

ORDINANCE NO. 99- 25

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA,
PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN
SELF-SERVICE DISPLAYS ACCESSIBLE TO MINORS
PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE

OFFICE
JEFFREY K. BARION, CLERK
Tricia Jones D.C.
DATE 10-12-99

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 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 product displays and open containers located directly next to entranceways; and

WHEREAS, the Board of County Commissioners and the citizens of Indian River County are concerned about the use of tobacco products by persons under the age of 18; and

WHEREAS, the Board of County Commissioners 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 product 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.2d 362 (1981), that ordinances that regulate the commercial marketing of items that may be used for illegal purposes do not violate the First Amendment; and

WHEREAS, the Board of County Commissioners desires to regulate the placement of tobacco products as it is in the best interests of the public health, safety, and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, 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 or other business formed for profit making or non-profit purposes in both the incorporated and unincorporated areas of Indian River County, including retail establishments where goods or 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 owner, or other store employee.

Tobacco products include 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.

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.

Vendor assisted means the customer has no access to tobacco products without the assistance of the vendor, store owner, or other store employee.

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 affect the validity of the remaining portions of this ordinance.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Florida Secretary of State.

The ordinance was advertised in the Vero Beach Press Journal on the 18th day of September, 1999, for a public hearing to be held on the 28th day of September, 1999, at which time it was moved for adoption by Commissioner Stanbridge, seconded by Commissioner Adams, and adopted by the following vote:

Chairman Kenneth R. Macht	Aye
Vice Chairman Fran B. Adams	Aye
Commissioner Caroline D. Ginn	Aye
Commissioner Ruth Stanbridge	Aye
Commissioner John W. Tippin	Aye

The Chairman thereupon declared the ordinance duly passed and adopted this 28th day of September, 1999.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

Attest: J. K. Barton, Clerk

Patricia M. Ridge
Deputy Clerk

By *Kenneth R. Macht*
Kenneth R. Macht
Chairman

ACKNOWLEDGMENT of filing with the Department of State of the State of Florida, this 7th day of October, 1999.

6/14/99(ord\amend\util)DH/vk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
Charles P. Muncie
Charles P. Muncie
County Attorney