

FILED FOR RECORD
R.B. SHORE
CLERK CIRCUIT COURT
MANATEE COUNTY, FLORIDA
Aug 31 9 03 AM '01

ORDINANCE 01-51

**AN ORDINANCE OF MANATEE COUNTY, FLORIDA
PROHIBITING SELF-SERVICE SALES OF TOBACCO
PRODUCTS; PROVIDING DEFINITIONS; PROVIDING
PENALTIES; PROVIDING EXCEPTIONS; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Section 569.101, Florida Statutes, prohibits the sale or transfer of tobacco products to persons who are under 18 years of age; and

WHEREAS, the Board of County Commissioners of Manatee County finds that preventing the sale or transfer of tobacco products to persons who are under 18 years of age is necessary to protect the health, safety and welfare of the people of Manatee County; and

WHEREAS, the Board of County Commissioners of Manatee County finds that prohibiting self-service displays of tobacco products by retail tobacco products dealers will reduce the availability of sales and transfers of such products to persons under 18 years of age; and

WHEREAS, the United States Supreme Court has held that government regulations requiring tobacco retailers to place tobacco products behind counters and requiring customers to have contact with a salesperson before they are able to handle a tobacco product withstand First Amendment scrutiny when the government has demonstrated a substantial interest in preventing access to tobacco products by minors [*Lorillard Tobacco Co. v. Reilly* ___ US ___, 721016 (U.S. June 28, 2001)].

FILED
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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

NOW THEREFORE, BE IT ORDAINED, by the Board of County of Commissioners of Manatee County, Florida, that:

SECTION 1. DEFINITIONS: As used in this Ordinance, the following terms shall have the following meanings:

- A. "Employee" means any person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.
- B. "Retail tobacco products dealer" means a holder of a retail tobacco dealer permit as defined in Section 569.002, Florida Statutes.
- C. "Self-service tobacco merchandising" means open display of tobacco products that the public has access to without the intervention of the retail tobacco products dealer or an employee of the dealer.
- D. "Tobacco product" includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, which can be used for smoking, sniffing, or chewing. This definition does not include any nicotine-containing product that is used for the purpose of helping a person to stop smoking, such as nicotine gum or nicotine patches.
- E. "Tobacco Shop" means a business establishment in which at least fifty percent of the merchandise displayed consists of tobacco products or a business establishment in which at least fifty percent of the gross revenue is attributable to sale of tobacco products.

SECTION 2. PROHIBITION OF SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS. It shall be unlawful to sell, permit to be sold, or to offer for sale any tobacco product by means of self-service tobacco merchandising or to display tobacco products for sale unless the tobacco products are located behind the sales counter and are not available to customer access without the intervention of a retail tobacco products dealer or an employee thereof.

SECTION 3. EXCEPTIONS: The prohibitions of Section 2 do not apply to establishments where access to the premises is denied to persons who are under the age of 18, nor to tobacco shops.

SECTION 4. PENALTIES. Violations of this Ordinance shall be prosecuted in the same way as misdemeanors are prosecuted, and, upon conviction, shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail for not to exceed 60 days or by both such fine and imprisonment.

SECTION 5. APPLICATION. This Ordinance shall apply to both the unincorporated and incorporated area of the County unless a municipality has or adopts a conflicting Ordinance in which case the municipal ordinance shall prevail within the boundaries of that municipality.

SECTION 6. SEVERABILITY. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be effective 30 days after the date of its filing with the Florida Department of State.


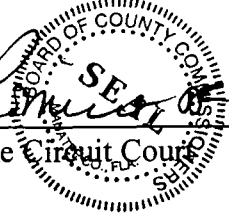
PASSED AND DULY ADOPTED, in open session, with a quorum present and voting this
the 21ST day of AUGUST, 2001.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: *J. McCluskey*
Chairman

ATTEST: R. B. SHORE

By: *R. B. Shore*
Clerk of the Circuit Court



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and
correct copy of the documents on file in my office.
Witness my hand and official seal the 21ST day of
AUGUST, 20 01
R. B. SHORE
Clerk of Circuit Court
By: *Nancy Harris* C.C.

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
Office of the Secretary
Division of Administrative Services
Division of Corporations
Division of Cultural Affairs
Division of Elections
Division of Historical Resources
Division of Library and Information Services
Division of Licensing
MEMBER OF THE FLORIDA CABINET



HISTORIC PRESERVATION BOARDS
Historic Florida Keys Preservation Board
Historic Palm Beach County Preservation Board
Historic Pensacola Preservation Board
Historic St. Augustine Preservation Board
Historic Tallahassee Preservation Board
Historic Tampa/Hillsborough County
Preservation Board
RINGLING MUSEUM OF ART

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS

August 28, 2001

FILED FOR RECORD
R.B. SHORE
CLERK OF CIRCUIT COURT
MANATEE COUNTY
Aug 31 9 00 AM '01

Honorable R. B. Shore
Clerk of the Circuit Court and Comptroller
Manatee County
Post Office Box 1000
Bradenton, Florida 34206

Attention: Diane E. Vollmer

Dear Mr. Shore:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letters dated August 22, 2001 and certified copies of Manatee County Ordinance Nos. 01-39 and 01-51, which were filed in this office on August 27, 2001.

As requested, the original date stamped copies are being returned for your records.

Sincerely,

Liz Cloud, Chief
Bureau of Administrative Code

LC/mp

Enclosure