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Ordinance 2000-44

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA; TO BE ENTITLED MERCHANDISING OF TOBACCO PRODUCTS IN ST. JOHNS 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 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 Human Services have found that a majority of those Americans who dies of tobacco related diseases became addicted to *tobacco products* prior to reaching the legal age of consent; and

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

WHEREAS, the Board of County Commissioners of St. Johns 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, the Board of County Commissioners of St. Johns County, Florida finds that the customary business practice of selling cigars and pipe tobacco (also known as *specialty tobacco stores*)

1 allows access to physically touch and smell those products prior to purchase, and the sale and delivery of
2 cigars and pipe tobacco is exempt from certain provisions of Chapter 569, Florida Statutes; and

3 **WHEREAS**, the Board of County Commissioners of St. Johns County, Florida finds that pursuant
4 to Chapter 569, Florida Statutes, specialty *tobacco stores* are required to post signs prohibiting the sale of
5 tobacco products to persons under 18 years of age; and

6 **WHEREAS**, the Board of County Commissioners of St. Johns County, Florida finds that *specialty*
7 *tobacco stores*, as defined in this ordinance, are not typically patronized by persons under 18 years of
8 age; and

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

11 **WHEREAS**, the United States Supreme Court has held in *Village of Hoffman Estates v. Flipside,*
12 *Hoffman Estates, Inc.*, 455 U.S. 489, 102 S.Ct 1186, 71 L.Ed.2d 362 911982, that ordinances that
13 regulate the commercial marketing of items that may be used for illegal purposes does not violate the
14 First Amendment; and

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

17 **NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of St. Johns
18 County, Florida, that

19 **SECTION 1 RECITALS** The foregoing recitals are true and correct and incorporated
20 herein by reference as findings of fact and conclusions of law.

21 **SECTION 2 INTENT** This Ordinance is intended to prevent the sale or delivery of
22 *tobacco products* to persons under the age of 18 by regulating the commercial marketing and placement
23 of such products. This Ordinance shall not be interpreted or construed to prohibit the sale or delivery of
24 *tobacco products* which are otherwise lawful or regulated pursuant to Chapter 569, Florida Statutes.

25 **SECTION 3 DEFINITIONS** For the purpose of this Ordinance, the following terms shall
mean:

1 *Vendor* means any individual, sole proprietorship, joint venture, corporation, partnership,
2 cooperative association, or other legal entity licensed as a dealer in *tobacco products* pursuant to Chapter
3 569, Florida Statutes, and any employee or agent of said dealer.

4 *Tobacco Product* means loose tobacco leaves, and products made from tobacco leaves, in
5 whole or in part, which can be used for smoking, sniffing or chewing, including but not limited to
6 cigarettes, cigars, pipe tobacco, snuff or smokeless tobacco, and chewing tobacco. *Tobacco product*
also includes cigarette wrappers.

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

9 *Open Display Unit* means a case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other
10 surface which allows direct public access to the product placed therein.

11 *Restricted Access Area* means an area reasonably physically confined with access designated
12 by the vendor as limited to the *vendor*.

13 **SECTION 4** **Placement of Tobacco Products in Open Display Unit.** No *vendor* shall
14 place tobacco products in an *open display unit* unless such unit is located in a *restricted access area*.

15 **SECTION 5** **EXCEPTIONS.** The provisions of this ordinance shall not apply to the
16 following:

- 17 (a) An establishment that prohibits persons under 18 years of age on the premises.
18 (b) Specialty tobacco stores.

19 **SECTION 6** **ENFORCEMENT.** The provisions of this Ordinance shall be enforced by
20 any procedure permitted by Chapter 162, Florida Statutes or other applicable Florida Law.

21 **SECTION 7** **TERRITORY EMBRACED.** The provisions of this Ordinance shall apply to
22 all areas of St. Johns County including those areas within the incorporated municipalities of the County.

23 **SECTION 8** **EFFECTIVE DATE.** This Ordinance shall take effect upon its being filed with
24 the Department of State of Florida.
25

1 PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida
2 this 1 day of August, 2000.

4 BOARD OF COUNTY COMMISSIONERS
5 ST. JOHNS COUNTY, FLORIDA

7 By: _____
8 James E. Bryant, Chairman

10 ATTEST: CHERYL STRICKLAND

12 By: _____
13 Clerk