



## Agenda Item Summary

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**File ID:** 22-0138

**PH-2**

**Meeting Date:** 10/19/2021

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**PLACEMENT:** Public Hearings

**TITLE:**

**PUBLIC HEARING TO CONSIDER ADOPTION OF AN ORDINANCE REPEALING ARTICLE 6 RELATING TO TOBACCO PRODUCTS AND AMENDING ARTICLE 7 RELATING TO ELECTRONIC NICOTINE DELIVERY DEVICES OF CHAPTER 87, GENERAL ORDINANCES, MARTIN COUNTY CODE**

**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.

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. The portions of the Ordinance relating to the Tobacco Distribution License requirements and its enforcement were repealed by the Board in June 2021. The remainder of Article 6 needs to be repealed by October 1, 2021 because of the preemption language.

Regulation of the use of vapor generating devices is not preempted to the State, and accordingly, Article 7 can remain in effect in Martin County. Article 7 utilizes the definition of vapor generating device in Article 6. As a result, Article 7 needs to be amended to update the definition of vapor generating device to be consistent with Florida Statutes Section 386.203(15).

#### **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.

##### **ALTERNATIVE RECOMMENDATIONS**

Provide staff with further direction.

#### **FISCAL IMPACT:**

##### **RECOMMENDATION**

None

## ALTERNATIVE RECOMMENDATIONS

None

## DOCUMENT(S) REQUIRING ACTION:

- ☐ Budget Transfer / Amendment   ☐ Chair Letter   ☐ Contract / Agreement  
☐ Grant / Application   ☐ Notice   ☒ Ordinance   ☐ Resolution  
☐ Other:

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