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ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2019-04

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AMENDING CHAPTER 67 OF THE ALACHUA COUNTY CODE OF ORDINANCES, ENTITLED "SALE AND USE OF E-CIGARETTES AND LIQUID NICOTINE"; REPEALING AND REPLACING CHAPTER 65, RENAMING IT "TOBACCO MINIMUM LEGAL SALES AGE 21 ORDINANCE"; PROVIDING FOR REPEALING CLAUSE; PROVIDING FOR MODIFICATION AT PUBLIC HEARING; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR APPLICABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

1 before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from
2 experimental smoking to regular, daily use; and

3 **WHEREAS**, young minds are particularly susceptible to the addictive properties of
4 nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood; and

5 **WHEREAS**, electronic smoking device use among minors (ages 11-17) increased in
6 Alachua County from 1.5% in 2012 to 15.1 in 2018; and

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

12 **WHEREAS**, the Institute of Medicine also predicts that raising the minimum legal sales
13 age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000
14 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000
15 and 2019, and would result in near immediate reductions in preterm birth, low birth weight, and
16 sudden infant death syndrome; and

17 **WHEREAS**, a growing number of communities, including the states of Hawaii, California,
18 New Jersey, Oregon, Maine and Massachusetts as well as Washington DC have enacted Minimum
19 Legal Sales Age 21 laws to further restrict use of tobacco; and

20 **WHEREAS**, three-quarters of adults favor raising the Minimum Legal Sales Age for
21 tobacco products to 21, including seven in ten smokers; and

22 **WHEREAS**, raising the minimum age to purchase tobacco products is consistent with
23 raising the legal drinking age to 21, which led to reduced alcohol use and dependence among
24 youth, and contributed to the decline in drunk driving fatalities; and

1 **WHEREAS**, the current use rate of cigarettes, cigars, smokeless tobacco, hookah, and
2 electronic vaping among Alachua County youth (ages 11-17) is 17.8%. Additionally, 31.5% of
3 Alachua County youth have tried any of these products; and

4 **WHEREAS**, the County adopted its initial ordinance prohibiting the sale of tobacco
5 products to minors on September 24th, 2013 and prohibited the sale of e-cigarettes to minors
6 through an ordinance adopted December 10, 2013; and

7 **WHEREAS**, the County now desires to amend certain provisions and replace others in
8 order to require tobacco product distribution licenses for vendors of certain products.

9 **NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY**
10 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AS FOLLOWS:**

11 **SECTION 1.** Chapter 65, entitled "Sale to and Possession of Tobacco by Minors", of the
12 Code of Alachua County, Florida is hereby repealed and replaced as follows:

13 **Sec. 65.01 Title; purpose; applicability.**

14 This chapter shall be known as the "Tobacco Minimum Legal Sales Age 21 Ordinance."

15 The purpose of this chapter is to reduce tobacco use by regulating the distribution of
16 tobacco products to keep tobacco products out of the hands of young people.

17 The provisions of this chapter shall apply to all unincorporated and incorporated areas
18 of the County, and may be opted out of by the various municipalities.

19 **Sec. 65.02 Definitions.**

20 a. *Distribute or Distribution* means to furnish, give, provide, or to attempt to do so,
21 whether gratuitously or for any type of compensation.

22 b. *Distributor* means a person who distributes a tobacco product.

23 c. *Person* means any natural person, partnership, joint venture, society, club,
24 trustee, trust, association, organization, or corporation, or any officer, agent, employee,
25 factor, or any other personal representative thereof, in any capacity.

1 d. Recipient means any person who obtains or attempts to obtain a tobacco
2 product.

3 e. Tobacco product means any product containing, made, or derived from tobacco
4 or nicotine, whether natural or synthetic, that is intended for human consumption, or is
5 likely to be consumed, whether chewed, smoked, absorbed, dissolved, inhaled, snorted,
6 sniffed, or ingested by any other means, or any component, part, or accessory of a
7 tobacco product, including but not limited to cigarettes; e-liquids; cigars; cheroots;
8 stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking
9 tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine cut and other chewing
10 tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other
11 kinds and forms of tobacco. Tobacco product also means electronic delivery systems,
12 including any device that can be used to deliver aerosolized or vaporized nicotine or any
13 other substance to the person inhaling from the device including, but not limited to, e-
14 cigarettes, e-cigars, e-pipes, vapor products, or e-hookahs. Tobacco product also means
15 any component or accessory used in the consumption of tobacco products, whether or
16 not they contain nicotine, including, but not limited to, filters, cartridges, pods, pens,
17 rolling papers, or pipes. Tobacco product does not include any product that has been
18 approved by the United States Food and Drug Administration for sale as a tobacco-
19 cessation product or as a tobacco-dependence product intended to assist tobacco users
20 in quitting or reducing tobacco use, or for other medical purposes, and is being marketed
21 and sold solely for such purpose.

22 **Section 65.03 License.**

23 No person shall sell or offer to sell any tobacco product or products regulated in Chapter
24 67 of this Code without first having obtained a distribution license to do so from the County.

25 To obtain a distribution license, the distributor shall submit to the County an application
26 on a form provided by the County and pay the annual license fee established by the County.
27 The application must contain the full name and address of the distributor; the street
28 address of the premises to be licensed; and any additional information the County deems
29 necessary.

30 If a distributor has multiple premises in the County where tobacco products are to be

1 distributed, the distributor must obtain a license for each separate premises.

2 All distribution licenses must be posted and displayed in plain view of the general public
3 on the licensed premises.

4 A distribution license is valid for one year and must be renewed annually by the
5 distributor in order to continue selling, or offering for sale, tobacco products.

6 Transfer of a distribution license issued pursuant to this Chapter, either by sale, lease or
7 by any other means is prohibited.

8 **Sec. 65.04 License Restrictions.**

9 The County may not grant a license to any person for a location that is within 1000 feet
10 of any public high school, middle school, or elementary school, as measured by the shortest
11 line from the property line of the space to be occupied by the proposed licensee and the
12 nearest property line of the school. This restriction does not apply to an applicant who has
13 been licensed by the State of Florida to sell tobacco products in that location at the time
14 this section was enacted into law.

15 **Sec 65.05 License Fees.**

16 The fee for a license to sell tobacco products shall be set by the County and thereafter
17 annually reviewed and approved as part of the Alachua County Schedule of Fees and
18 Charges for Services.

19 The license fee should cover the administration cost for the licensing program, retailer
20 education and training, retail inspections and enforcement costs, including the conduct of
21 inspections and enforcement costs, and unannounced compliance checks, but should not
22 exceed the cost of the regulatory program authorized by the this ordinance.

23 Licensing fees are due at the time of application and are not refundable. A license
24 cannot be renewed if the license has outstanding fines pursuant to this ordinance.

25 **Sec. 65.06 License Renewal.**

26 A license issued under this provision shall be entitled to an annual renewal on or before
27 October 1st of each year as a matter of course by paying the annual license fee established
28 by the County. The request for a renewal must be made at least 30 calendar days before the
29 expiration of the current license. Any license not renewed within 60 calendar days of

1 expiration will be cancelled unless such permit is involved in litigation. A license may not be
2 renewed if it has previously been revoked.

3 **Sec. 65.07 Minimum legal sales age for tobacco products.**

4 No person may sell any tobacco product to any person under the age of 21.

5 Tobacco cessation products are exempt from the prohibitions of this ordinance.

6 **Sec. 65.08 Age verification.**

7 Before distributing any tobacco product, or products regulated by this Chapter or
8 Chapter 67, the licensee shall verify that the recipient is at least 21 years of age.

9 Licensees must verify the legal sales age by examining the recipient's government-
10 issued identification. Verification is not required for a person over the age of 30. That a
11 recipient appeared to be 30 years of age or older shall not constitute a defense to a
12 violation of this section.

13 **Sec. 65.09 Signage.**

14 No person may sell or permit the sale of tobacco products in Alachua County unless a
15 clearly visible notice is posted at the location where tobacco products are available for
16 purchase. The County shall provide this notice, which shall state "The sale of tobacco
17 products to persons under the age of 21 is against Alachua County law. Proof of age is
18 required for purchase" legibly printed in letters at least one-half inch high.

19 **Sec. 65.10 Enforcement**

20 The County, or its authorized designee, may conduct random, unannounced inspections
21 at locations where tobacco products are distributed to test and ensure compliance with this
22 ordinance.

23 **1. Violations and Penalties.**

24 a. Violations of this Chapter may be enforced pursuant to section 10.08 of the Alachua
25 County Code of Ordinances. Continued violation. Each violation, and every day in
26 which a violation occurs or continues, shall constitutes a separate offense.

27 **2. Administrative penalties.**

a. Licensees. Any licensee found to have violated this Chapter, or whose employee violated this Chapter, will be subject to the following penalties:

<u>Number of Violations</u>	<u>License Suspension</u>
<u>1st violation</u>	<u>7-day suspension</u>
<u>2nd violation within a 24-month period</u>	<u>30-day suspension</u>
<u>3rd violation within a 24-month period</u>	<u>90-day suspension</u>
<u>4th violation within a 24-month period</u>	<u>Revocation with no option to reapply</u>

b. Distribution without a license. Any person found to be selling or otherwise distributing tobacco products without a license in the County will be subject to a Class V violation as provided in Chapter 24 of the Alachua County Code and subject to such other means of enforcement as provided by law or equity.

c. The penalties set forth herein shall not take effect until the exhaustion of the appeals process for that violation.

Sec. 65.10 License Revocation.

The County may revoke any County-issued tobacco product distribution license following the procedure provided in Section 65.09 (Enforcement) whenever it is determined that a licensee has violated this Chapter 4 times within a 24-month period.

Sec. 65.11 Exceptions and defenses.

The penalties in this Chapter do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of County staff for training, education, research, or enforcement purposes.

1) Nothing in this Chapter prohibits a person younger than 21 years old from handling tobacco products in the course of lawful employment.

2) It shall be an affirmative defense to a violation of this Chapter for a person to have reasonably relied on government-issued identification for proof of age.

1 **Sec. 65.12. - Self-service merchandise prohibited.**

2 No person, business, tobacco retailer or other establishment subject to this Chapter
3 shall sell, permit to be sold, offer for sale or display for sale any tobacco products by means
4 of self-service merchandising or any other means other than vendor-assisted sales, unless
5 access to the premises by persons under the age of 21 is prohibited.

6 **SECTION 2.** Sections 67.02 and 67.03 are amended to read as follows:

7 **Sec. 67.02. - Definitions.**

8 For the purpose of this chapter, the following words and terms shall have the meanings
9 given herein:

10 *a. County* means Alachua County, Florida.

11 *b. E-cigarette* means any electronic device composed of a mouthpiece, heating
12 element, battery and electronic circuits that provides a vapor of liquid nicotine
13 and/or other substances to the user that he or she inhales in simulation of smoking.
14 This term shall include such devices whether they are manufactured as e-cigarettes,
15 e-cigars, e-pipes or under any other product name. E-cigarette means electronic
16 delivery systems, including any device that can be used to deliver aerosolized or
17 vaporized nicotine or any other substance to the person inhaling from the device
18 including, but not limited to, e-cigarettes, e-cigars, e-pipes, vapor products, or e-
19 hookahs. E-cigarette also means any component or accessory used in the
20 consumption of e-cigarettes, whether or not they contain nicotine, including but not
21 limited to, filters, cartridges, pods, pens, rolling papers, or pipes. E-cigarette does not
22 include drugs, devices, or combination products authorized for sale as a tobacco
23 cessation product approved by the U.S. Food and Drug Administration, as defined in
24 the Federal Food, Drug and Cosmetic Act.

25 *c. Liquid nicotine* means any liquid product composed either in whole or part of pure
26 nicotine and other substances and manufactured for use with e-cigarettes.

- 1 d. *Open display unit* , in the context of the retail sale of e-cigarettes and liquid nicotine,
2 means any device, furniture or furnishing within or upon which e- cigarettes or liquid
3 nicotine are displayed to customers, and includes but is not limited to any case, rack,
4 shelf, counter, table, desk, kiosk, booth, stand and other surface.
- 5 e. *Person* means any natural person or artificial entity capable of suing and being sued
6 in the State of Florida.
- 7 f. *Self-service merchandising*, in the context of the retail sale of e-cigarettes and liquid
8 nicotine, means the open display of e-cigarettes and liquid nicotine, whether
9 packaged or otherwise, for direct retail customer access and handling prior to
10 purchase without the intervention or assistance of the retailer or the retailer's
11 owner, employee or agent. Such open display includes the use of an open display
12 unit.
- 13 j. *Smoking* means smoking as defined in Section 386.203, Florida Statutes, and any
14 successor thereto.
- 15 k. *Use of an e-cigarette* means the heating or ignition of an e-cigarette which creates a
16 vapor of liquid nicotine and/or other substances which the user can inhale in
17 simulation of smoking.

18 **Sec. 67.03. – Sale of e-cigarettes to minors prohibited.**

19 ~~It is prohibited for any~~ No person to may sell, or offer for sale, e-cigarettes or liquid
20 nicotine within the County to a person under ~~eighteen~~ twenty-one years of age.

21 **SECTION 3. Repealing Clause.** All ordinances or portions thereof in conflict herewith
22 are, to the extent of such conflict, hereby repealed.

23 **SECTION 4. Modification.** It is the intent of the Board of County Commissioners that
24 the provisions of this ordinance may be modified as a result of considerations that may arise
25 during public hearings. Such modifications shall be incorporated into the final version of the
26 ordinance adopted by the Board and filed by the Clerk to the Board.

27 **SECTION 5. Severability.** If any word, phrase, clause, paragraph, section or provision

1 of this ordinance or the application hereof to any person or circumstance is held invalid or
2 unconstitutional, such finding shall not affect the other provisions or applications of the
3 ordinance which can be given effect without the invalid or unconstitutional provisions or
4 application, and to this end the provisions of this ordinance are declared severable.

5 **SECTION 6. Inclusion in the Code.** It is the intent of the Board of County
6 Commissioners of Alachua County, Florida, and it is hereby provided that the provisions of this
7 ordinance shall become and be made a part of the Code of Ordinances of Alachua County,
8 Florida; that the section of this ordinance may be renumbered or re-lettered to accomplish such
9 intent and that the word "ordinance" may be changed to "section", "article", or other appropriate
10 designation.

11 **SECTION 7. Effective Date.** A certified copy of this ordinance shall be filed with the
12 Department of State by the Clerk of the Board within ten (10) days after enactment by the
13 Board and shall take effect October 22, 2019.

14
15 **DULY ADOPTED** in regular session, this 22nd day of January, 2019.

16
17 **BOARD OF COUNTY COMMISSIONERS OF**
18 **ALACHUA COUNTY, FLORIDA**

19
20 ATTEST:

21 
22
23
24 J. K. "Jess" Irby, Esq.
25 Clerk of Court

26
27 BY: 
28 Charles S. Chestnut, IV, Chair
29 Board of County Commissioners

30 APPROVED AS TO FORM

31 
County Attorney