

**AN ORDINANCE OF WAUSAU, FLORIDA; PROHIBITING
PLACEMENT OF TOBACCO PRODUCTS IN SELF-SERVICE
DISPLAYS ACCESSIBLE TO MINORS; PROVIDING
DEFINITIONS; PROVIDING FOR SEVERABILITY;
PROVIDING FOR PENALTIES; PROVIDING FOR
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 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 products displays and open containers located directly next to entranceways; and

WHEREAS, the head of the Food and Drug Administration, David Kessler, has 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 a year; and

WHEREAS, the Wausau Town Council and the citizens of Wausau are concerned about the use of tobacco products by persons under the age of 18; and

WHEREAS, the Wausau Town Council 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, Chapter 569, Florida Statutes, 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 L. Ed. 2d 362 (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 Wausau Town Council 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 WAUSAU TOWN COUNCIL, WAUSAU, FLORIDA, THAT:

SECTION 1. TITLE

This Ordinance shall be known and may be cited as the "MERCHANDISING OF TOBACCO PRODUCTS 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 of other business formed for profit making or non-profit purpose in the incorporated areas of Wausau 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 means loose tobacco suitable for smoking, snuff, snuff flour, plug and twist tobacco, fine cuts and other chewing tobaccos, and other kinds and forms of tobacco prepared in such manner as to be suitable to chewing, inhaling, smoking or ingesting in any matter and including, but not limited to cigarettes and cigars.

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 store employees.

SECTION 3. 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. Only vendor-assisted sales are allowed, 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 4. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any county of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION 5. PENALTIES

- A. Any person or business that violates this ordinance, shall upon conviction, be guilty of a violation 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 Tobacco and Alcoholic Beverages.

SECTION 6. EFFECTIVE DATES

This ordinance shall take effect upon being enacted and duly filed with the Florida Secretary of State.

SECTION 7. PROVIDE FOR INCLUSION IN CODE

It is the intention of the Wausau Town Council of Wausau, Florida, and it is hereby provided, that the provisions of this ordinance shall become and be made part of the code of Ordinances of Wausau, Florida. To this end, the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article" or other appropriate designation.

ENACTED in Regular Session, this 25th day of September, 2001.

WAUSAU TOWN COUNCIL OF
WAUSAU, FLORIDA,

ATTEST: Margaret Ritey (SEAL)
Clerk

BY: George Rozen
Chairman