

ORDINANCE NO. 95-11-103

AN ORDINANCE OF THE CITY OF ATLANTIC BEACH, FLORIDA, AMENDING CHAPTER 13, OFFENSES, BY ADDING A NEW SECTION 13-14, PROHIBITING SELF-SERVICE DISPLAY AND PLACEMENT OF TOBACCO PRODUCTS; PROVIDING FOR A TITLE; PROVIDING FOR INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, AND APPLICABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR AN EFFECTIVE DATE AND CODIFICATION

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 entered into a settlement agreement with the tobacco industry for billions of dollars to reimburse 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 U.S. Department of Health and Human Services has determined that every day 3,000 children become smokers and a third of them, eventually, will die from smoking-related illnesses. Smoking is this nation's leading preventable cause of death and kills more than 430,000 people a year; 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.Ed2d 362 (1981), that ordinances that regulate the commercial marketing and display of items that may be used for illegal purposes does not violate the First Amendment; and

WHEREAS, the City of Atlantic Beach, along with its citizens, are concerned about the use of tobacco products by persons under the age of 18; and

WHEREAS, the City Commission 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 product use by that age group; and

WHEREAS, the City Commission finds that such regulation is in the best interest of the public health, safety and welfare.

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION ON BEHALF OF THE PEOPLE OF THE CITY OF ATLANTIC BEACH, FLORIDA:

SECTION 1. The Code of Ordinances of the City of Atlantic Beach, Florida, is hereby amended by adding a new section to be numbered Sec. 13-14, which section shall read as follows:

“Sec. 13-14. **Tobacco product placement.**

(a) **Title.** This Ordinance shall be known and cited as the City of Atlantic Beach Tobacco Product Placement Ordinance.

(b) **Intent.** This article is intended to prevent the sale to and possession of tobacco products by persons under the age of eighteen (18) by regulating the placement of such products. 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 Chapter 569, Florida Statutes.

(c) **Definitions.** For the purpose of this article the following terms shall mean:

Candy flavored tobacco products shall mean tobacco or any of its component parts (including the tobacco, filter or paper) that contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke.

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 pipes and smoking devices shall mean metal, wooden, acrylic, glass, stone, plastic or ceramic smoking pipes, with or without screens, permanent screens or punctured metal bows; water pipes; carburetion tubes and devices; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; and ice pipes or chillers.

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 Chapter 569, Florida Statutes.

Tobacco retailer means any person or business that operates or manages a store, stand, booth, concession or other place at which sales of tobacco products are made to purchasers.

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

(d) **Self-service display and placement prohibited.** 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, candy flavored tobacco product, and any smoking pipe and smoking device by means of self-service display or placement or by any means other than vendor assisted sales.

(e) **Exceptions.** The provisions of this article shall not apply to an establishment that prohibits persons under eighteen (18) years of age on the premises.

(f) **Penalties.** Violation of this ordinance is a misdemeanor pursuant to Section 125.69, Florida Statutes, and is punishable under said section by imprisonment for up to sixty (60) days, or a fine of up to \$500.00, or both such imprisonment and fine.

(g) **Conflicting Provisions.** City of Atlantic Beach ordinances and City of Atlantic Beach resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning either adoption or amendment of the City of Atlantic Beach comprehensive plan, pursuant to Chapter 163, Part II, Florida Statutes, or land development regulations relating specifically to community redevelopment areas established pursuant to Chapter 163, Part III, Florida Statutes.

(h) **Severability.** If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, 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, such holding shall not affect its applicability to any other person, property or circumstances.

(i) **Applicability of Ordinance.** This ordinance shall be applicable throughout the jurisdiction of the City of Atlantic Beach.

(j) **Filing with the Department of State.** The Clerk be and hereby is directed forthwith to send a certified copy of this ordinance to the Bureau of Administrative Code, Department of State, R.A. Gray Building, Room 101, 500 S. Bronough Street, Tallahassee, Florida 32399-0250.

(k) **Codification.** Provisions of this ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “section,” “article” or other word, and the sections of this ordinance may be renumbered or relettered to accomplish such intention; provided, however, that Sections Seven to Eleven shall not be codified.”

SECTION 2. This Ordinance shall take effect on October 1, 2011.

PASSED by the City Commission on first reading this 11th day of July, 2011.

PASSED by the City Commission on second and final reading this 25th day of July, 2011.

ATTEST:

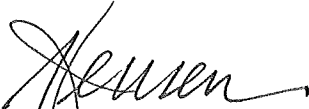


Donna L. Bartle, CMC
City Clerk



Mike Borno
Mayor, Presiding Officer

APPROVED AS TO FORM AND CORRECTNESS:



Alan C. Jensen, Esquire
City Attorney