

ORDINANCE NO. 435

AN ORDINANCE ENTITLED "MERCHANDISING OF TOBACCO PRODUCTS IN CITY OF MEXICO BEACH"; PROVIDING FOR FINDINGS OF FACT, INTENT AND DEFINITIONS; REGULATION TOBACCO PRODUCT PROMOTION, 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, 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

WHEREAS, the settlement agreement between the State of Florida and the tobacco industry provided for a pilot program which 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. In fact, 90% of all smokers begin at or before the age of 18; and

WHEREAS, the 1999 U. S. Federal Trade Commission Cigarette Report Stated that payments for higher visibility on store shelves for tobacco products has increased 23% since the Tobacco Settlement; and

WHEREAS, a 2000 University of Illinois at Chicago study showed that 75% of youth visit a convenience store at least once a week; and

WHEREAS, a 2001 Operations SWAT survey of sample retail stores in Bay County showed that 24% of stores surveyed had tobacco advertising located next to candy, 37% of tobacco advertising was located at 3 feet or below (measured from the ground up), and 42% of stores had tobacco products located on the counter, in front of the counter, by the front door or in an aisle; and

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

WHEREAS, the City Council of Mexico Beach, Florida, 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 reduction in tobacco product use by that age group; and

WHEREAS, the City Council of Mexico Beach, 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 sell and delivery of cigars and pipe tobacco is exempt from certain provisions of Chapter 569, Florida statues; and

WHEREAS, the City Council of Mexico Beach, 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 government 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. (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 City Commission desires to regulate the placement of tobacco products as it is in the best interest of the public health, safety, and welfare;

NOW THEREFOR BE IT ORDAINED BY THE CITY COUNCIL OF MEXICO BEACH , 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 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. This would also include “bidis” or “beedies” which is a tobacco product wrapped in temburni or tendu leaf or other product.

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 placed therein.

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

Self-service Tobacco Merchandising- means open display of tobacco products and point-of-sale tobacco related

promotional products that the public has access to without the intervention of the vendor.

Tobacco Product Promotion- includes any advertisement, the display of any logo, brand name, character, graphic or designs that are trademarks of a particular brand of tobacco product.

Tobacco product promotion does not include any public service messages sponsored by a federal, state or local government entity or by a non-profit entity, designed to communicate the hazards of smoking or to encourage minors to refrain from using or buying tobacco products.

Vending Machine- means any mechanical, electrical, or electronic device that, on the insertion of money, tokens, or other form of payment, dispenses tobacco products automatically or by operation of a lockout device as defined in Section 569.12, Florida Statutes.

Vendor Assisted Sale- means the customer has no physical access to tobacco products without the assistance of the vendor or employee.

Snack- includes but is not limited to items such as chips, crackers, cookies, ice cream, beef jerky, popcorn, pretzels, ect.

Section 4. Regulation of Tobacco Product Promotion of

Placement of Tobacco Products in Open Display Unit: 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 the City of Mexico Beach.

Section 8. Effective Date: This Ordinance shall take effect upon its being filed with the Department of the State of Florida.

DONE AND ORDERED this 8th day of April, 2003.

ATTEST:


CITY CLERK

CITY COUNCIL
OF MEXICO BEACH, FLORIDA


MAYOR OF MEXICO BEACH, FLORIDA

