

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL BANNING ELECTRONIC SMOKING DEVICES (ESDs) ON THE PINE RIDGE INDIAN RESERVATION.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 5123, and under Article III of the Oglala Sioux Tribe Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, the Tribal Council has the authority under Article IV, Section 1(w), of the Tribal Constitution to adopt laws protecting and promoting the health and general welfare of the Tribe and its members, and

WHEREAS, the Tribal Council hereby finds the cultural, spiritual, and ceremonial use of traditional tobacco is an integral part of traditional, native life, and

WHEREAS, American Indian people have the highest rate of commercial tobacco use in the United States, and

WHEREAS, commercial tobacco use is the leading cause of preventable death and disease and American Indian people suffer serious health consequences, including heart disease and cancer, and

WHEREAS, electronic smoking devices (ESDs) are not proven tobacco smoking cessation devices, but are alternative nicotine delivery devices that maintain or restore the addiction to nicotine, and can addict a new generation to nicotine, and

WHEREAS, ESD companies are marketing ESDs to the public, and especially to young adults, as safe alternatives to tobacco cigarettes and an easy way to quit smoking tobacco cigarettes, and many companies are enticing young people and others to use ESDs with attractive flavors, and

WHEREAS, the 2014 United States Surgeon General's Report on the Health Consequences of Smoking states that studies and assessments by the Food and Drug Administration (FDA) and independent scientists have demonstrated enormous variability in design, operation, contents, and emissions of carcinogens, other toxicants, and nicotine from electronic smoking devices. The FDA's testing also suggests that "quality control processes used to manufacture these products are inconsistent or non-existent." See, Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA, and

WHEREAS, electronic smoking devices produce an aerosol of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products, and

WHEREAS, ESDs have not been approved as to safety and efficacy by the FDA, and their use may pose a health risk to persons exposed to their smoke, aerosol, or vapor because of a known irritant contained therein and other substances that may, upon evaluation by the FDA, be identified as potentially toxic to those inhaling the smoke, aerosol, or vapor, and

WHEREAS, the 2016 United States Surgeon General's Report on E-Cigarette Use Among Youth and Young Adults reports that: e-cigarettes are now the most commonly used form of tobacco by youth in the United States; more than 25% of students in grades 6-12 and more than 33% of young adults have tried e-cigarettes; and 85% of e-cigarette users ages 12-17 use flavored products, and

WHEREAS, the health of our people, including our youth, is of the utmost importance and our Tribe has always strived to take a leading role in addressing the health issues of our people, now

NOW THEREFORE BE IT ORDAINED, the Oglala Sioux Tribal Council hereby bans the manufacture, sale, distribution, purchase, possession, and use of electronic smoking devices (ESDs) on the Pine Ridge Indian Reservation, and

BE IT FURTHER ORDAINED, that for purposes of this Ordinance, the term "electronic smoking device (ESD)" shall mean an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah pipe, vape, vape pen, hookah pen, mod, tank, or any cartridge or other component of the device or related product, whether or not sold separately, and

BE IT FURTHER ORDAINED, that the Oglala Sioux Tribe hereby amends Section 539 of the Oglala Sioux Tribe Criminal Offense Code as follows:

(a) It shall be unlawful to:

- (1) Purchase, obtain, possess, smoke, chew, inhale or ingest any product made from or with tobacco if under the age of eighteen years (18); or

- (2) Sell to, or otherwise obtain for or arrange for the obtaining of tobacco or a tobacco product for a person under the age of eighteen (18), or to knowingly permit such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation.
- (b) It shall be unlawful for any person to manufacture, sell, distribute, purchase, possess, or use electronic smoking devices (ESDs) on the Pine Ridge Indian Reservation. For purposes of this section, the term "electronic smoking device (ESD)" shall mean an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, vape, vape pen, hookah pen, mod, tank, or any cartridge or other component of the device or related product, whether or not sold separately.
- (c) Offenses under this Section shall be punishable by a fine not to exceed two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three (3) months, or both.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately, provided that no person shall be prosecuted for the manufacture, sale, distribution, purchase, possession, or use of electronic smoking devices (ESDs) in violation of Section 539 of the Criminal Offense Code, as amended, within the first thirty (30) days after enactment of this Ordinance by the Tribal Council, and

BE IT FURTHER ORDAINED, that the Secretary of the Tribe shall cause this Ordinance to be published for three (3) consecutive weeks in one or more newspapers of general circulation on the Reservation.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Secretary of Oglala Sioux Tribe, hereby certify that this Resolution was enacted by a vote of: ___ For; ___ Against; ___ Abstain; and ___ Not Voting; during a REGULAR SESSION held on the 24th Day of SEPTEMBER 2019.