

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* 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 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 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 the 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 finds 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*) 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 St. Johns 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 St. Johns 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 governments from regulating the placement and merchandising of *tobacco products*; and

WHEREAS, the United States 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 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 St. Johns County, Florida that:

Section 1. Recitals The foregoing recitals are true and correct and incorporated herein by reference as findings of fact and conclusions of law.

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 or chewing, including but not limited to cigarettes, cigars, pipe tobacco, snuff or smokeless tobacco, and chewing tobacco. *Tobacco product* also includes cigarette 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.

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

Section 4. Placement of Tobacco Products in Open Display Unit Prohibited. No *vendor* shall 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.
- (b) *Specialty tobacco stores*.

Section 6. Enforcement The provisions of this Ordinance shall be enforced by any procedure permitted by Chapter 162, Florida Statutes or other applicable Florida Law.

Section 7. Territory Embraced The provisions of this Ordinance shall apply to all areas of St. Johns County including those areas within the incorporated municipalities of the County.

Section 8. Effective Date. This Ordinance shall take effect on the later date of October 1, 2000 or its being filed with the Department of State of Florida.

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

BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: CHERYL STRICKLAND

BY: Cheryl Strickland
Clerk

Effective date: October 1, 2000

ORDINANCE BOOK 25 PAGE 583

THE ST. AUGUSTINE RECORD

PUBLISHED EVERY AFTERNOON MONDAY THROUGH FRIDAY, SATURDAY AND SUNDAY MORNING ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA, COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared Linda Y. Murray who on oath says that she is an Accounting Clerk of the St. Augustine Record, a daily newspaper published at St. Augustine in St. Johns County, Florida:

that the attached copy of advertisement, being a

NOTICE OF PUBLIC HEARING

in the matter of

MERCHANDISING OF TOBACCO PRODUCTS

in the Court, was published in said newspaper in the issues of

JULY 18, 2000

Affiant further says that the St. Augustine Record is a newspaper published at St. Augustine, in said St. Johns County, Florida, and that the said newspaper heretofore been continuously published in said St. Johns County, Florida, each day and has been entered as second class mail matter at the post office in the City of St. Augustine, in said St. Johns County, for a period of one year preceding the first publication of the copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing the advertisement for publication in the said newspaper.

Sworn to and subscribed before me this 19TH day of JULY 2000,

by [Signature] who is personally known to me or who has produced PERSONALLY KNOWN as identification.

[Signature of Notary Public]



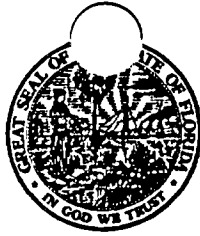
Zoe Ann Moss MY COMMISSION # CC641814 EXPIRES August 22, 2001 BONDING THRU TROY FAIR INC.

Zoe Ann Moss

ORDINANCE BOOK 25 PAGE 584

NOTICE OF A PUBLIC HEARING BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA. NOTICE IS HEREBY GIVEN that the Board of County Commissioners of St. Johns County, Florida, will hold a public hearing on Tuesday, August 1, 2000, at 5:30 p.m. in the County Auditorium of the County Administration Complex, 4020 Lewis Speedway (County Road 16A) and U.S. 1 North, St. Augustine, Florida, to consider adoption of the following ordinance: AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA, TO VOTE ENTITLED MERCHANDISING OF TOBACCO PRODUCTS IN ST. JOHNS COUNTY, PROVIDING FOR FINDINGS OF FACT, INTENT AND DEFINITIONS, PROHIBITING PLACEMENTS OF TOBACCO PRODUCTS IN OPEN DISPLAY UNITS DIRECTLY ACCESSIBLE TO THE PUBLIC, PROVIDING FOR EXCEPTIONS, PROVIDING FOR ENFORCEMENT, AND PROVIDING FOR AN EFFECTIVE DATE. The proposed ordinance is on file in the office of the Clerk of the Board of County Commissioners at the St. Johns County Administration Complex, 4020 Lewis Speedway (CR 16A and U.S. #1), St. Augustine, Florida and may be examined by parties interested prior to the public hearing. Interested parties may appear at the public hearing and be heard with respect to the proposed ordinance. If a person desires to appeal any decision made by the Board of County Commissioners with respect to any matter considered at the public hearing, he/she will need a record of the proceedings; and for such purposes he/she may need to ensure that a verbatim record of the proceedings is made which record includes the testimony and evidence. Upon which the appeal is to be based. NOTICE TO PERSONS NEEDING SPECIAL ACCOMMODATIONS AND TO ALL HEARING IMPAIRED PERSONS: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in the proceedings should contact ADA Coordinator, at (904) 823-2501 at the County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32095. For hearing impaired individuals: Telecommunication Device for the Deaf (TDD): Florida Relay Service: 1-800-955-8770, no later than 5 days prior to the date of the hearing. BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA. CHERYL STRICKLAND, ITS CLERK. By: Patricia DeGrande, Deputy Clerk. L2110; July 18, 2000

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
Office of the Secretary
Division of Administrative Services
Division of Corporations
Division of Cultural Affairs
Division of Elections
Division of Historical Resources
Division of Library and Information Services
Division of Licensing
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Historic Florida Keys Preservation Board
Historic Palm Beach County Preservation Board
Historic Pensacola Preservation Board
Historic St. Augustine Preservation Board
Historic Tallahassee Preservation Board
Historic Tampa/Hillsborough County
Preservation Board
RINGLING MUSEUM OF ART

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS

August 7, 2000

Honorable Cheryl Strickland
Clerk to Board of Commissioners
St. Johns County
Post Office Drawer 300
St. Augustine, Florida 32085-0300

Attention: Patricia DeGrande
Minutes and Records Division

Dear Ms. Strickland:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated August 3, 2000 and certified copy of Ordinance No. 2000-44, which was filed in this office on August 7, 2000.

Sincerely,

Liz Cloud, Chief
Bureau of Administrative Code

LC/mp

ORDINANCE BOOK 25 PAGE 585

BUREAU OF ADMINISTRATIVE CODE
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