

ORDINANCE 01-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONER OF MARION COUNTY, FLORIDA RELATING TO TOBACCO PRODUCTS IN RETAIL ESTABLISHMENTS; PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN SELF-SERVICE DISPLAYS ACCESSIBLE TO MINORS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR INCLUSION IN THE MARION COUNTY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislative 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 Board of County Commissioners of Marion County, Florida along with the citizens of Marion County are concerned about the use of tobacco products by persons under the age of 18; and

WHEREAS, the Board of County Commissioners of Marion County, 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 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 Marion County, Florida that:

SECTION 1. RECITALS. The foregoing recitals are true and correct and incorporated herein by reference.

SECTION 2. INTENT. This Ordinance 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 Ordinance 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.

SECTION 3. DEFINITIONS. For the purpose of this Ordinance 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 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 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.

SECTION 4. SELF-SERVICE 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 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 retailer or other establishment or prohibited by law.

SECTION 5. ENFORCEMENT. The provisions of this Ordinance shall be enforced by Tobacco Product Enforcement Officers of the Marion County Code Enforcement Department or the Marion County Sheriff's Department. Tobacco Product Enforcement Officers shall be appointed by the Marion County Board of County Commissioners pursuant to Section 569.12. Florida Statutes.

SECTION 6. PENALTIES. The violation of any provisions of this ordinance shall be punished as follows:

(a) The first violation shall result in a warning with each subsequent violation punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment. Each day any violation of any provision of the ordinance shall continue shall constitute a separate offense, unless otherwise provided.

SECTION 7. SEVERABILITY. It is hereby declared to be the intent of the Board of County Commissioners of Marion County that if any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 8. REPEAL. All ordinances, or parts of ordinances in conflict with this ordinance are to the extent of such conflict hereby repealed.

SECTION 9. INCLUSION IN CODE. It is the intention of the Board of County Commissioners of Marion County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Marion County, Florida: that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article" or other appropriate designation.

SECTION 10. EFFECTIVE DATE. This ordinance shall be filed with the Office of the Secretary of State by the Clerk within ten (10) days after enactment by the Board as provided in Section 125.66(2), Florida Statutes, and shall take effect on ~~April~~ ^{MAY} 1, 2001.

DULY ADOPTED this ___ day of _____, 2001.

**BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA**

LARRY CRETUL, CHAIRMAN

ATTEST:

DAVID R. ELLSPERMANN, CLERK