

**CITY OF MARCO ISLAND  
ORDINANCE NO. 01- 25**

**AN ORDINANCE REGULATING MERCHANDISING OF TOBACCO PRODUCTS IN THE CITY OF MARCO ISLAND; PROVIDING FOR FINDINGS OF FACT, INTENT AND DEFINITIONS, PROHIBITING PLACEMENT OF TOBACCO PRODUCTS IN OPEN DISPLAY UNITS DIRECTLY ACCESSIBLE TO MINORS; PROVIDING FOR EXCEPTIONS, PROVIDING FOR ENFORCEMENT; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Florida Legislature has enacted laws, located in Chapter 569, Florida 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 for the possession of such tobacco products by a person under the age of 18; and

WHEREAS, the State of Florida has entered into a settlement agreement with the tobacco industry for money to reimburse the state for some of the health care costs incurred by the state because of illnesses related to tobacco use; and

WHEREAS, the State of Florida has declared it to be a policy to specifically reduce 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 many of those Americans who die of tobacco related diseases became addicted to tobacco products prior to reaching the legal age of consent; and

WHEREAS, City Council and the citizens of Marco Island are concerned about the use of tobacco products by persons under the age of 18; and

WHEREAS, City Council is undertaking to reduce the visual and physical availability of tobacco products to minors in an effort to reduce tobacco product use by that age group; and

WHEREAS, City Council 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 sale and delivery of cigars and pipe tobacco is exempt from certain provisions of Chapter 569, Florida Statutes; and

WHEREAS, City Council finds that pursuant to Chapter 569, Florida Statutes, tobacco products stores are required to post signs prohibiting the sale of tobacco products to persons under 18 years of age; and

WHEREAS, City Council 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 in other locations; and

WHEREAS, THE United States Supreme Court has held in Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1981), that ordinances that regulate the commercial marketing of items that may be used for legal purposes do not violate the First Amendment; and

WHEREAS, City Council desires to regulate the placement of tobacco products in the best interests of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA THAT:

### **Section 1. Recitals.**

The foregoing recitals are true and correct and incorporated herein by reference.

### **Section 2. Intent.**

This Ordinance is intended to prevent the sale and 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:

a. **Vendor** means any 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.

b. **Tobacco Products** include 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.

c. **Specialty Tobacco Store** means an establishment primarily in the business of selling cigars, pipe tobacco and other tobacco products.

d. **Open Display Unit** means a case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other surface that allows direct public access to the product placed therein.

e. **Restricted Access Area** means a physically confined area with immediate access limited to the vendor or the vendor's employee(s).

f. **Self-service Tobacco Merchandising** means an open display of tobacco products that the public has access to without the intervention of the vendor or employee(s) of the vendor.

#### **Section 4. 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 or sell, permit to be sold, offer for sale, or display for sale any tobacco products by means of self-service merchandising in a non-restricted access area.

#### **Section 5. Exceptions.**

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 Florida Statutes.

#### **Section 7. Applicability.**

The provisions of this Ordinance shall apply to all areas of the City of Marco Island within the corporate limits of the City.

#### **Section 8. Incorporation, Conflict and Severability**

(1) It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance

may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

(2) All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County Ordinances or parts of ordinances and all Collier County Resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.

(3) If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the ordinance.

**Section 9. Effective Date.**

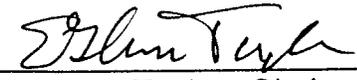
This ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 1st day of October, 2001.

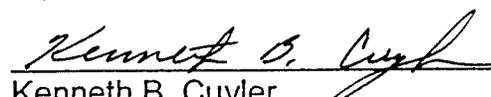
Attest:

  
\_\_\_\_\_  
A. William Moss  
City Manager/City Clerk

CITY OF MARCO ISLAND, FLORIDA

BY:   
\_\_\_\_\_  
E. Glenn Tucker, Chairman

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
Kenneth B. Cuyler  
City Attorney