**BEFORE THE CITY COMMISSION**

**CITY OF STUART, FLORIDA**

**ORDINANCE NO.2459-2021**

**AN ORDINANCE OF THE CITY OF STUART AMENDING ARTICLE VII; SECTION 12-163 THROUGH 12-172 RELATING TO THE SALE AND USE OF NICOTINE DELIVERY DEVICES AND TOBACCO PRODUCTS; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

**WHEREAS**, the City Commission for the City of Stuart, Florida, is authorized by provisions in Chapter 166, Florida Statutes, to establish programs providing for the health, safety and general welfare of the residents of Stuart, Florida; and

**WHEREAS**, the City Commission has determined that the existing ordinances pertaining to tobacco products should be amended to provide additional definitions and guidelines pertaining to the sale and distribution of tobacco products; and

**WHEREAS**, On December 20, 2019, President Trump signed legislation to amend the Federal Food, Drug and Cosmetic Act to raise the federal minimum age pertaining to the sale of tobacco products from 18 to 21 years; and

**WHEREAS**, it is a violation of Federal Law for a retailer to sell any tobacco products, including cigarettes, cigars and vapor-generating electronic devices, to anyone under 21 years of age in the United States; and

**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; and

**WHEREAS,** tobacco use leads to more than $300 billion in health care and lost worker productivity costs each year; and

**WHEREAS,** an estimated 5.6 million youth under the age of 18 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 before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use; and

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

**WHEREAS,** as reported by the Florida Department of Health, vapor-generating electronic device use among Martin County youth between the ages of 11 and 17 has increased from 6.4% in 2014 to 16.3% in 2020; and

**WHEREAS**, as reported by the Florida Department of Health, 17.1% of Martin County youth between the ages of 11 and 17 currently use tobacco products; and

**WHEREAS**, the City Commission finds that amending the existing regulations within the Code of Ordinances is necessary for the preservation of the health, safety and welfare of City of Stuart youth, residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, THAT:**

**ARTICLE VII. ELECTRONIC NICOTINE DELIVERY DEVICES, IS HEREBY AMENDED AS FOLLOWS:**

**ARTICLE VII. - <u>PROHIBITION OF SALE OR DISTRIBUTION</u> <u>OF TOBACCO PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE</u>**

**Sec. 12-163. - Title. This article shall be known and may be cited as the "Nicotine Merchandising Ordinance."**

**Sec. 12-164. - Purpose and intent.**

It is the intent of this article to promote, protect, and improve the health, safety, and general welfare of the citizens of the City of Stuart, Florida, by discouraging the unhealthy practice of using tobacco products and to help prevent the addiction to nicotine, especially by young people under the age of 21, through regulation of the marketing, sale and merchandising of tobacco products, to the extent such regulation is not preempted to the federal or state government. This article shall not be interpreted or construed to prohibit the sale or delivery of tobacco products which are otherwise lawful or regulated pursuant to F.S. ch. 569.

**Sec. 12-165. – Definitions.**

***Business*** means any sole proprietorship, joint venture, partnership, corporation, limited liability

company or other business formed for profit making or non-profit purposes within the corporate limits of the City of Stuart, Florida, including all retail establishments where goods or services are sold.

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

***E-cigarette*** means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user that he or she inhales in simulation of smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

***Licensed Products*** means the term that collectively refers to any tobacco product, including liquid nicotine, nicotine product, or vapor-generating electronic device**.**

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

***Open display unit***, in the context of the retail sale of e-cigarettes and liquid nicotine, means any device, furniture or furnishing within or upon which e-cigarettes or liquid nicotine are displayed to customers, and includes but is not limited to any case, rack, shelf, counter, table, desk, kiosk, booth, stand and other surface.

***Person*** means any natural person or artificial entity capable of suing and being sued in the State of Florida.

***Recipient*** means any person who obtains or attempts to obtain a tobacco product.

***Retail establishment*** means any place of business where tobacco products are available for sale to the general public. Retail establishment includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, restaurants other place at which sales of tobacco products are made to purchasers.

***Tobacco Retailer or Retailer*** means any person, partnership, joint venture, society, club, trustee, trust, association, organization, corporation or business that owns, operates or manages any tobacco retail establishment or who sells or distributes electronic nicotine delivery systems.

***Self-service merchandising***, in the context of the retail sale of e-cigarettes and liquid nicotine, means the open display of e-cigarettes and liquid nicotine, whether packaged or otherwise, for

direct retail customer access and handling prior to purchase without the intervention or assistance of the retailer or the retailer's owner, employee or agent. Such open display includes the use of an open display unit.

***Smoking*** means inhaling, exhaling, burning, carrying or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product or inhaling, heating or igniting a vapor-generating electronic device which creates a vapor of liquid nicotine or other substances mixed with propylene glycol which can be inhaled in simulation of smoking.

***Tobacco products*** means any product containing, made or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means, or any component, part or accessory of a tobacco product, including but not limited to, cigarettes, e-liquids, gels, cigars, cheroots; stogies, perique, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut and all other forms of tobacco. Tobacco products include vapor-generating electronic devices. Tobacco products also include any component or accessory used in the consumption of tobacco, whether or not they contain nicotine, including but not limited to filters, cartridges, pods, pens, rolling papers, blunt, hemp wraps or pipes. Tobacco products do not include any product that is approved by the United States Food and Drug Administration for sale as a prescription tobacco-cessation product to assist tobacco users with quitting or reducing tobacco use, or for other medical purposes, and is being marketed and sold solely for such purpose.

***Use of an e-cigarette*** means the heating or ignition of an e-cigarette which creates a vapor of liquid nicotine and/or other substances mixed with propylene glycol to the user that he or she can inhale in simulation of smoking.

***Vapor-generating electronic device*** means any product that employs an electronic, chemical, or mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vapor product, e-hookahs or other similar device or product, any replacement cartridge for such device; and any other container of nicotine in a solution or other substance form intended to be used with or within an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, a vape pen, an electronic hookah, or other similar device or product. The term includes any component, part or accessory of the device and also includes substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine.

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

**Sec. 12-166. - Sale of e-cigarettes to minors prohibited**.

No person or tobacco retailer may sell or offer to sell any tobacco product to any person under the age of 21 within the City of Stuart, Florida.

12-166(A). Before selling or offering to sell any tobacco product, or products regulated by this article, the retailer shall verify that the recipient is at least 21 years of age.

12-166(B) Retailers must verify the legal sale age by examining the recipient's government issued identification.

**Sec 12-167. – Self-service merchandising prohibited.**

It shall be unlawful for any tobacco retailer to sell, to permit to be sold, to offer for sale or to display any tobacco product by means of self-service display or placement or by any means other than vendor assisted sales.

(a) Exceptions. The provision of this section shall not apply to an establishment that prohibits persons under 21 years of age on the premises.

(b) Penalties for improper self-service display and placement. Improper self-service display and placemen shall result in a fine not to exceed $500.00 per day from the date of the citation until the violation has been rectified. No person engaged in the retail sale of e-cigarettes or liquid nicotine shall place-cigarettes or liquid nicotine in an open display unit unless the same is located in an area that is inaccessible to customers.

**Sec. 12-168. - Use of an e-cigarette where smoking prohibited.**

The use of an e-cigarette is prohibited at all locations within the city at which smoking is prohibited under Chapter 386, Florida Statutes.

**Sec. 12-169. - Marketing restrictions.**

In addition to the other responsibilities under this part, each business shall remove from each point of sale all self-service displays, advertising, labeling, and other items that do not comply with the requirements under this article.

**Sec. 12-170. - Penalties.**

(A) The violation of any provision of this article shall be punished by a fine not to exceed $500.00 per occurrence or imprisonment for a term not exceeding 60 days or by both fine

and imprisonment.

(B) Any condition caused or permitted to exist in violation of any of the provisions of this article shall be deemed a public nuisance and shall be subject to abatement by the city.

(C) Each and every act or action done in violation of the provisions of this article, shall be construed, deemed and taken as a separate and distinct violation of such provisions of this article. Every day that a violation of this article or any provisions hereof shall continue shall be deemed a separate and distinct violation of the provisions of this article.

**Sec. 12-171. - Validity.**

If any section, phrase, sentence or portion of this article is for any reason 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 hereof.

**Sec. 12-172. – Effective date.**

The ordinance from which this article derives shall take effect immediately upon adoption.

**DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY THIS___DAY OF OCTOBER 2020.**

Passed on first reading the ____ day of _____, 2021.

Commissioner _____ offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

| | YES | NO | ABSENT | ABSTAIN |
|---|---|---|---|---|
| EULA R. CLARKE, MAYOR | | | | |
| MERRITT MATHESON, VICE MAYOR | | | | |
| BECKY BRUNER, COMMISSIONER | | | | |
| TROY MCDONALD, COMMISSIONER | | | | |
| MIKE MEIER, COMMISSIONER | | | | |

ADOPTED on second and final reading this _____day of _____, 2021.

ATTEST:

MARY R. KINDELEULA R. CLARKE
CITY CLERKMAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY