

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 87, GENERAL ORDINANCES, MARTIN COUNTY CODE; AMENDING ARTICLE 6 RELATING TO TOBACCO PRODUCTS; AMENDING ARTICLE 7 RELATING TO ELECTRONIC NICOTINE DELIVERY DEVICES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE AND DEPARTMENT OF REVENUE, AN EFFECTIVE DATE AND CODIFICATION.

WHEREAS, the Board of County Commissioners of Martin County, Florida, is authorized by provisions in Chapter 125, Florida Statutes, to establish programs providing for the health, safety and general welfare of the residents of Martin County; and

WHEREAS, the Board has determined that the existing ordinances pertaining to tobacco products should be amended to provide additional definitions and guidelines pertaining to the sale and distribution of tobacco products; and

WHEREAS, On December 20, 2019, President Trump signed legislation to amend the Federal Food, Drug and Cosmetic Act to raise the federal minimum age pertaining to the sale of tobacco products from 18 to 21 years; and

WHEREAS, it is illegal for a retailer to sell any tobacco products, including cigarettes, cigars and vapor-generating electronic devices, to anyone under 21 years of age in the United States; and

WHEREAS, the use of tobacco products has devastating health and economic consequences; and

WHEREAS, tobacco use is the foremost preventable cause of premature death in America. It causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years; and

WHEREAS, tobacco use leads to more than \$300 billion in health care and lost worker productivity costs each year; and

WHEREAS, an estimated 5.6 million youth under the age of 18 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change; and

WHEREAS, national data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use; and

WHEREAS, young minds are particularly susceptible to the addictive properties of nicotine. As a result, 3 out of 4 teen smokers end up smoking into adulthood; and

WHEREAS, as reported by the Florida Department of Health, vapor-generating electronic device use among Martin County youth between the ages of 11 and 17 has increased from 6.4% in 2014 to 16.3% in 2020; and

WHEREAS, as reported by the Florida Department of Health, 17.1% of Martin County youth between the ages of 11 and 17 currently use tobacco products; and

WHEREAS, the Board finds that amending the existing regulations within the Martin County Code is necessary for the preservation of the health, safety and welfare of Martin County youth, residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:

PART 1: ARTICLE 6. TOBACCO PRODUCTS, CHAPTER 87, HEALTH, GENERAL ORDINANCES, MARTIN COUNTY CODE, IS HEREBY AMENDED AS FOLLOWS:

ARTICLE 6. - TOBACCO PRODUCTS PROHIBITION OF SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE

Sec. 87.131. - Title.

This article shall be known and cited as the "Martin County Tobacco Product Placement" "Prohibition of Sale or Distribution of Tobacco Products to Persons Under 21 Years of Age."

Sec. 87.132. - Intent.

This article is intended to prevent the sale to and possession of tobacco products by persons under the age of 18 by regulating the placement of such products. It is the intent of this article to promote, protect, and improve the health, safety, and general welfare of the citizens of Martin County, Florida, by discouraging the unhealthy practice of using tobacco products and to help prevent the addiction to nicotine, especially by young people under the age of 21, through regulation of the marketing, sale and merchandising of tobacco products, to the extent such regulation is not preempted to the federal or state government. This article shall not be interpreted or construed to prohibit the sale or delivery of tobacco products which are otherwise lawful or regulated pursuant to F.S. ch. 569.

Sec. 87.133. - Definitions.

For the purpose of this article the following terms shall mean:

Business means any sole proprietorship, joint venture, partnership, corporation, limited liability company or other business formed for profit making or non-profit purposes operating within the unincorporated area of Martin County, Florida, including all retail establishments where goods or services are sold.

Delivery Sale means the sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery Sale includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery Sale includes delivery by licensees or third parties by any means, including curbside pick-up.

Distribute or Distribution means to furnish, give, provide, or to attempt to do so, whether gratuitously or for any type of compensation.

Licensed Products means the term that collectively refers to any tobacco product, including liquid nicotine, nicotine product, or vapor-generating electronic device.

Open display unit, in the context of the retail sale of tobacco products, means any device, furniture or furnishing within or upon which tobacco products are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table, desk, kiosk, booth, stand and other surface.

Person means any natural person or entity capable of suing and being sued in the State of Florida.

Recipient means any person who obtains or attempts to obtain a tobacco product.

Retail establishment means any place of business where tobacco products are available for sale to the general public. Retail establishment includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, restaurants other place at which sales of tobacco products are made to purchasers.

Self-service display or placement means the open display or placement of tobacco products to which the public has access without the intervention of the vendor, store owner or other store employee.

Smoking means inhaling, exhaling, burning, carrying or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product or inhaling, heating or igniting a vapor-generating electronic device which creates a vapor of liquid nicotine or other substances mixed with propylene glycol which can be inhaled in simulation of smoking.

Tobacco products include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing or chewing, as defined in F.S. ch. 569, means any product containing, made or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed,

whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means, or any component, part or accessory of a tobacco product, including but not limited to, cigarettes, e-liquids, gels, cigars, cheroots; stogies, perique, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut and all other forms of tobacco. Tobacco products include vapor-generating electronic devices. Tobacco products also include any component or accessory used in the consumption of tobacco, whether or not they contain nicotine, including but not limited to filters, cartridges, pods, pens, rolling papers, blunt, hemp wraps or pipes. Tobacco products do not include any product that is approved by the United States Food and Drug Administration for sale as a tobacco-cessation product or as a tobacco-dependence product intended to assist tobacco users with quitting or reducing tobacco use, or for other medical purposes, and is being marketed and sold solely for such purpose.

Tobacco retailer or retailer means any person, partnership, joint venture, society, club, trustee, trust, association, organization, corporation or business that owns, operates or manages any tobacco retail establishment, a store, stand, booth, concession or other place at which sales of tobacco products are made to purchasers.

Vapor-generating electronic device means any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vapor product, e-hookahs or other similar device or product, any replacement cartridge for such device; and any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product. The term includes any component, part or accessory of the device and also includes substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.

Vendor assisted means the customer has no access to tobacco products without the assistance of the vendor, store owner or other store employee.

Sec. 87.134. Distribution License required.

87.134.A. No person shall sell or offer to sell any tobacco products within the unincorporated area of Martin County without first having obtained a distribution license pursuant to this article.

87.134.B. A distribution license shall not be issued to any person for a location that is within 1000 feet of any public high school, middle school, or elementary school, as measured by the shortest line from the property line of the premises to be licensed and the nearest property line of the school. This restriction does not apply to an applicant who has been licensed by the State of Florida to sell tobacco products in that location prior to the effective date of this Ordinance.

Sec. 87.135. License application.

87.135.A. No distribution license shall be issued except upon written application to the Martin County Tax Collector on the form provided by the County.

87.135.B. The application must contain the full name and address of the retailer; the street address of the premises to be licensed; and any additional information the County deems necessary.

87.135.C. If a retailer has multiple premises where tobacco products are to be distributed, a separate license for each premises must be obtained.

87.135.D. Prior to submitting an application to the Tax Collector, the retailer must obtain an acknowledgement from the Growth Management Department of the County that the premises to be licensed is not restricted pursuant to Sec. 87.134.B.

Sec. 87.136. License fee.

87.136.A. Fees associated with distribution licenses shall be set by resolution of the Board of County Commissioners.

87.136.B. All license fees collected will be deposited into the Prevention of Underaged Tobacco Use Trust Fund established in Section 87.143.

Sec. 87.137. Display of license and sign required.

87.137.A. A copy of the distribution license must be posted and displayed in plain view of the general public on the licensed premises.

87.137.B. A public awareness sign shall be displayed at each licensed premises in a conspicuous location that is clearly visible to the public and employees of the licensed premises.

87.137.C. The required public awareness sign must be at least 8.5 inches by 11 inches in size, must be printed in at least 16-point type, and must state the following: "The sale of tobacco and nicotine products to person under the age of 21 is against the law. Proof of age is required for purchase."

87.137.D. Licensees must notify and train all employees on the legal requirements related to the sale of tobacco products and the possible consequences of license violations.

Sec. 87.138. Term, renewal and transfer of license.

87.138.A. Distribution licenses are valid for no more than one year and expire on September 30th each year.

87.138.B. Distribution licenses must be renewed by the retailer annually in order to continue distribution of tobacco products. Licensees that fail to renew

prior to October 1st will be assessed late fees as establish by Resolution of the Board of County Commissioners.

87.138.C. A license may not be renewed if it has been previously revoked with no opportunity to reapply pursuant to Section 87.142.B.

87.138.D. Transfer of a distribution license issued pursuant to this article by any means is prohibited.

Sec. 87.139. Minimum legal sales age for tobacco products.

No person or tobacco retailer may sell or offer to sell any tobacco product to any person under the age of 21.

Sec. 87.140. Age verification.

87.140.A. Before selling or offering to sell any tobacco product, or products regulated by this article, the retailer shall verify that the recipient is at least 21 years of age.

87.140.B. Retailers must verify the legal sale age by examining the recipient's government issued identification.

Sec. 87. 141134. Delivery Sales, Self-service display and placement prohibited.

87.141.A. It shall be unlawful for any tobacco retailer to sell, to permit to be sold, to offer for sale or to display any tobacco product by means of self-service display or placement or by any means other than vendor assisted sales. No retailer shall place tobacco products in an open display unit unless the same is located in an area that is inaccessible to customers.

87.135.A. Exceptions.

~~The provisions of this section shall not apply to an establishment that prohibits persons under 18 21 years of age on the premises.~~

87.141.A.1. Penalties for improper self-service display and placement. Violation of this section improper self-service display and placement is a misdemeanor pursuant to F.S. sec. 125.69 and is punishable under said section by imprisonment for up to 60 days, or a fine of up to \$500.00, or both such imprisonment and fine.

87.141. B. It shall be unlawful for any tobacco retailer to sell, to permit to be sold, or to offer for sale any tobacco product by means of delivery sales. All sales of tobacco products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

87.141. C. It shall be unlawful for any tobacco retailer to sell, to permit to be sold, or to offer for sale any tobacco product to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

87.141. D. Violation of Sections 87.141.B or 87.141.C. shall be a violation of the license and is punishable as provided in Section 87.142.

Sec. 87.142. Enforcement.

County law enforcement officers may conduct random, unannounced inspections at locations where tobacco products are distributed to test and ensure compliance with this ordinance.

87.1421.A. Penalties. In addition to any penalties specifically mentioned in this article:

87.132.A.1. Licensees. Any licensee found to have violated this article, or whose employee violates this article, will be subject to the following:

<u>Number of Violations</u>	<u>Penalty</u>
<u>1st Violation</u>	<u>7-day license suspension and \$100 fine</u>
<u>2nd Violation within a 24-month period</u>	<u>30-day license suspension and \$250 fine</u>
<u>3rd Violation within a 24-month period</u>	<u>90-day license suspension and \$500 fine</u>
<u>4th Violation within a 24-month period</u>	<u>Revocation of license with no option to reapply and \$500 fine</u>

87.142.A.2. Distribution without a valid license. Selling or otherwise distributing tobacco products without a valid license in the County is a misdemeanor pursuant to F.S. sec. 125.69 and is punishable by imprisonment for up to 60 days or a fine up to \$500 or both.

87.142.B. License Revocation

A tobacco product distribution license may be revoked with no option to reapply whenever it is determined that a licensee has violated this article four times (4) within a 24-month period.

87.142.C. Exceptions and defenses

The penalties in this article do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of County staff or law enforcement for training, education, research, or enforcement purposes.

87.142.C.1. Nothing in this article prohibits a person younger than 21 years old from handling tobacco products in the course of lawful employment.

87.142.C.2. It shall be an affirmative defense to a violation of this article for a person to have reasonably relied on government-issued identification for proof of age.

Sec. 87.143. Creation of Fund and Accounting.

87.143.A. The Clerk of the Circuit Court and Comptroller shall keep a record of all monies collected pursuant to this article and Article 7 and shall deposit all monies into the fund entitled "Prevention of Underaged Tobacco Use Trust Fund."

87.143.B. The Clerk of the Circuit Court and Comptroller shall provide the Board of County Commissioners with a monthly report as to the funds collected and deposited into the Prevention of Underaged Tobacco Use Trust Fund and the amount of expenditures from the Prevention of Underaged Tobacco Use Trust Fund.

Sec. 87.144. Expenditures.

Monies deposited into the Prevention of Underaged Tobacco Use Trust Fund shall be used for the administration of the distribution licenses, enforcement of this article and to financially assist the prevention of underaged tobacco use programs in public and nonpublic schools in Martin County. In order to receive assistance grants from the Prevention of Underaged Tobacco Use Trust Fund, programs shall be selected as recipients on the basis of selection procedures which shall be developed by the County Administrator or designee. Final approval shall be made by the Board of County Commissioners. The terms and conditions of such grants shall be contained in an agreement between the Martin County Board of County Commissioners and the grantee.

Sec. 87.145. – Reserved. Secs. 87.137-87.140. Reserved.

PART 2. ARTICLE 7. ELECTRONIC NICOTINE DELIVERY DEVICES, CHAPTER 87, GENERAL ORDINANCES, MARTIN COUNTY CODE, IS HEREBY AMENDED AS FOLLOWS:

ARTICLE 7. PROHIBITION ON USE OF VAPOR-GENERATING ELECTRONIC NICOTINE DELIVERY DEVICES

Sec. 87.141. Title.

This article shall be known and may be cited as the "Martin County Nicotine Merchandising Ordinance."

Sec. 87.1462. Purpose and intent.

It is the intent of this article to promote, protect, and improve the health, safety, and general welfare of the citizens of Martin County, Florida, by discouraging the unhealthy practice of using nicotine products and to help prevent the addiction to nicotine, especially by young people, ~~through regulation of the marketing, sale and merchandising of nicotine products~~, to the extent such regulation is not preempted to the federal or state government.

Sec. 87.143. Definitions.

As used in this article:

~~Business~~ means any sole proprietorship, joint venture, partnership, corporation, limited liability company or other business formed for profit making or non-profit purposes operating within the unincorporated areas of Martin County, Florida, including all retail establishments where goods or services are sold.

~~E cigarette~~ means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides a vapor of liquid nicotine or other substances mixed with propylene glycol to the user that he or she inhales in simulation of smoking. This term shall include such devices whether they are manufactured as e cigarettes, e cigars, e pipes or under any other product name.

~~Liquid nicotine~~ means any liquid product composed either in whole or part of pure nicotine and propylene glycol and manufactured for use with e cigarettes.

~~Open display unit~~, in the context of the retail sale of e cigarettes and liquid nicotine, means any device, furniture or furnishing within or upon which e cigarettes or liquid nicotine are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table, desk, kiosk, booth, stand and other surface.

~~Person~~ means any natural person or artificial entity capable of suing and being sued in the State of Florida.

~~Retailer~~ means any person or business engaged in the retail sale of e cigarettes or liquid nicotine.

~~Self service merchandising~~, in the context of the retail sale of e cigarettes and liquid nicotine, means the open display of e cigarettes and liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention or assistance of the retailer or the retailer's owner, employee or agent. Such open display includes the use of an open display unit.

~~Smoking~~ means smoking as defined in F.S. § 386.203 and any successor thereto.

~~Use of an e cigarette means the heating or ignition of an e cigarette which creates a vapor of liquid nicotine or other substances mixed with propylene glycol to the user that he or she can inhale in simulation of smoking.~~

Sec. 87.144. Sale of e-cigarettes to minors prohibited.

~~It is prohibited for any person to sell or offer for sale e cigarettes or liquid nicotine within the unincorporated County to a person under 18 21 years of age. The retailer shall verify the age of the purchaser prior to completing the sale of any e cigarettes or liquid nicotine.~~

Sec. 87.145. Self-service merchandising prohibited.

- (a) ~~No retailer shall sell, permit to be sold, offer for sale, or display for sale e cigarettes or liquid nicotine by means of self-service merchandising.~~
- (b) ~~No retailer shall place e cigarettes or liquid nicotine in an open display unit unless the same is located in an area that is inaccessible to customers.~~

Sec. 87.1476. Use of vapor-generating electronic device e-cigarette prohibited.

The use of a vapor-generating electronic device, as defined in Article 6, ~~an e-cigarette~~ is prohibited at all locations within the unincorporated County at which smoking and vaping are ~~is~~ prohibited under F.S. ch. 386, or within 50 feet thereof and at County parks.

Sec. 87.147. - Marketing restrictions.

~~In addition to the other responsibilities under this part, each business shall remove from each point of sale all self-service displays, advertising, labeling, and other items that do not comply with the requirements under this article.~~

Sec. 87.148. - Penalties.

87.148.A. (a) The violation of any provision of this article is a misdemeanor pursuant to F.S. sec. 125.69 and is punishable under said section by imprisonment for up to 60 days, or a fine of up to \$500.00, or both such imprisonment and fine.

~~(b) Any condition caused or permitted to exist in violation of any of the provisions of this article shall be deemed a public nuisance and shall be subject to abatement by the county.~~

87.148.B. (e) Each and every act or action done in violation of the provisions of this article, shall be construed, deemed and taken as a separate and distinct violation of such provisions of this article. Every day that a violation of this article or any provisions hereof shall continue shall be deemed a separate and distinct violation of the provisions of this article.

87.148.C. (d) Nothing contained in this section prohibits the Board of County Commissioners from enforcing codes by any other means.

PART 3: CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, County ordinances and County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict.

PART 4: SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 5: APPLICABILITY.

This ordinance shall be applicable throughout the unincorporated area of Martin County.

PART 6: FILING WITH DEPARTMENT OF STATE AND DEPARTMENT OF REVENUE.

The Clerk shall be and is hereby directed forthwith to scan this Ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission. The Clerk is further directed to send a certified copy of this Ordinance to the Florida Department of Revenue.

PART 7: EFFECTIVE DATE.

This ordinance shall take effect on February 1, 2021.

PART 8: CODIFICATION.

Provisions of this ordinance shall be incorporated in the County Code, except parts 3 to 8 shall not be codified. The word "ordinance" may be changed to "section," "article" or other word, and the sections of this ordinance may be renumbered or re-lettered.

**DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY
COMMISSIONERS OF MARTIN COUNTY THIS ____ DAY OF OCTOBER 2020.**

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

HAROLD E. JENKINS II, CHAIRMAN

APPROVED AS TO FORM & LEGAL
SUFFICIENCY:

SARAH W. WOODS, COUNTY ATTORNEY

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