1) or more people are waiting for or
15 receiving service of any kind, whether or not such service involves the exchange of money.

16 *Smoke or smoking* means inhaling, exhaling, burning, holding or carrying any lighted or
17 activated cigarette, cigar, cigarillo, pipe, or other lighted or activated tobacco product in any manner
18 or in any form. "Smoke" also means the gaseous products, vapor or particles created by the use of a
19 lighted cigarette, cigar, cigarillo, pipe or any other kind of smoking equipment.

20 *Sports arena* means enclosed sports pavilions, stadiums, coliseums, gymnasiums, health spas,
21 boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys or similar places where
22 members of the general public assemble either to engage in physical exercise, participate in athletic
23 competition or witness sports events.

24 *Tobacco product* means any product that is made from or derived from tobacco or contains
25 nicotine or any substance intended to be inhaled or ingested in a way that simulates smoking, and is

1 intended for human consumption or is likely to be consumed, whether smoked, heated, chewed,
2 absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette,
3 a cigar, pipe tobacco, chewing tobacco, snuff, snus or an electronic smoking device. Tobacco
4 product does not include any product specifically approved by the United States Food and Drug
5 Administration for sale as a tobacco cessation product that is being marketed and sold solely for the
6 approved purpose.

7 *Transitional living facility, halfway house or shelter* means a dwelling unit providing
8 temporary shelter to the homeless, mentally disabled, substance or alcohol dependent individuals
9 undergoing treatment, or abused or neglected adults. In addition, the facility shall provide referrals to
10 appropriate agencies for assistance, treatment and follow-up care as required by the individual.

11 *Truck stop* means any facility located within the city primarily catering to and frequented by
12 interstate cargo haulers for the purpose of obtaining rest or food, with or without showering facilities
13 and having sufficient open space for parking large vehicles.

14 APPROVED AS TO FORM:

15 

16 _____
17 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

**City of Santa Fe
Fiscal Impact Report (FIR)**

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X 2014 3 Resolution: _____
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): RELATING TO SANTA FE SMOKE FREE ORDINANCE, SECTION 10-6 SFCC 1987; AMENDING SUBSECTION 10-6.2 TO INCLUDE FINDINGS RELATING TO ELECTRONIC SMOKING DEVICES AND AMENDING SUBSECTION 10-6.3 TO INCLUDE DEFINITIONS FOR "ELECTRONIC SMOKING DEVICE" AND "TOBACCO PRODUCT".

Sponsor(s): Trujillo

Reviewing Department(s): City Attorney's Office

Person Completing FIR: Rebecca Seligman Date: December 3, 2013 Phone: 955-6501

Reviewed by City Attorney: *Kelly A. Brennan* Date: 12/10/13
(Signature)

Reviewed by Finance Director: *[Signature]* Date: 12/19/13
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution.

The purpose of this bill is to amend Subsection 10-6.2 to include findings related to electronic smoking devices; and Subsection 10-6.3 to include definitions for "electronic smoking device" and "tobacco product"

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected	

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____
Total:	\$ _____			\$ _____			

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
Type of Revenue	FY _____		"R" Costs Recurring or "NR" Non-recurring		"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____		\$ _____			

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Not applicable

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None staff is aware of.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The Smoke Free Santa Fe Ordinance would not include electronic smoking devices and therefore electronic smoking devices could potentially be used anywhere.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The FDA and healthcare providers question the safety of electronic smoking devices to both users and those in close proximity to users, despite the claims of harmlessness by manufacturers, similar to claims made by the tobacco industry in years past. Including electronic smoking devices in the Santa Fe Smoke Free Ordinance would further promote the health and welfare of our community.

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08