ORDINANCE NO. 423

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF BAYFIELD, COLORADO, AMENDING CHAPTER 9 OF THE MUNICIPAL CODE OF THE TOWN OF BAYFIELD, ESTABLISHING MINIMUM AGE FOR PURCHASE OF TOBACCO PRODUCTS.

WHEREAS, House Bill 19-1033 expressly authorizes a statutory town to enact an ordinance regulating the sale of cigarettes, tobacco products, or nicotine products to minors under the age of 21; and

WHEREAS, House Bill 19-1076 among other items amended the "Colorado Clean Indoor Air Act" by adding a definition of "electronic smoking device" (ESD) to include e-cigarettes and similar devices within the scope prohibiting its use indoors in most public places; and

WHEREAS, C.R.S. § 25-14-207 provides that a local authority may, pursuant to Article 16 of Title 31, C.R.S., a home rule charter, or Article 15 of Title 30, C.R.S., enact, adopt, and enforce smoking regulations; and

WHEREAS, smoking rates in the U.S. have declined substantially since the Surgeon General's 1964 report, from 42 percent to about 18 percent today; however, it remains one of the biggest public health problems in the United States as almost 500,000 Americans still die prematurely each year from diseases related to cigarette smoking. This makes up 85% of deaths from lung cancer. In Colorado, like most other states, it is the number one cause of preventable death, and accounts for 5,100 deaths a year; and

WHEREAS, 90% of adult smokers started smoking before the age of 18 and each day more than 3,000 adolescents in the U.S. try their first cigarette; and

WHEREAS, since 2014, after decades of effective anti-smoking campaigns and decreasing smoking rates in the U.S., there has been a surprising upturn in youth tobacco use; and

WHEREAS, research has shown such regulations are effective in decreasing high school tobacco use by up to 50%; and

WHEREAS, research has shown that teens purchase cigarettes from their peers and that 90% of the "social sources" (friends and family) of tobacco for 12–18 year olds are 18–21 year olds. It has also been shown that youth typically do not make the effort to travel to neighboring localities if the age has increased to 21 in their municipality; and

WHEREAS, the Board of Trustees finds that this ordinance furthers and is necessary for the promotion of the public health, safety, and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BAYFIELD, COLORADO:

Section 1.
Chapter 9, Offenses–Miscellaneous, of the Municipal Code of the Town of Bayfield, Colorado, is hereby amended by the addition of a new Article V. TOBACCO, which shall read as follows:

**ARTICLE V. TOBACCO**

**Sec. 9-80 Definitions.**
The following definitions shall apply throughout this Article:

(a) *Cigarette* means any product that contains tobacco or nicotine that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

1. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
2. Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
3. Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (a)(1) above.
4. The term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by consumers as tobacco for making cigarettes.

(b) *Electronic Smoking Device* means an electronic device that, when activated, emits a vapor, aerosol, fume, or smoke that may be inhaled or absorbed by the user, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah, or similar device. Electronic smoking devices includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance, with or without nicotine, intended to be aerosolized, vaporized, or that produces a fume or smoke during the use of the device intended for human consumption.

(c) *Minimum Legal Sales Age* means twenty-one (21) years of age or older.

(d) *Mobile Vending* means any sales other than at a fixed location.

(e) *Person* means natural person, a joint venture, joint-stock company, partnership, association, firm, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer, or employee thereof.

(f) *Self-Service Display* means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer in a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(g) *Tobacco Product* means:

1. Any product which contains, is made or derived from tobacco, or used to deliver nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including,
but not limited to Cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, mints, hand gels;

(2) Any electronic smoking device;

(3) Notwithstanding any provision of subsections (g)(1) or (g)(2) to the contrary, Tobacco Product includes any component, part, accessory, or associated tobacco paraphernalia of a Tobacco Product whether or not sold separately.

(4) The term “Tobacco Product” does not include (i) any product that contains marijuana or (ii) any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

(h) **Tobacco Product Retail Location or Retail Location** means any premises where Tobacco Products are sold or distributed to a consumer including, but not limited to, hookah bar, lounge or cafe, any grounds occupied by a retailer, any store, stand, outlet, vehicle, cart, location, vending machine, or structure where Tobacco Products are sold.

(i) **Tobacco Product Retailer** means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Tobacco or Nicotine Products, or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(j) **Tobacco Product Retailing** means the selling, offering for sale, or exchanging for any form of consideration a Tobacco Product.

(k) **Tobacco Paraphernalia** means any item designed for the consumption, use, or preparation of Tobacco Products.

(l) **Vending Machine** shall mean any mechanical, electrical, or electronic self-service device, which, upon insertion of money, tokens, or any other form of payment, dispenses product.

**Sec. 9-81 Minimum Legal Sales Age.**
Tobacco Products shall not be sold to any person under the Minimum Legal Sales Age.

**Sec. 9-82 Tobacco Products Retailer Requirements.**

(a) **Display of Minimum Legal Sales Age Requirements.** The requirement of the Minimum Legal Sale Age for the purchase of Tobacco Retail Product shall be prominently displayed in the entrance (or other clearly visible location) of the Tobacco Product Retail Location.

(b) **Prohibition of Self-Service Displays.** Tobacco Product Retailers shall stock and display all Tobacco Products in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the Tobacco Product from an employee of the business to the customer.

(c) **Restriction on Sales to Underage Persons.** No person engaged in Tobacco Product Retailing shall sell or transfer a Tobacco Product to another person unless that recipient is at least twenty-one (21) years of age. It is an affirmative defense to prosecution that the seller was presented with the ID showing the person to be over the minimum age.
(d) No Tobacco Products Retailer Sales of Tobacco Products within 500 feet of Schools. No licenses will be issued to retailers located within 500 feet of any public or parochial school as determined by the Town Clerk. This restriction shall not apply to an existing Retail Location within 500 feet of a school.

Sec. 9-83 Enforcement.

The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity. In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a civil action brought by the Town Attorney, including but not limited to nuisance abatement proceedings and injunctive relief.

Sec. 9-84 Penalties and Fines.

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall cause the offender to be subject to the penalties set forth herein or in the Municipal Code.

Section 2.

Chapter 9, Offenses–Miscellaneous, of the Municipal Code of the Town of Bayfield, Colorado, is hereby amended by the addition of a new Article VI. Smoking in Public Places which Article shall read as follows:

ARTICLE VI. SMOKING IN PUBLIC PLACES

Sec. 9-90 Intent and Purpose.

The intent and purpose of this article is to promote the public health, safety and general welfare of the citizens of Bayfield by limiting exposure to involuntary environmental tobacco smoke or secondhand tobacco smoke and the associated health risks in designated areas open to the public. The board of trustees finds and declares that by prohibiting smoking in such designated areas that the need to breathe smoke-free air shall have priority over the desire to smoke, for purposes of preserving and improving the health, comfort, and environment of the citizens of Bayfield.

Sec. 9-91 Definitions.

The following words, terms and phrases, when used in this Article shall have the meaning respectively ascribed to them unless the context otherwise clearly indicates:

(a) Town shall mean and refer to the Town of Bayfield.

(b) Environmental Tobacco Smoke or Secondhand Tobacco Smoke means the complex mixture formed from escaping gases, particles, or vapors released into the air as a result of combustion, electrical ignition, vaporization, or heating of tobacco products when the apparent or usual
purpose of the combustion, electrical ignition, vaporization, or heating is human inhalation of the byproducts.

(c) *Park* means an area of land set aside for public use that is owned, controlled, or used by the Town, with or without facilities, for rest or recreational purposes, regardless of any age or fee requirement. The term "Park" does not include Town-owned open space or natural lands, including soft surface trails.

(d) *Picnic Pavilions and Fixed Covered Seating Areas* means open air or covered areas within a park owned or operated by the town for dining, seating, or other forms of entertainment pursuant to park rules and regulations.

(e) *Playground* means the area within a Park owned or operated by the Town containing equipment or facilities designed for children's play.

(f) *Recreational Facility or Field* means an area that is owned, controlled, or used by the Town that is open to the general public for recreational purposes, regardless of any age or fee requirement, including, but not limited to, athletic fields, basketball courts, community gardens, dog parks, ice skating rinks, restrooms, skateboard parks, and spectator and concession areas.

(g) *Smoke* means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, vaporization, or heating, when the apparent or usual purpose of the combustion, electrical ignition, vaporization, or heating is human inhalation of the byproducts, except when the combusting material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, hookah smoke, or electronic cigarette vapors. Smoke does not include smoke that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

(h) *Smoking* means engaging in an act that generates Smoke such as inhaling, exhaling, burning, heating, or carrying any lighted cigar, cigarette, water pipe, or pipe containing tobacco or other organic burning material, weed, plant, or other combustible substance regardless of its composition. Smoking does not include smoke that is associated with a native recognized religious ceremony, ritual, or activity by American Indians that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

(i) *Tobacco Product* means any product that contains nicotine or tobacco or is derived from nicotine or tobacco and is intended to be ingested or inhaled by, or applied to the skin of an individual; or any electronic device that can be used to deliver nicotine to the person inhaling from the device including but not limited to an electronic cigarette, cigar, cigarillo, pipe, or hookah.

**Sec. 9-92 General Smoking Restrictions.**

(a) In order to reduce the risks of fire danger and the levels of exposure to Environmental Tobacco Smoke and Secondhand Tobacco Smoke, Smoking shall not be permitted and no person shall Smoke in any outdoor public area described below, including, but not limited to:

   (1) Bus stops or waiting areas to board public transportation;
(2) All seating areas in Town-owned parks, playgrounds and picnic areas, including, but not limited to, Picnic Pavilions or Fixed Covered Seating Areas located in a Town-owned park;

(3) Town-owned recreational facilities and ball fields;

(4) All open space and trails within Town-owned space, natural lands, or parks;

(5) All town-owned buildings, grounds and landscaped areas adjacent to or around those buildings;

(b) It shall be unlawful for any person to smoke tobacco in any form within any business premises in the town where the owner or operator of such premises has elected to disallow Smoking and has posted a sign or signs at the entrance(s) of the establishment indicating that Smoking within the establishment is prohibited. Any owner, operator, manager or other person who controls any private property may declare that entire property as Smoke-free.

Sec. 9-93 Posting of Signs.

"No Smoking" or "Smoke-Free" signs and/or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly and conspicuously posted in and at the locations where Smoking is prohibited by this Article by Town.

Sec. 9-94 Unlawful Acts, Enforcement and Penalties.

(a) It is unlawful for a person to smoke in an area where Smoking is prohibited pursuant to this Article.

(b) Enforcement of this Article shall be complaint-based enforcement implemented by the Bayfield Marshal’s Office.

(c) Any person who violates any provision of this Article is guilty of an offense and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars ($100.00) for a first violation; a fine not to exceed two hundred dollars ($200.00) for a second violation within the same calendar year; and a fine not to exceed three hundred dollars ($300.00) for each additional violation within such calendar year. Each day of a continuing violation shall be deemed a separate violation. Fines and costs shall be paid to, receipted and accounted for by the Town Clerk or Court Clerk and such funds used to support tobacco education and cessation in the Town.

(d) No person or employer shall discharge or retaliate in any manner against any individual because such individual exercises any right to a Smoke-free environment afforded by this Article.

Sec. 9-95 Other Applicable Laws.

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by federal, state, or local laws, ordinances and regulations, including, but not limited to C.R.S. § 25-14-201 et seq.
Sec. 9-96 Compliance with C.R.S. § 39-22-623.

This Article is not, nor shall it be construed, in any way as imposing a fee, license, or tax upon any person as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. This article is not applicable to the sale of cigarettes. If any part of this Article is found by a court of competent jurisdiction to impose a fee, license, or tax upon any person as a condition of engaging in the business of selling cigarettes, then such part shall be deemed void.

Section 3.

Severability. If any section, paragraph, sentence, clause, or phrase of this Article is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Article. The Board of Trustees hereby declares that it would have adopted this Article and each part or parts thereof, irrespective of the fact that any one part or parts is subsequently declared to be unconstitutional or invalid.

Section 4.

The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5:

The Ordinance shall become effective thirty (30) days after publication.

PASSED BY THE BOARD OF TRUSTEES AFTER A PUBLIC HEARING AND SIGNED THIS _____ DAY OF _________, 2019.

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Matthew Salka, Mayor

ATTEST:

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Kathleen S. Cathcart, Town Clerk