



# FLORIDA LOCAL RETAIL TOBACCO LICENSING ORDINANCE

## With Purchase Age of 21



In January 2019, Alachua County became the first local government in Florida to require tobacco retailers to obtain a license. Through licensing and related regulations, Florida cities and counties have the opportunity to address the sale of commercial tobacco and related devices and products in the retail environment.<sup>1</sup>

This model ordinance includes all of the minimum retail tobacco sales restrictions required by Florida state and federal law. It also includes a number of additional provisions a local government may choose to adopt in order to further advance public health. A city or county planning to adopt this model ordinance, in whole or in part, should review it with its attorney beforehand to determine suitability. While the model ordinance language can be modified by adding or omitting content concerning activities

The best possible world is one without the death and health harms associated with commercial tobacco use.



that a city or county does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.

Because provisions within this model ordinance are controlled by statute and rule, the city or county attorney should review any modifications to ensure they conform to state and federal law. In addition, because the ordinance establishes rights and responsibilities of both the local government and license applicants and holders, the city or county attorney should review the entire ordinance before it is adopted. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

### Notice

In order to properly adopt an ordinance, cities and counties in Florida must follow specific processes set out in state statute. [Section 125.66](#) sets out the process for counties; [Section 166.041](#) sets out the process for cities. These statutes include requirements for notice, publication, and form.

### Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for local governments in Florida. This model ordinance contains several policy components that go beyond state minimum requirements and communities may or may not choose to adopt at this time, including:

- Raising the legal purchasing age to 21;
- Restricting the sale of flavored tobacco products, including menthol;
- Regulating the price of commercial tobacco products, such as establishing minimum prices for cigars and restricting price promotions and coupon redemptions;
- Regulating the distance between tobacco retailers, youth-oriented facilities and other retailers; and
- Prohibiting pharmacies from selling commercial tobacco products.

### Context Boxes

Context boxes are included throughout this model ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city or county wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a city or county is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

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This retail tobacco licensing ordinance was prepared by the Public Health Law Center, located at Mitchell Hamline School of Law in St. Paul, Minnesota, under a grant from Counter Tools.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation or advice. This document should not be considered legal advice.

**This publication and its companion, setting a minimum sale age of 18, represent the only Florida model local retailer licensing policies endorsed by the Public Health Law Center.**

**ORDINANCE NO. [ \_\_\_\_\_ ]**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF  
[ \_\_\_\_\_ ] COUNTY, FLORIDA / CITY COUNCIL  
OF [ \_\_\_\_\_ ], FLORIDA, REGULATING THE  
SALE OF TOBACCO AND RELATED DEVICES AND PRODUCTS**

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### Title

Florida state statutes require both city and county ordinances to have a title. Cities have the additional limitation that ordinances shall “embrace but one subject, [which] shall be clearly stated in the title.” The title should state whether the ordinance is amending an existing section of the city or county code, or whether it is creating a new section.

## Section 1. Findings.<sup>2</sup>

**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 since the first Surgeon General’s report on smoking in 1964; and

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

**WHEREAS**, young people are particularly susceptible to the addictive properties of tobacco products and are particularly likely to become lifelong users; and

**WHEREAS**, an estimated 5.6 million youth aged 0 to 17 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 brains are particularly susceptible to the addictive properties of nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood; and

**WHEREAS**, electronic smoking device use among minors (ages 11-17) increased in Florida from 5.7% in 2012 to 26.3% in 2018; and

**WHEREAS**, research demonstrates that flavored tobacco products are especially attractive to youth, who are an enticing target market for the tobacco industry, and these products have been shown to increase initiation among all populations by masking the harsh taste of tobacco and nicotine; and

**WHEREAS**, the U.S. Food and Drug Administration has commissioned two extensive reports that document the evidence and conclude that removing menthol from all commercial tobacco products would benefit the public's health and save thousands of lives, 33 to 50 percent of which would be African American; and

**WHEREAS**, studies have found positive associations between student smoking and the proximity of tobacco retailers to schools; and

**WHEREAS**, studies have shown an association between lower life expectancy and high tobacco retailer density; and

**WHEREAS**, restrictions on the availability of tobacco products through self-service means has been shown to reduce minors' access to tobacco; and

**WHEREAS**, the current use rate of cigarettes, cigars, smokeless tobacco, hookah, and electronic vaping among Florida youth (ages 11-17) is 19.1%. Additionally, 33.1% of Florida youth have tried any of these products; and

**WHEREAS**, the City/County now desires to require tobacco product distribution licenses for vendors of certain products.

### **Purpose and Findings**

A Purpose and Findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the city or county's reasoning for adopting specific provisions. This section can be updated regularly to include relevant data such as current rates of tobacco use, updated estimates of the cost of tobacco use, etc. The Public Health Law Center can provide support for communities to determine which Purpose and Findings statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the city or county chooses to adopt.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF [ \_\_\_\_\_ ] COUNTY / CITY COUNCIL OF [ \_\_\_\_\_ ], FLORIDA, AS FOLLOWS:

## Section 2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

**CHILD-RESISTANT PACKAGING.** Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

**COMPLIANCE CHECKS.** The system the city/county uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. COMPLIANCE CHECKS involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. COMPLIANCE CHECKS may also be conducted by the city/county or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

**FLAVORED PRODUCT.** Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

**IMITATION TOBACCO PRODUCT.** Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include nicotine dispensing devices or nicotine products.

**LICENSED PRODUCTS.** The term that collectively refers to any tobacco, tobacco-related device, nicotine dispensing devices or nicotine products.

**LOOSIES.** The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. LOOSIES does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least [ \$4.00 ] per cigar.

**MOVEABLE PLACE OF BUSINESS.** Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

**NICOTINE DISPENSING DEVICE.** Any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.<sup>3</sup>

**NICOTINE PRODUCT.** Any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include a:

- (1) Tobacco product;
- (2) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act; or
- (3) Product that contains incidental nicotine.<sup>4</sup>

**PERSON.** Any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity.

**PHARMACY.** A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

**RETAIL ESTABLISHMENT.** Any place of business where licensed products are available for sale to the general public. The phrase includes but is not limited to grocery stores, tobacco products shops, hookah lounges, convenience stores, gasoline service stations, bars, and restaurants.



**SALE.** Any transfer of goods for money, trade, barter or other consideration.

**SELF-SERVICE DISPLAY.** The open display of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee.

**TOBACCO PRODUCT.** Any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.<sup>5</sup>

**TOBACCO-RELATED DEVICE.** Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. TOBACCO-RELATED DEVICES may or may not contain tobacco.

**VENDING MACHINE.** Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

**YOUTH-ORIENTED FACILITY.** Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

### Section 3. License.

- (A) **License required.** No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city/county.
- (B) **Application.** An application for a license to sell licensed products must be made on a form provided by the city/county. The application must contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City/County Clerk will forward the application to the City Council / Board of Commissioners for action at its next regularly scheduled meeting. If the City/County Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to

make the application complete. If an applicant has multiple premises in the City/County where tobacco products are to be distributed, the distributor must obtain a license for each separate premises.

- (C) **Action.** The City Council / Board of Commissioners may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council / Board of Commissioners approves the application, the City/County Clerk will issue the license to the applicant. If the City Council / Board of Commissioners denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (E) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedures set forth in Section 11.
- (F) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (G) **Moveable place of business.** No license will be issued to a moveable place of business. Only fixed-location businesses are eligible to be licensed.
- (H) **Display.** All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.
- (I) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.
- (J) **Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- (K) **Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least [ 18 or 21 ] years of age to sell licensed products.

### Minimum Age for Clerks

Cities/counties may be interested in establishing a minimum age for employees that work for licensed tobacco retailers. Doing so ensures that employees are of or above the minimum legal sales age for commercial tobacco sales. If a city/county chooses to raise the minimum legal sales age to 21, but leave the minimum clerk age at 18, clerks between the ages of 18 and 20 can legally sell licensed products within the purview of their employment, but would be unable to purchase them.

- (L) **Maximum number of licenses.** The maximum number of licenses issued by the city or county at any time is limited to [ see context box below ]. When the maximum number of licenses has been issued, the city or county may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city or county license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

### Licensing Cap

Communities with a higher density of commercial tobacco retailers expose more youth and young adults to commercial tobacco industry marketing and make it easier for youth and young adults to obtain licensed products. This encourages commercial tobacco initiation, use, and brand choice. One way to address retailer density issues is to place a cap on the number of tobacco retailer licenses that may be issued by the city or county. The above provision would set the maximum number of licenses available.

Cities and counties can choose how to structure a licensing cap to meet the needs of their communities. Potential options include setting the cap at the number of existing licensed retailers or limiting the number of licensed retailers based on population density. A city or county may also want to limit licenses to those that currently exist and reduce the number of available licenses over time, as licenses are revoked or expire and are not renewed. Cities and counties are encouraged to work with local public health departments, city and county attorneys, and the Public Health Law Center to determine the appropriate licensing cap provision for their community.

For more information on retailer density, review our publication, [Location, Location, Location: Regulating Tobacco Retailer Locations for Public Health](#).



- (M) **Proximity to youth-oriented facilities.** No license will be granted to any person for a retail establishment location that is within [ 1,000 ] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been legally selling licensed products in that same location for at least one year before the date this section was enacted into law.
- (N) **Proximity to other licensed retailers.** No license will be granted to any person for a retail establishment location that is within [ 2,000 ] feet of any other existing licensed retail establishment, as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant who has been legally selling licensed products in the same location for at least one year before the date this section was enacted into law.

### Proximity Restrictions

Research has demonstrated that policies requiring set distances between retailers and between retailers and youth-oriented facilities help to reduce tobacco retailer density and increase prices for commercial tobacco products. These proximity buffers have the largest impact in urban, low-income neighborhoods, which have been historically targeted by the tobacco industry with pervasive marketing and price promotions at the point of sale. The greatest public health impacts are seen when these policies are combined with a cap on the number of licenses issued.

Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Myers, A. E., Hall, M. G., Isgett, L. F., & Ribisl, K. M. (2015). A Comparison of Three Policy Approaches for Tobacco Retailer Reduction. *Preventive Medicine*, 74, 67-7; and Ribisl, K. M., Luke, D. A., Bohannon, D. L., Sorg, A. A., & Moreland-Russell, S. (2017). Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales near Schools. *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, 19(2), 239-244.

- (O) **Pharmacies ineligible for licensure.** No license will be issued to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy.



## Pharmacy Prohibitions

Several communities have adopted laws prohibiting pharmacies from selling commercial tobacco products. These laws have been shown to significantly reduce commercial tobacco retailer density when compared to communities without similar laws. These gains have had the greatest impact on neighborhoods with higher median income, education, and proportion of non-Hispanic white residents. Although pharmacy restrictions alone are unlikely to address health disparities, some studies have shown that these policies are most effective when combined with proximity restrictions.

Giovenco, D. P., Spillane, T. E., Mauro, C. M., & Hernández, D. (2018). Evaluating the Impact and Equity of a Tobacco-free Pharmacy Law on Retailer Density in New York City Neighbourhoods. *Tobacco Control*, tobaccocontrol-2018-054463. Jin, Y., Lu, B., Klein, E. G., Berman, M., Foraker, R. E., & Ferketich, A. K. (2016). Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *American Journal of Public Health*, 106(4), 679–685.

- (P) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost.
- (Q) **Instructional program.** Licensees must ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city/county. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

## Section 4. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time.

## Licensing Fees

Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education. Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks. Our publication, [Retail License Fees](#), provides more information about retail licensing fees and a license fee checklist. ChangeLab Solutions has a [Fee Calculator](#) to help estimate an appropriate fee.

## Section 5. Basis for Denial of License.

- (A) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
- (1) The applicant is under 21 years of age.
  - (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
  - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
  - (4) The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.
  - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
- (B) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the city to deny the license.
- (C) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. The city/county will provide the license holder with notice of the revocation, along with information on the right to appeal.

## Section 6. Prohibited Acts.

- (A) **In general.** No person shall sell or offer to sell any licensed product:
- (1) By means of any type of vending machine.
  - (2) By means of loosies as defined.
  - (3) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
- (B) **Legal age.** No person shall sell any licensed product to any person under the age of 21.
- (1) **Age verification.** Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required

for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

- (2) **Signage.** No person may sell or permit the sale of tobacco products in the City of [ \_\_\_\_\_ ] / [ \_\_\_\_\_ ] County unless a clearly visible notice is posted at the location where tobacco products are available for purchase. The City/County shall provide this notice, which shall state “The sale of tobacco products to persons under the age of 21 is against the law in [CITY NAME / [ \_\_\_\_\_ ] COUNTY]. Proof of age is required for purchase” legibly printed in letters at least one-half inch high.<sup>6</sup>
- (C) **Self-service sales.** No person shall allow the sale of licensed products by any self-service displays where the customer may have access to those items without having to request the item from the licensee or the licensee’s employee and where there is not a physical exchange of the licensed product from the licensee or the licensee’s employee to the customer. All licensed products must be stored behind the sales counter, in another area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
- (D) **Flavored products.** No person shall sell or offer for sale any flavored products.

### Sales of Flavored Products

Research demonstrates that flavored tobacco products are especially attractive to youth. These products increase initiation among all populations by masking the harsh taste of tobacco and nicotine. Flavors like menthol and clove also provide a numbing effect that lead to longer breath-holding. This makes quitting flavored tobacco products difficult. Overwhelmingly, youth begin using tobacco with flavored products. Restricting the sale of flavored tobacco products to stores that youth and young adults cannot enter can reduce youth access to, and advertisements for, flavored products.

For more information, please review our publication: [Regulating Flavored Tobacco Products](#).

- (E) **Cigars.** No person shall sell or offer to sell any cigar that is not within its intended retail packaging containing a minimum of [ five ] cigars and for a sales price, after any discounts are applied and before sales taxes are imposed, of less than [ \$12.50 ] per package. This provision does not prohibit the sale of a single cigar with a sales price, after any discounts are applied and before sales taxes are imposed, of at least [ \$4.00 ].

- (F) **Imitation tobacco products.** No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city/county.
- (G) **Liquid packaging.** No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in a nicotine dispensing device, in packaging that is not child-resistant. Upon request by the city/county, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (H) **Price promotion and coupon redemption.** No person shall accept or redeem any coupon or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

### Product Discounts

The price of tobacco products directly affects the consumption levels, particularly among price-sensitive consumers, including youth, young adults, and those with limited financial means. The commercial tobacco industry uses innovative pricing strategies to entice new customers to purchase their products, to discourage current users from quitting, and to reduce the effectiveness of tobacco tax increases in decreasing tobacco sales and increasing users' quit attempts. These pricing strategies include "buy-one-get-one" coupons, cents- or dollar-off promotions, and multi-pack offers, which are often marketed and redeemed at the point-of-sale. Jurisdictions can prohibit the redemption of these price discounts to negate the sophisticated discounting strategies of the commercial tobacco industry. Please see our publication, *Death on a Discount: Regulating Tobacco Product Pricing*, for more information on product pricing.

## Section 7. Responsibility.

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee. Nothing in this section shall be construed as prohibiting the city/county from also subjecting the employee to any civil penalties that the city/county deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.



## Section 8. Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized city/county officials during regular business hours. From time to time, but at least [ twice ] per year, the city/county will conduct compliance checks. The city/county will conduct at least one compliance check that involves the participation of a person between the ages of 16 and 20 to enter licensed premises to attempt to purchase licensed products. Prior written consent is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

## Section 9. Other Prohibited Acts.

Unless otherwise provided, the following acts are an administrative violation of this ordinance:

- (A) **Prohibited furnishing or procurement.** It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or attempt to purchase any licensed product.
- (B) **Use of false identification.** It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

### Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification

Prohibiting the attempted and actual possession, use, and purchase (PUP) of licensed products by underage persons or the use of a false ID to purchase tobacco products is a part of many ordinances around the country and Florida state law.<sup>7</sup> However, this model ordinance does not include penalties for underage PUP and only provides non-criminal, non-monetary penalties for the use of false IDs.

At its core, a licensing ordinance is intended to regulate the behavior of licensees. Penalizing underage persons detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine. It is important to note that, even if PUP provisions are not included in an ordinance, retailers have the authority to ask underage persons to leave the premises if they attempt to purchase products.

There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking. Historically, these laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace a dying consumer base and maintain profits in a dwindling market.

Furthermore, many advocates are concerned that PUP penalties open the door to selective enforcement against youth from certain racial, ethnic, and socio-economic groups. Evidence suggests that youth of color are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and resulting in their introduction to the criminal justice system. Finally, Florida law currently penalizes PUP and the use of false IDs and no further enforcement is needed at the local level.

Some of these concerns may be alleviated by offering alternative non-criminal, nonmonetary penalties as suggested below in section 11(B)(3).

For further reading on the history of PUP laws and the disproportionate enforcement of laws against youth of color and indigenous youth, please see Wakefield, M., & Giovino, G. (2003). Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*, 12(suppl 1), i6-i13.

## Section 10. Exceptions and Defenses.

- (A) **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

- (5) **Costs.** If the citation is upheld by the hearing officer, the city/county's actual expenses in holding the hearing up to a maximum of [ \$1,000 ] must be paid by the person requesting the hearing.
- (6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [ \_\_\_\_\_ ] County district court within 10 business days of the date of the decision.
- (7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) **Administrative penalties.**

- (1) **Licensees.** Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be charged an administrative fine of [ \$200 ] for a first violation and will be subject to a 7-day license suspension; [ \$500 ] and a 30-day license suspension for a second offense at the same licensed premises within a 24-month period; and [ \$750 ] and a 90-day suspension for a third or subsequent offense at the same location within a 24-month period. Upon a fourth violation within a 24-month period, the license will be revoked with no option to reapply.<sup>8</sup>
- (2) **Other individuals.** Individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, who are found to be in violation of this ordinance will be charged an administrative fine of [ \$50 ].
- (3) **Persons under the Age of 21.** Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the city determines to be appropriate. The City Council / Board of Commissioners will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the city/county. The penalty may be established by ordinance and amended from time to time.

- (C) **Misdemeanor prosecution.** Nothing in this section prohibits the city/county from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

- (B) **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

## Section 11. Violations and Penalties.

### (A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the city/county that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (2) **Hearings.**
  - (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City/County Clerk or other designated officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.
  - (b) The City/County Clerk or other designated officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
- (3) **Hearing Officer.** The City Council / Board of Commissioners will designate a hearing officer. The hearing officer will be an impartial employee of the city/county or an impartial person retained by the city/county to conduct the hearing.
- (4) **Decision.** A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city/county and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city/county and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, division (A)(6) of this section.



## Section 12. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

## Section 13. Effective Date.

This ordinance becomes effective on the date of its publication.

## Endnotes

- 1 Although Florida law preempts the ability of local governments to restrict smoking in public places, there is no comparable provision related to regulating tobacco at the point of sale through licensing regulations. See [Florida Statutes, Sec. 386.209](#).
- 2 These findings are modified from the findings in the Alachua County licensing ordinance.
- 3 This definition matches the definition in [Florida Statutes, Sec. 877.112\(1\)\(a\)](#).
- 4 This definition matches the definition in [Florida Statutes, Sec. 877.112\(1\)\(b\)](#).
- 5 This is a broader definition than the one found in [Florida Statutes, Sec. 569.002\(6\)](#). That definition is limited to products made from tobacco leaves that can be smoked, sniffed, or chewed.
- 6 This provision is based on language in the Alachua County licensing ordinance. Should a Florida city or county adopt an ordinance with a minimum legal sale age of 18 rather than 21, it would be preferable to use signage language that mirrors the language required by [Florida Statutes, Sec. 569.14](#).
- 7 See [Florida Statutes, Sec. 569.11](#).
- 8 The graduated license suspension system is borrowed from Alachua County's licensing ordinance.