

ORDINANCE NO. _____

AN ORDINANCE OF HILLSBOROUGH COUNTY, FLORIDA, REGULATING THE MERCHANDISING OF TOBACCO PRODUCTS; PROVIDING DEFINITIONS; REGULATING TOBACCO PRODUCT PROMOTION; PROHIBITING SELF-SERVICE TOBACCO MERCHANDISING; PROVIDING PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 569, Florida Statutes, prohibits the sale to and the purchase by individuals under the age of eighteen (18) of tobacco products, and

WHEREAS, the Board of County Commissioners of Hillsborough County finds that the regulation of tobacco product merchandising will reduce the availability and desirability of tobacco products to persons under the age of eighteen (18), and

WHEREAS, such regulation is necessary for the health, safety, and welfare of the citizens of Hillsborough County,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, that:

Section 1. DEFINITIONS: As used in this Ordinance the following terms shall have the following meanings:

1. "Beedies" or "Bidis" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpa*), or any other product that is offered to, or purchased by, consumers as beedies or bidis.
2. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. This definition does not include "beedies."
3. "Cigar promotions" means any advertisement, the display of any logo, brand name, character, graphic or designs that are trademarks of a particular brand of cigar.

4. "Employee" means any person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.
5. "Pipe tobacco" means 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 to be smoked in a pipe.
6. "Pipe tobacco promotions" means any advertisement, the display of any logo, brand name, character, graphic or designs that are trademarks of a particular brand of pipe tobacco.
7. "Retail tobacco products dealer" means a holder of a retail tobacco dealer permit as defined in Section 569.002, Florida Statutes.
8. "Self-service tobacco merchandising" means open display of tobacco products and point-of-sale tobacco related promotional products that the public has access to without the intervention of the retail tobacco products dealer, store owner or employee.
9. "Tobacco product" includes; loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing. This definition does not include any nicotine-containing product that is used for the purpose of helping a person stop smoking such as nicotine gum or nicotine patches.
10. "Tobacco product promotion" includes any advertisement, the display of any logo, brand name, character, graphic or designs that are trademarks of a particular brand of tobacco product. Tobacco product promotion does not include any public service message sponsored by a federal, state or local government entity, or by a non-profit entity, designed to communicate the hazards of smoking or to encourage minors to refrain from using or buying tobacco products.
11. "Tobacco shop" means a business establishment in which at least fifty percent of the merchandise displayed is cigars and/or pipe tobacco, or, a business establishment in which at least fifty percent of the gross revenue is attributable to sale of cigars and/or pipe tobacco.

12. "Vending Machine" means any mechanical, electrical, or electronic device that, on the insertion of money, tokens, or other form of payment, dispenses tobacco products automatically or by operation of a lockout device as defined in Section 569.12, Florida Statutes.
13. "Vendor assisted sale" means the customer has no physical access to tobacco products without the assistance of the retail tobacco products dealer, storeowner or employee.

Section 2. REGULATION OF TOBACCO PRODUCT PROMOTION AND PROHIBITION OF SELF-SERVICE MERCHANDIZING. It shall be unlawful for any retail tobacco products dealer to place or maintain, or cause to be placed or maintained, any tobacco product promotion below four feet from the floor or within two feet of any candy, snack, or non-alcoholic beverage display, unless such promotion is located behind the counter or on a vending machine. It shall likewise be unlawful to sell, permit to be sold, or offer for sale or display any tobacco product by means of self-service tobacco merchandising or any means other than vendor assisted sales.

The provisions of this section do not apply to:

- (a.) A commercial establishment where access to the premises by persons less than eighteen (18) years of age is prohibited by law.
- (b.) A tobacco shop.
- (c.) Cigars or cigar promotions.
- (d.) Pipe Tobacco or pipe tobacco promotions.

Section 3. PENALTIES. Violations of this Ordinance shall be prosecuted in the same way as misdemeanors are prosecuted. Violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney and upon conviction shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail for not to exceed 60 days or by both such fine and imprisonment.

Section 4. APPLICATION OF ORDINANCE. This Ordinance shall apply to both the unincorporated and incorporated area of the County unless a municipality has or adopts a conflicting Ordinance in which case the municipal ordinance shall prevail within the boundaries of the municipality.

Section 5. SEVERABILITY. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion.

Section 6. EFFECTIVE DATE. This Ordinance shall be effective on the date June 1, 2001 or on the date of its filing with the Florida Department of State, whichever is later.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, Richard Ake, Clerk of the Circuit Court and Ex Officio Clerk of the Board of County Commissioners of Hillsborough County, Florida, do hereby certify that the above and foregoing is a true and correct copy of an ordinance adopted by the Board at its meeting of _____, 2000, as the same appears of record in Minute Book _____, of the Public Records of Hillsborough County Florida.

WITNESS my hand and official seal this _____ day of _____ 2000.

RICHARD AKE, CLERK OF CIRCUIT COURT

By: _____
Deputy Clerk

APPROVED BY COUNTY ATTORNEY
AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney