



## Agenda Item Summary

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**File ID:** 21-0764

**PH-1**

**Meeting Date:** 6/22/2021

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**PLACEMENT:** Public Hearings

**TITLE:**

**PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE AMENDING ARTICLE 6, RELATING TO TOBACCO PRODUCTS, CHAPTER 87, GENERAL ORDINANCES, MARTIN COUNTY CODE BY REPEALING TOBACCO DISTRIBUTION LICENSE REQUIREMENTS AND RELATED ENFORCEMENT PROVISIONS**

**EXECUTIVE SUMMARY:**

On November 17, 2020, the Board of County Commissioners (Board) adopted Ordinance 1149 which, among other things, established 21 as the minimum age to purchase and use tobacco products in Martin County and established a tobacco distribution licensing requirement for tobacco retailers in Martin County. On May 7, 2021, Governor DeSantis signed Senate Bill (SB) 1080 relating to tobacco and nicotine products. Under the new legislation, the establishment of the minimum age for purchasing or possession, and the regulation for the marketing, sale or delivery of tobacco or nicotine products is preempted to the state beginning October 1, 2021.

**DEPARTMENT:** County Attorney

**PREPARED BY:** **Name:** Elysse A. Elder  
**Title:** Senior Assistant County Attorney

**REQUESTED BY:**

**PRESET:**

**PROCEDURES:** None

**BACKGROUND/RELATED STRATEGIC GOAL:**

On December 20, 2019, President Trump signed legislation to amend the Federal Food, Drug and Cosmetic Act to raise the federal minimum age for the purchase of tobacco products from 18 to 21. This created inconsistencies with many states' laws that established 18 as the minimum age for the purchase of tobacco products, including Florida. Even though the Florida Legislature approved Senate Bill (SB) 810 in the 2020 legislative session which raised the minimum age for the sale of tobacco products to 21 in Florida, the bill was vetoed by Governor DeSantis. As a result, Florida law was inconsistent with federal law for the minimum age to purchase tobacco products. This created an enforcement issue for local law enforcement.

Recognizing the inconsistency between federal and state law and to combat the negative impacts of tobacco use in Martin County, on November 17, 2020, the Board adopted a Tobacco 21 Ordinance,

Ordinance 1149, which became effective on February 1, 2021. Ordinance 1149 was codified into Article 6 and Article 7, General Ordinances, Martin County Code. Article 6, relating to tobacco products was amended to increase the minimum age to purchase tobacco products from 18 to 21 and to establish the requirement that tobacco retailers in unincorporated Martin County obtain a Tobacco Distribution License (TDL) in order to sell tobacco products. It also provided enforcement provisions for violations of the Ordinance. The fees for TDLs were established by Board resolution. The Tax Collector's Office issues TDLs which are valid from October 1<sup>st</sup> through September 30<sup>th</sup> of each year and require yearly renewal. They are renewed annually between July 1<sup>st</sup> and September 30<sup>th</sup>. Accordingly, renewals for the existing TDLs will begin on July 1, 2021. The monies generated from the Ordinance are being held in a trust with the Clerk of the Circuit Court and Comptroller to financially assist with the prevention of the underaged use of tobacco products.

On May 7, 2021, Governor DeSantis signed Senate Bill (SB) 1080 relating to tobacco and nicotine products. Under the new legislation, the establishment of the minimum age for purchasing or possession, and the regulation for the marketing, sale or delivery of tobacco and nicotine products is preempted to the state beginning October 1, 2021. As a result, all of the provisions in Article 6 will need to be repealed by October 1, 2021. Since the Tax Collector will begin renewals of the TDLs on July 1, 2021, the portions of Article 6 relating to the TDLs and its enforcement provisions should be repealed prior to the renewal timeframe. The attached Ordinance repeals those portions of Article 6 relating to the TDL and its enforcement. By just repealing the TDL requirement and relating enforcement provisions at this time but leaving the minimum age requirements in place until October 1, 2021, Martin County will continue to be consistent with the federal minimum age requirement for enforcement purposes.

#### **ISSUES:**

None

#### **LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that arbitrary and capricious or illegal are subject to serious legal challenge.

#### **RECOMMENDED ACTION:**

##### **RECOMMENDATION**

Move that the Board approve the proposed Ordinance.

Move that the Board rescind Resolution 20-11.27, Resolution to Establish Fees for Tobacco Distribution Licenses.

Move that the Board direct the Clerk of the Circuit Court & Comptroller to disburse any funds in the Prevention of Underaged Tobacco Use Trust Fund to the Health and Human Services Department of Martin County to be utilized for the prevention of underaged tobacco use and to close the trust fund.

## ALTERNATIVE RECOMMENDATIONS

Provide staff with further direction.

## FISCAL IMPACT:

## RECOMMENDATION

None

## ALTERNATIVE RECOMMENDATIONS

None

## DOCUMENT(S) REQUIRING ACTION:

- |  |                                       |   |
|--|---------------------------------------|---|
| <input type="checkbox"/> Budget Transfer / Amendment | <input type="checkbox"/> Chair Letter | <input type="checkbox"/> Contract / Agreement |
| <input type="checkbox"/> Grant / Application         | <input type="checkbox"/> Notice       | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Other:                      | <input type="checkbox"/> Resolution   |   |

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