

ORDINANCE NO. 2021- _____

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, AMENDING CHAPTER 313 (MERCHANTISING OF TOBACCO PRODUCTS) OF THE CODE OF INDIAN RIVER COUNTY, RELATED TO THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES; TO PROHIBIT THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES TO PERSONS UNDER 21 YEARS OF AGE AND PROVIDING FOR ADDITIONAL REQUIREMENTS FOR THE SALE OF TOBACCO PRODUCTS AND USE OF ELECTRONIC CIGARETTES; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Indian River County recognizes that the use of tobacco products has devastating health and economic consequences; and

WHEREAS, commercial tobacco use is the foremost preventable cause of premature death in America, with tobacco use responsible for 480 million deaths annually; and

WHEREAS, tobacco product use leads to more than \$300 billion in healthcare and lost worker productivity each year, and tobacco use costs the State of Florida \$8.64 billion in healthcare costs annually; and

WHEREAS, young brains are particularly susceptible to the addictive properties of nicotine, which can result in addiction to other drugs; and

WHEREAS, a 2012 Surgeon General's report found that almost 90% of smokers in the United States began smoking before the age of 21; and

WHEREAS, an estimated 5.6 million youths under the age of 18, approximately 1 in 13 Americans 17 years or younger alive today, are expected to die prematurely from smoking related illness; and

WHEREAS, a National Academy of Medicine report predicts that raising the minimum legal age of the sale of tobacco products nationwide to age 21 would result in 223,000 fewer premature deaths, 45,000 fewer deaths from lung cancer, and 4,200,000 fewer years of life lost for those born between 2000 and 2019. In addition, the report concluded that raising the minimum legal age of sale would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome; and

WHEREAS, in 2015, the National Academy of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide would reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales for tobacco products nationwide to age 21 would, over time, lead to a 12 percent decrease in smoking prevalence; and

WHEREAS, 33 states and over 555 cities and counties have enacted minimum legal sales age 21 policies to further restrict access to commercial tobacco; and

WHEREAS, the federal government has raised the age to 21; and

WHEREAS, raising the age for tobacco sales in Indian River County, Florida, would lessen the accessibility of tobacco to minors and further the County's interest in protecting the health, safety, and general welfare of the residents of the County; and

WHEREAS, the use of high-tech nicotine dispensing devices, commonly referred to as electronic cigarettes or e-cigarettes, is becoming more prevalent and wide-spread; and

WHEREAS, nationwide 40% of high school seniors have vaped in the last 30 days; and

WHEREAS, e-cigarettes are the most common tobacco product used by 18 to 24-year-olds. As of 2020, e-cigarette use has increased 24.6% since 2011; and

WHEREAS, a laboratory test conducted by the U.S. Food and Drug Administration (FDA) has shown that e-cigarette vapors contain carcinogens, and FDA tests showed that e-cigarette vapors were found to contain toxic chemicals such as diethylene glycol, a common ingredient in antifreeze; and

WHEREAS, the Florida Legislature has addressed the effects of smoking conventional tobacco products and second-hand smoke by adoption of the "Florida Clean Indoor Air Act," section 386.201, Florida Statutes et seq., which Act prohibits smoking in specified indoor areas; and

WHEREAS, while the regulation of smoking is preempted to the state, per section 386.209, Florida Statutes, local governments can impose more restrictive regulations on the use of vapor-generating devices,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

Section 1. Enactment Authority.

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes vest broad home rule powers in counties to enact ordinances, not inconsistent with general or

special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Indian River County Board of County Commissioners specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

Section 2. Amendment of Chapter 313 (Merchandising of Tobacco Products).

New language indicated by underline, and deleted language indicated by ~~strikethrough~~.

Chapter 313 (Merchandising of Tobacco Products) of the Code of Indian River County, Florida is hereby amended to read as follows:

**CHAPTER 313- MERCHANDISING AND SALE OF TOBACCO PRODUCTS AND
MERCHANDISING, SALE AND USE OF ELECTRONIC CIGARETTES**

ARTICLE I.- IN GENERAL

Section 313.01.- Title.

This chapter shall be known and may be cited as the “Merchandising and Sale of Tobacco Products and Merchandising, Sale and Use of Electronic Cigarettes Ordinance.”

Section 313.011.- Purpose and Intent.

It is the intent of this chapter to promote, protect, and improve the health, safety, and general welfare of the citizens of Indian River County by discouraging the unhealthy practice of using tobacco and related products and to help prevent the addiction to nicotine, especially by young people, through regulation of the sale, merchandising, and use of certain tobacco, nicotine, and related products, the regulation of which is not preempted to the federal or state government.

Section 313.02.- Definitions.

For the purpose of this chapter, the following terms shall mean:

Business means any sole proprietorship, joint venture, partnership, corporation, or limited liability company or other business formed for profit making or non-profit purposes in both the incorporated and unincorporated areas of Indian River County, including retail establishments where goods or services are sold.

~~*Electronic nicotine delivery devices*~~ *Electronic cigarette or e-cigarette or nicotine dispensing device* means a an electronic device or product that produces a vapor that delivers liquid nicotine or other substances to a person inhaling from the device to simulate smoking and that is offered to or purchased by consumers as an. This term shall also include ~~electronic cigarette,~~ electronic cigars, electronic cigarillos, electronic pipes, or and other similar devices or products.

Enclosed indoor workplace shall have the same meaning and definition as provided in the Florida Clean Indoor Air Act, F.S. § 386.201, et seq.

Liquid nicotine means any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with e-cigarettes.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.

Self-service merchandising means the open display of tobacco products to which the public has access without the intervention of the vendors, store owner, or other store employee.

Tobacco products or nicotine products include loose tobacco leaves, products made by tobacco leaves, in whole or in part, cigarette wrappers, which can be used for smoking, sniffing, or chewing, and electronic nicotine delivery devices cigarettes.

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

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

Section 313.03.- Merchandising prohibited.

(a) No person, business, tobacco retailer, or other establishment subject to this chapter shall sell, permit to be sold, offer for sale, or display for sale any tobacco products, including electronic cigarettes, by means of self-service merchandising. Only vendor assisted sales are allowed, unless access to the premises by persons under the age of ~~eighteen (18)~~ twenty-one (21) is prohibited by the person, business, tobacco retailer, or other establishment or prohibited by law.

(b) No person, business, retailer, or other establishment engaged in the retail sale of tobacco products shall place tobacco products in an open display unit unless the same is located in an area that is inaccessible to customers.

313.04.- Prohibitions.

It shall be unlawful for any person to sell, offer for sale, give away, or deliver any tobacco product, to any person under the age of twenty-one (21) years. If any person suspects that a minor is attempting to purchase or obtain any tobacco product, such person shall request and examine identification from the purchaser or acquirer and positively establish the purchaser's or acquirer's age as twenty-one (21) or greater before allowing the purchase or delivery of such products to occur.

313.05.- Age Verification.

Before distributing or selling any tobacco product, or products regulated by this article the retailer shall verify that the recipient is at least twenty-one (21) years of age. Retailers must verify the legal sales age by examining the recipient's government-issued identification. Verification is not required for a person over the age of thirty (30). A recipient appearing to be thirty (30) years of age or older shall not constitute a defense to a violation of this section.

313.06.- Signage.

(a) Any retailer that sells tobacco products or electronic cigarettes shall post a clear and conspicuous sign in each place or business where such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST THE INDIAN RIVER COUNTY CODE. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(b) Any retailer that sells tobacco products or electronic cigarettes shall provide at the checkout counter in a location clearly visible to the retailer or the retailer's agent or employee instructional material in a calendar format to assist in determining whether a person is of legal age to purchase tobacco products or electronic cigarettes. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS OR
ELECTRONIC CIGARETTES OR LIQUID NICOTINE PRODUCTS.

In lieu of a calendar a retailer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products or electronic cigarettes.

ARTICLE II.- ELECTRONIC CIGARETTES

313.07.- Use of e-cigarettes prohibited where smoking is prohibited.

(a) A person may not use, employ, or otherwise operate any nicotine dispensing device or e-cigarette in any enclosed indoor workplace located within the county wherein smoking is prohibited pursuant to the Florida Clean Indoor Air Act, F.S. § 386.201, et seq. The exceptions provided in said Act that permit smoking in certain places shall also apply to permit the use of nicotine dispensing devices and e-cigarettes in the same places designated in the Act. In addition, the use of nicotine dispensing devices and e-cigarettes may be permitted in a retail e-cigarette shop.

(b) The proprietor or other person in charge of any enclosed indoor workplace subject to the prohibition established in subsection (a) must develop and implement a policy for compliance with said prohibition. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of subsection (a) and must include a policy which prohibits an employee from using any nicotine dispensing device or e-cigarette in the enclosed indoor workplace. In order to increase public awareness, the proprietor or person in charge of the enclosed indoor workplace may, at his or her discretion, post signs stating "NO SMOKING OR USE OF E-CIGARETTES" or similar language as deemed appropriate.

Section 3. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. Severability. If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 5. Codification. It is the intention of the Board of County Commissioners that the provision of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

Section 6. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the ____ day of _____, 2021, for a public hearing to be held on the ____ day of _____, 2021, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman, Joseph E. Flescher	_____
Vice-Chairman, Peter D. O'Bryan	_____
Commissioner Susan Adams	_____
Commissioner Joseph H. Earman	_____
Commissioner Laura Moss	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ____ day of _____, 2021.

**BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: _____
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the _____
day of _____, 2021.

PROPOSED