

Putnam County, FL

Ordinance Number: 5 22 01

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ORDINANCE NO. 2001 - 13**FILED**
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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

AN ORDINANCE OF PUTNAM COUNTY, FLORIDA, TO BE ENTITLED MERCHANDISING OF TOBACCO PRODUCTS IN PUTNAM COUNTY; 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 State of Florida has entered into a settlement agreement with the tobacco industry 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 become addicted to tobacco products prior to reaching the legal age of consent; and

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

WHEREAS, the Board of County Commissioners of Putnam 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 products use by that age group; and

WHEREAS, the Board of County Commissioners of Putnam County, 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 Board of County Commissioners of Putnam County, 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 under 18 years of age; and

WHEREAS, the Board of County Commissioners of Putnam County, Florida finds that specialty tobacco stores, as defined in this Ordinance, are not typically patronized by persons under 18 years of age; and

WHEREAS, Chapter 569, Florida Statutes, does not prohibit local government from regulating the placement and merchandising of tobacco products; and

WHEREAS, the United States Supreme Court has held 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 Board of County Commissioners desires to regulate the placement of tobacco products as it is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Putnam 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 or delivery of tobacco products to 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:

Vendor means any individual, sole proprietorship, joint venture, corporation, partnership, cooperative association, or other legal entity licensed as a dealer in tobacco products pursuant to Chapter 569, Florida Statutes, and any employee or agent of said dealer.

Tobacco Product means loose tobacco leaves, and products made from tobacco leaves, in whole or in part, which can be used for smoking, sniffing, dipping, or chewing, including but not limited to cigarettes, cigars, pipe tobacco, snuff or

smokeless tobacco, and chewing tobacco. Tobacco Product includes cigarette papers or wrappers.

Specialty Tobacco Store means an establishment primarily in the business of selling cigars and pipe tobacco.

Open Display Unit means a case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other surface which allows direct public access to the product placed therein, without the intervention or assistance of the Vendor.

Restricted Access Area means a reasonably physically confined area, access to which has been designated by the Vendor as limited to the Vendor.

SECTION 4 PLACEMENT OF TOBACCO PRODUCTS IN OPEN DISPLAY UNIT. No Vendor, person or entity shall sell, offer for sale or place Tobacco Products in an Open Display Unit unless such Unit is located in a Restricted Access Area.

SECTION 5 EXCEPTIONS. The provisions of this Ordinance shall not apply to the following:

- (a) An establishment that prohibits persons under 18 years of age on the premises; and
- (b) Specialty Tobacco Stores.

SECTION 6 VIOLATIONS; PENALTY. It shall be unlawful for any person to hinder or prevent the performance of any act or duty authorized or required by this Ordinance. Violation of any provision of this Ordinance is a civil infraction with a maximum civil penalty of \$500.00. Any law enforcement officer or Code Enforcement Officer, finding probable cause that a person has committed an act in violation of this Ordinance, may issue that person a citation. Any person charged under this section who does not wish to contest the citation shall pay, within 30 days of the date of receiving the citation, the penalty and costs applicable to a Class IV violation set forth in Administrative Order No. 97-002 dated February 25, 1997, as the same may be amended from time to time (the "Administrative Order"), what is currently a total of \$57.00, either by mail or in person to the Clerk of the County Court. If the person cited follows the above procedure, he or she shall be deemed to have admitted the infraction and to have waived the right to a hearing.

Any person who wishes to contest the citation must, within 30 days of the date of receiving the citation, appear in person at the office of the Clerk of County Court and enter a not guilty plea. A hearing date will be set by the Court and the Clerk shall mail a Notice of Hearing. The County Judge, after the hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the County Judge may impose a penalty not to exceed \$500.00 and may assess costs pursuant to the Administrative Order.

Failure to pay the penalty or to timely contest the citation shall result in an Order to Show Cause being issued by the Court. Said Order to Show Cause shall require the offender to appear before the County Judge on a certain date to show cause why he should not be held in contempt of court for failure to respond. The Court may fine the offender up to Five Hundred Dollars (\$500.00) and may assess costs pursuant to the Administrative Order.

As provided in Section 162.21(6), Florida Statutes, any person who willfully refuses to sign and accept a citation shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082 or Section 775.083, Fla. Stat.


SECTION 7 TERRITORY EMBRACED. The provisions of this Ordinance shall apply to all unincorporated areas of Putnam County.

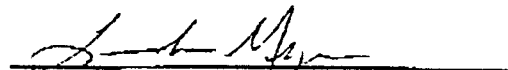
SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect on July 1, 2001.

DONE, ORDERED AND ADOPTED by the Board of County Commissioners of Putnam County, Florida this 22nd day of May, 2001.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
PUTNAM COUNTY, FLORIDA

By: 
Tim Smith, Clerk of Courts

By: 
Linda Myers, Chairman

ANRF Information Center

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Received