

Ordinance Enacted: 8/28/01

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ORDINANCE NO. 2001-46

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA; CREATING ARTICLE XI OF CHAPTER 20, BROWARD COUNTY CODE, TO BE ENTITLED MERCHANDISING OF TOBACCO PRODUCTS; PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN SELF-SERVICE DISPLAYS ACCESSIBLE TO MINORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE BROWARD COUNTY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

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; and

WHEREAS, the State of Florida has entered into a settlement agreement 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 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 products by persons under the age of 18; and

WHEREAS, the United States Surgeon General and the United States 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

1 WHEREAS, survey results conducted in October and December of 1998 showed that
2 90% of tobacco retailers have tobacco products located on, in front of and beside the counter
3 and 25% of tobacco retailers have tobacco product displays and open containers located
4 directly next to entranceways; and

5 WHEREAS, the Board of County Commissioners of Broward County, Florida, along
6 with the citizens of Broward County, is concerned about the use of tobacco products by
7 persons under the age of 18; and

8 WHEREAS, the Board of County Commissioners of Broward County, Florida, believes
9 that a reduction in the availability, both visually and physically, of tobacco products to persons
10 under the age of 18 will likely lead to a reduction in tobacco product use by that age group;
11 and

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

14 WHEREAS, the United States Supreme Court has held in *Village of Hoffman Estates v.*
15 *Hoffman Estates, Inc.*, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1981), that
16 ordinances that regulate the commercial marketing of items that may be used for illegal
17 purposes do not violate the First Amendment; and

18 WHEREAS, the Board of County Commissioners desires to regulate the placement of
19 tobacco products because it is in the best interests of the public health, safety and welfare.

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21 NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of
22 Broward County, Florida, that:

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2 **Section 1. CREATION.** That Article XI, Chapter 20, of the Broward County Code, to
be 3 entitled Merchandising of Tobacco Products, is created to read as follows:

4 **ARTICLE XI. MERCHANDISING OF TOBACCO PRODUCTS**

Sec. 20-229. Intent.

6 This Article is intended to prevent the sale to and possession of tobacco products by
per 7 sons under the age of 18 by regulating the commercial marketing and placement of such
prod 8 ucts. This Article shall not be interpreted or construed to prohibit the sale or delivery of
toba 9 cco products which are otherwise lawful or regulated pursuant to Chapter 569, Florida
Stat 10 utes.

Sec. 20-230. Definitions.

12 For the purpose of this Article the following terms shall mean:

13 (a) *Business* means any sole proprietorship, joint venture, corporation or other
busi 14 ness formed for profit making or non-profit purposes, including retail establishments
wher 15 e goods or services are sold.

16 (b) *Person* means any individual, partnership, cooperative association, private
corp 17 oration, personal representative, receiver, trustee, assignee or other legal entity.

18 (c) *Self-service merchandising* means the open display of tobacco products to
wher 19 h the public has access without the intervention of the vendor, store owner or other store
emp 20 loyee.

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1 (d) *Tobacco products* includes loose tobacco leaves, and products made from
2 tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking,
3 snifing or chewing.

4 (e) *Tobacco retailer* means any person or business that operates a store, stand,
5 booth, concession or other place at which sales of tobacco products are made to purchasers
6 for consumption.

7 (f) *Vendor-assisted* means the customer has no access to tobacco products
8 without the assistance of the vendor, store owner or other store employee.

See 20-231. Self-Service Merchandising Prohibited.

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

See 20-232. Enforcement.

16 The provisions of this Article shall be enforced pursuant to Chapter 20, Article VII,
17 Consumer Protection Code, Division 1, of the Broward County Code.

18 **Section 2. SEVERABILITY.**

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

22 **Section 3. INCLUSION IN CODE.**

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1 It is the intention of the Board of County Commissioners that the provisions of this
Ordinance shall become and be made a part of the Broward County Code; and that the
sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be
changed to "section," "article," or such other appropriate word or phrase in order to
accomplish such intentions.

6 **Section 4. EFFECTIVE DATE.**

7 This Ordinance shall become effective ninety (90) days after the date of enactment.

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9 ENACTED: August 28, 2001

10 FILED WITH DEPARTMENT OF STATE: September 10, 2001

11 EFFECTIVE: September 10, 2001

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PURPOSE: To prevent the sale to and possession of tobacco products by persons under the
age of 18 by regulating the commercial marketing and placement of such products.

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JES:vs
20 Tobacco.001
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ANRF Information Center

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