

**CITY OF APALACHICOLA  
ORDINANCE NO. 2001 - 06**

**AN ORDINANCE OF THE CITY OF APALACHICOLA, FLORIDA;  
PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN SELF-SERVICE  
DISPLAYS ACCESSIBLE TO MINORS; PROVIDING DEFINITIONS;  
PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES;  
PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS, the Florida Legislature has enacted laws located in Chapter 569,  
Florida Statutes, that provide for increased regulation of the retail sale of tobacco  
products; and**

**WHEREAS, within Chapter 569, Florida Statutes, the Florida Legislature  
has provided for civil, administrative, and/or criminal penalties for the sale of  
tobacco products to a person under the age of 18 and for the possession of such  
tobacco products by a person under the age of 18;**

**WHEREAS, the settlement agreement between the State of Florida and the  
tobacco industry provides for a pilot program which is aimed specifically at the  
reduction of the use of tobacco by persons under the age of 18; and**

**WHEREAS, the U.S. Surgeon General and the U.S. Department of Health  
and Human Services have found that a majority of those Americans who die of  
tobacco related diseases became addicted to tobacco products prior to reaching the  
legal age of consent; and**

**WHEREAS, survey results conducted in October and December of 1998  
showed that 90% of tobacco retailers have tobacco products located on, in front of,  
and beside the counter, and 25% of tobacco retailers have tobacco products displays  
and open containers located directly next to entranceways; and**

**WHEREAS, the head of the Food and Drug Administration, David Kessler,  
has announced that every day 3,000 children become smokers and almost half of  
them, eventually, will die from smoking-related illnesses. Smoking is this nations'  
leading preventable cause of death and kills more than 400,000 people a year, and**

**WHEREAS, the City Commission of the City of Apalachicola, Florida and  
the citizens of Apalachicola, Florida are concerned about the use of tobacco  
products by persons under the age of 18, and**

**WHEREAS, the City Commission of the City of Apalachicola believes that a  
reduction in the availability, both visually and physically, of tobacco products to  
persons under the age of 18 will likely lead to a reduction in tobacco products use by  
that age group; and**

**WHEREAS, Chapter 569, Florida Statutes, does not prohibit local governments from regulating the placement and merchandising of tobacco products; and**

**WHEREAS, the U.S. Supreme Court has held in Village of Hoffman Estates v. Flipside Hoffman Estates, Inc., 455 U.S. 489, 102 S. Ct. 1186, 71 L. Ed. 2d362 (1981), that those ordinances which regulate the commercial marketing of items that may be used for illegal purposes do not violate the First Amendment; and**

**WHEREAS, the City Commission of the City of Apalachicola, Florida desires to regulate the placement of tobacco products as it is in the best interests of public healthy safety, and welfare.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA, THAT:**

#### **SECTION 1. TITLE**

**This Ordinance shall be known and may be cited as the "MERCHANDISING OF TOBACCO PRODUCTS ORDINANCE".**

#### **SECTION 2. DEFINITIONS**

**For the purpose of this ordinance, the following terms shall mean:**

**BUSINESS** means any sole proprietorship, joint venture, partnership, corporation, or limited liability company of other business formed for profit making or non-profit purpose in the unincorporated areas of the City of Apalachicola, including all retail establishments where goods and services are sold.

**PERSON** means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or other legal entity.

**SELF SERVICE MERCHANDISING** means the open display of tobacco products to which the public has access without the intervention of the vendors, store owners, or other store employees.

**TOBACCO PRODUCTS** means loose tobacco suitable for smoking, snuff, snuff flour, plug and twist tobacco, fine cuts and other chewing tobaccos, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing, inhaling, smoking or ingesting in any matter and including, but not limited to cigarettes and cigars.

**TOBACCO RETAILER** means any person or business that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

**VENDER ASSISTED** means the customer has no access to tobacco products without the assistance of the vendor, store owner, or other store employees.

### **SECTION 3. MERCHANDISING PROHIBITED**

No person, business, tobacco retailer, or other establishment subject to this ordinance shall sell, permit to be sold, offer for sale, or display for sale any tobacco products by means of self-service merchandising. Only vendor assisted sales are allowed, unless access to the premises by persons under the age of 18 is prohibited by the person, business, tobacco retailer, or other establishment or prohibited by law.

### **SECTION 4. SEVERABILITY**

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

### **SECTION 5. PENALTIES**

A. Any person or business who violates this ordinance, shall upon conviction, be guilty of a violation of a second degree misdemeanor, punishable as provided by law.

B. The penalty for a second conviction of this ordinance shall be at least double the penalty for the first conviction, except that any penalty shall not exceed the maximum penalty set by law for a misdemeanor of the second degree.

C. All convictions for violation of this Ordinance shall be reported to the State of Florida, Division of Tobacco and Alcoholic Beverages.

### **SECTION 6. EFFECTIVE DATES**

This ordinance shall take effect upon being enacted and duly filed with the Florida Secretary of State.

### **SECTION 7. PROVIDE FOR INCLUSION IN CODE**

It is the intention of the City Commission of the City of Apalachicola, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the code of Ordinances of the City of Apalachicola, Florida. To this end, the sections of this Ordinances may be renumbered or

relettered to accomplish such intention, and the word "ordinance" may be changed to "section" or other appropriate designation.

This Ordinance was first read in open session on the 5TH day of JUNE, 2001. This Ordinance was read for the second time and finally adopted in open session the 3RD day of JULY, 2001, by motion made by Commissioner DAVIS, seconded by Commissioner JOHNSON

Motion carried:


Voting Aye: DAVIS, JOHNSON, ELLIOTT, BARTLEY, MAYOR PIERCE

Voting Nay: NONE

FOR THE CITY COMMISSION OF  
THE CITY OF APALACHICOLA:

  
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ALAN PIERCE, Mayor

ATTEST:

  
Betty Taylor Webb  
City Clerk

**CITY OF APALACHICOLA**  
**RESOLUTION # 2001-01**  
**TOBACCO PRODUCTS PLACEMENT RESOLUTION**

WHEREAS, the Florida Legislature has enacted laws, located in Chapter 569, Florida Statutes, that provide for increased regulation of the retail sale of tobacco products; and

WHEREAS, the Florida Legislature has, in Chapter 569, provided for civil, administrative and/or criminal penalties for the sale of tobacco products to an underage person and for the possession of such tobacco by an underage person; and

WHEREAS, the State of Florida has entered into a settlement with the tobacco industry for billions of dollars to reimburse the state for some of the health care costs incurred by the state due to the prevalence of tobacco use; and

WHEREAS, the settlement between the State of Florida and the tobacco industry provides for a Pilot Program which is aimed specifically at the reduction of the use of tobacco by underage person; and

WHEREAS, the government and residents of the City of Apalachicola are also concerned about the use of tobacco products by underage persons; and

WHEREAS, a reduction in the availability, both visually and physically, of tobacco products to underage persons will likely lead to a reduction in tobacco product use by them.

BE IT THEREFORE RESOLVED BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA THAT: it supports the placement of all tobacco products "behind the counter" in all retail establishments so as to limit underage accessibility to such products.

ADOPTED this 8th day of May, 2001.

CITY COMMISSION OF THE  
CITY OF APALACHICOLA

By: Alan C. Pierce  
Alan Pierce, Mayor

ATTEST:

Betty Taylor Webb  
Its City Clerk Administrator  
Betty Taylor Webb

