

Ordinance Enacted: 6/26/00

Entered into Database: ___/___/___

ORI _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA; CREATING CHAPTER 14, ARTICLE IX, SECTIONS 14-171, 14-172, 14-173 AND 14-174 OF THE CODE OF ORDINANCES OF THE CITY OF LEESBURG, FLORIDA, TO BE ENTITLED MERCHANDISING OF TOBACCO PRODUCTS; PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN SELF-SERVICE DISPLAYS ACCESSIBLE TO MINORS; PROVIDING FOR ENFORCEMENT; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN 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; 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

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 City Commission of the City of Leesburg, Florida 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 United States 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 does not violate the First Amendment; and

WHEREAS, the City Commission of the City of Leesburg, Florida 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 ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA:

SECTION I.

Article IX, Sections 14-171, 14-172, 14-173 and 14-174 are hereby added to the Code of Ordinances of the City of Leesburg, Florida, to read as set forth below:

Article IX. Merchandising of Tobacco Products.

Sec. 14-171. Intent. This Section is intended 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. This Article shall not be interpreted or construed to prohibit the sale or delivery of tobacco products which are otherwise lawful or regulated pursuant to Chapter 569, Florida Statutes.

Sec. 14-172. Definitions. For the purpose of this Section, the following terms shall mean:

Business means any sole proprietorship, joint venture, corporation or other business formed for profit making or non profit purposes, including retail establishments where goods or service 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 vendor, store owner or other store employee.

Tobacco products 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.

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 of use.

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

Sec. 14-173. Self-Service Merchandising Prohibited. No person, business, tobacco retailer or other establishment subject to this Section shall sell, permit to be sold, offer for sale or display for sale any tobacco products by means of self-service merchandising or any other means other than vendor assisted sales, unless access to the premises by persons under the age of 18 is prohibited by the person, business, tobacco retailers or other establishment or prohibited by law.

Sec. 14-174. Enforcement. The provisions of this Section shall be enforced by the City of Leesburg Code Enforcement Board.

SECTION II.

If any portion of this ordinance is declared invalid or unenforceable, then to the extent it is possible to do so without destroying the overall intent and effect of this ordinance, the portion deemed invalid or unenforceable shall be severed herefrom and the remainder of this ordinance shall continue in full force and effect as if it were enacted without including the portion found to be invalid or unenforceable.

SECTION III.

All ordinances or parts of ordinances which are in conflict with this ordinance are hereby repealed, to the extent necessary to alleviate the conflict, but shall continue in effect insofar as they are not in conflict herewith, unless repeal of the conflicting portion destroys the overall intent and effect of any of the conflicting ordinances, in which case those ordinances so affected shall be hereby repealed in their entirety.

SECTION IV.

This Ordinance shall take effect upon its passage and adoption by the Leesburg City Commission, according to law.

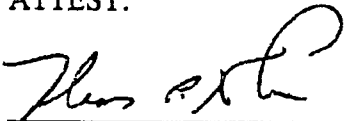
PASSED AND ADOPTED at the regular meeting of the Leesburg City Commission as held on the 26th day of June, 2000.

City of Leesburg



Mayor Chet Blackmon

ATTEST:



Thomas P. Klinker
City Clerk/Finance Director