



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

---

Dylan Reingold, County Attorney  
William K. DeBaal, Deputy County Attorney  
Susan J. Prado, Assistant County Attorney

**MEMORANDUM**

**TO:** Board of County Commissioners  
**THROUGH:** Dylan Reingold, County Attorney  
**FROM:** Cassidy Brown, Legal Intern at County Attorney's Office  
**DATE:** March 17, 2021  
**SUBJECT:** Tobacco 21 Ordinance

---

**BACKGROUND.**

Vapor generating devices, or e-cigarettes, are the most common used tobacco product by individuals between the ages of 18 to 24. Studies have shown that 40% of high school seniors have vaped in the last 30 days, and that increasing the smoking age to 21 can reduce smoking related illnesses and increase life expectancy.

On February 16, 2021, the Indian River County Board of County Commissioners ("Board") directed staff to draft an ordinance similar to what had been enacted in the City of Vero Beach, which increased the age to 21 to purchase tobacco products and included regulation on the purchase and use of e-cigarettes. The Board also asked staff to research whether the County could include an exception for military personnel 18 years or older to purchase tobacco products.

Pursuant to 21 U.S.C. §387f(3)(A)(ii), federal law states that an individual must be 21 years old to purchase tobacco products. The federal statute does not allow for any exceptions, and requires that all individuals must be 21 years of age or older to purchase tobacco products. The federal statute does not address regulations of the merchandising or use of e-cigarettes, and has delegated the regulation of e-cigarettes to the states. Section 386.209, Florida Statutes, expressly preempts regulation of smoking to the state and prevents cities and counties from regulating smoking. However, this section does not preclude the adoption of city or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided for by the State. Section 386.209, Florida Statutes does not prohibit cities and counties from regulating the merchandising and use of e-cigarettes.

Consistent with the direction of the Board, the County Attorney's Office drafted the attached ordinance increasing the age to 21 to purchase tobacco products and including regulations of the merchandising and use of e-cigarettes consistent with federal and state law. The draft ordinance prohibits the sale of any tobacco product, including e-cigarettes to anyone under the age of 21. The draft ordinance also requires age verification for anyone appearing to be 30 years of age or younger. The draft ordinance also requires businesses to post a sign concerning the age requirement. Finally, the draft ordinance mimics the Vero Beach language on the location where smoking of e-cigarettes can occur.

**FUNDING.**

The cost of publication of the required public notice for the public hearing was \$153.90. The cost was funded from the County Attorney's Office budget within the General Fund (account number 00110214-034910).

**RECOMMENDATION.**

The County Attorney's Office recommends that the Board open the public hearing and take any public comment, and approve the draft ordinance.

**ATTACHMENT(S).**

Draft Tobacco 21 Ordinance