

Ordinance No. 2002-02

**Description:**

**AN ORDINANCE OF THE CITY OF MONTICELLO, FLORIDA, TO BE ENTITLED TOBACCO PRODUCT PLACEMENT IN MONTICELLO; PROVIDING FOR FINDINGS OF FACT; INTENT AND DEFINITIONS; PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN OPEN DISPLAY UNITS DIRECTLY ACCESSIBLE TO THE PUBLIC; PROVIDING FOR EXCEPTIONS; PROVIDING FOR ENFORCEMENT; AND PROVIDING FOR 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 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 statewide in November of 1998 showed that 86% of tobacco retailers have tobacco products located on, in front of, and beside the counter; and

**WHEREAS**, while serving as head of the Food and Drug Administration, David Keisler announced that every day 3,000 children become smokers and almost half of them eventually will die from smoking related illnesses; smoking is this nation's leading preventable cause of death and kills more than 400,000 people per year; and

**WHEREAS**, the City Council of Monticello and the citizens of the City of Monticello are concerned about the use of tobacco products by persons under the age of 18; and

**WHEREAS**, the City Council of Monticello 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 products use by that age group; and

**WHEREAS**, the City Council of Monticello, Florida, finds that the customary business practice of selling cigars and pipe tobacco (also known as specialty tobacco stores) allows access to physically touch and smell those products prior to purchase, and the sale and delivery of cigars and pipe tobacco is exempt from certain provisions of Chapter 569, Florida Statutes; and

**WHEREAS**, the City Council of Monticello, Florida, finds that pursuant to Chapter 569, Florida Statutes, specialty tobacco stores are required to post signs prohibiting the sale of tobacco products to persons less than 18 years of age

**WHEREAS**, Chapter 569, Florida Statute, 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, Ed. 2d 312 (1981), that those ordinances which regulate the commercial marketing of items that may be used for illegal purposes do not violate the First Amendment; and

**WHEREAS**, the City Council of Monticello desires to regulate the placement of tobacco products as it is in the best interests of public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF MONTICELLO, FLORIDA, THAT:**

#### **SECTION 1. TITLE**

This ordinance shall be known and may be cited as the "Tobacco Product Placement 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 purpose in the incorporated areas of the City of Monticello including all retail establishments where goods and 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, storeowners, or other store employees.

**TOBACCO PRODUCTS** include loose tobacco leaves and products made from loose tobacco leaves, in whole or in part, which can be used for smoking, inhaling, chewing or ingesting in any manner, including but not limited to cigarettes, cigars, bidis or beedies, clove and other herbal cigarettes, pipe tobacco, snuff or smokeless tobacco and chewing tobacco. Tobacco products also include cigarette wrappers, papers, cigarette and cigar holders, snuff flower, plug and twist tobacco, and any other tobacco-related products or accessories but not limited to cigarettes and cigars. 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.

**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, storeowner, or other employees.

**SPECIALTY TOBACCO STORE** means an establishment primarily in the business of selling cigars, pipe tobacco and other tobacco products in which fifty percent (50%) or more of any one or more of the following is devoted or attributable to the sale of pipe tobacco or cigars:

(1) Wall space or any other display areas such as tables, racks or display structures or,

(2) Gross revenues.

**TOBACCO PRODUCT PROMOTION** means 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 tobacco use or to encourage minors to refrain from using or buying tobacco products.

### **SECTION 3. MERCHANDISING PROHIBITED**

No person, business, tobacco retailer, or other establishment subject to this ordinance shall sell, permit to be sold, or display for sale any tobacco products by means of self-service merchandising or any other means other than vendor assisted sales, unless the tobacco products are located inside a tobacco specialty store, or access to the premises by persons under the age of 18 is prohibited by law. All tobacco products must be kept behind the sales counter.

#### **SECTION 4. ADVERTISING**

All businesses, persons, tobacco retailers and specialty tobacco stores shall place any and all tobacco advertising including but not limited to stickers, posters and signs at least 4 feet above the floor.

#### **SECTION 5. INCLUSION OF ALL INCORPORATED AREAS**

This ordinance shall be applicable and enforceable throughout the incorporated areas of the City of Monticello.

#### **SECTION 6. 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 7. PENALTIES**

- A. Any person or business that violates this ordinance shall upon conviction be guilty of a second-degree misdemeanor, punishable as provided by law.
- B. The penalty for a second conviction of this ordinance shall be at least double the penalty for the first conviction, except that any penalty shall not exceed the maximum penalty set by law for a misdemeanor of the second degree.
- C. All convictions for violation of this ordinance shall be reported to the State of Florida, Division of Alcoholic Beverages and Tobacco.

#### **SECTION 8. EFFECTIVE DATES**


This ordinance shall take effect upon such time that it is filed with the Secretary of State's Office.

#### **SECTION 9. PROVIDE FOR INCLUSION IN CODE**

It is the intention of the City Council of Monticello, Florida, and it is hereby provided, that the provisions of this ordinance shall become and be made part of the code of ordinances of the City of Monticello, Florida. To this end, the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate designation.

PASSED AND ADOPTED on this 1st day of October, 2002.

THE CITY COUNCIL OF  
MONTICELLO, FLORIDA

  
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Mayor

ATTEST: Julie S. Conley  
City Clerk