



MEMORANDUM

Office of the City Attorney

Legistar No. 020023

Phone: 334-5011/Fax 334-2229

Box 46

TO: Mayor and City Commission

DATE: October 28, 2002
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-02-53

An ordinance of the City of Gainesville, Florida, creating a new section in Chapter 14.5, Miscellaneous Business Regulations, Article II, consisting of sections 14.5-15 through 14.5-20, inclusive; and adding said sections to the Code of Ordinances of the City of Gainesville relating to sale and possession of tobacco by minors; providing legislative findings; creating s. 14.5-15, establishing the intent to prevent the sale to and possession of tobacco products by minors; creating s. 14.5-16, providing definitions; creating s. 14.5-17, prohibiting self-service merchandising of tobacco products to persons under the age of 18; creating 14.5-18, designation of enforcement official; creating 14.5-19, providing no liability for city officers, or employees; creating Section 14.5-20, providing guidelines for service of notice of violation; amending Section 2-377, providing for the Gainesville Code Enforcement Board to have jurisdiction to hear and decide cases in which a violation of this ordinance is alleged; amending Section 2-399, authorizing enforcement by the civil citation process; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

Recommendation: The City Commission adopt the proposed ordinance.

At its meeting of October 14, 2002, the City Commission authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance regulating the placement of tobacco products. This ordinance is creating a new section in Chapter 14.5, Miscellaneous Business Regulations, Article II, consisting of sections 14.5-15 through 14.5-20, inclusive; and adding said sections to the Code of Ordinances of the City of Gainesville relating to sale and possession of tobacco by minors.

Prepared by: Walter Mathews, IV
Walter Mathews, IV, Assistant City Attorney

Approved and
Submitted by: Marion J. Radson
Marion J. Radson, City Attorney

MJR:WM:sw

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10-4-02

ORDINANCE NO. _____
0-02-53

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4 **An ordinance of the City of Gainesville, Florida, creating a new**
5 **section in Chapter 14.5, Miscellaneous Business Regulations, Article**
6 **II, consisting of sections 14.5-15 through 14.5-20, inclusive; and**
7 **adding said sections to the Code of Ordinances of the City of**
8 **Gainesville relating to sale and possession of tobacco by minors;**
9 **providing legislative findings; creating s. 14.5-15, establishing the**
10 **intent to prevent the sale to and possession of tobacco products by**
11 **minors; creating s. 14.5-16, providing definitions; creating s. 14.5-17,**
12 **prohibiting self-service merchandising of tobacco products to persons**
13 **under the age of 18; creating 14.5-18, designation of enforcement**
14 **official; creating 14.5-19, providing no liability for city officers, or**
15 **employees; creating Section 14.5-20, providing guidelines for service**
16 **of notice of violation; amending Section 2-377, providing for the**
17 **Gainesville Code Enforcement Board to have jurisdiction to hear and**
18 **decide cases in which a violation of this ordinance is alleged;**
19 **amending Section 2-399, authorizing enforcement by the civil citation**
20 **process; providing directions to the codifier; providing a severability**
21 **clause; providing a repealing clause; and providing an effective date.**
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23 **WHEREAS**, at least 10 days notice has been given once by publication in a
24 newspaper of general circulation notifying the public of this proposed ordinance and of a
25 Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

26 **WHEREAS**, a Public Hearing was held pursuant to the published notice
27 described at which hearing the parties in interest and all others had an opportunity to be
28 and were, in fact, heard; and

29 **WHEREAS**, the City Commission of the City of Gainesville is aware that the
30 Florida Legislature has adopted laws to increase the regulation of tobacco products; and

31 **WHEREAS**, the United States Surgeon General and the United States
32 Department of Health and Human Services have found that a majority of those Americans
33 who die of tobacco-related diseases become addicted to tobacco products prior to

1 reaching the legal age of consent; and

2 **WHEREAS**, the City Commission of the City of Gainesville is concerned about
3 the use of tobacco products by persons under the age of 18; and

4 **WHEREAS**, the City Commission of the City of Gainesville believes that the
5 reduction in the availability of tobacco products to persons under the age of 18 by
6 requiring all sales to those persons to be vendor-assisted will likely lead to the reduction
7 in tobacco products used by that age group; and

8 **WHEREAS**, the City Commission of the City of Gainesville has determined that
9 the regulation of the sale of tobacco products is in the best interests of the public health,
10 safety and welfare of the citizens of the City of Gainesville;

11 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**
12 **OF THE CITY OF GAINESVILLE, FLORIDA:**

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14 **Section 1.** A new section in Chapter 14.5, Miscellaneous Business Regulations,
15 Article II, consisting of subsections 14.5-15 through 14.5-20, inclusive, is created and
16 added to the City of Gainesville Code of Ordinances to read as follows:

17 **Article II. Merchandising of Tobacco Products**

18 **Sec. 14.5-15. Declaration of intent.**

19 This article is intended to prevent the sale to, and possession of tobacco products
20 by, persons under the age of 18 by regulating the commercial marketing and placement of
21 such products. This section shall not be interpreted or construed to prohibit the sale or
22 delivery of tobacco products that are otherwise lawful or are regulated pursuant to
23 Chapter 569, Florida Statutes.

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Sec. 14.5-16. Definitions.

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

(a) Business means any sole proprietorship, joint venture, corporation, or other business for profit-making or non-profit purposes, including retail establishments, where goods or services are sold.

(b) Persons means any individual, partnership, cooperative association, private corporation, personal representative receiver, trustee, assignee, or other legal entity.

(c) Self-service merchandising means the open display of tobacco products to which the public has access without the intervention of the vendor, storeowner or other store employee.

(d) Tobacco products includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

(e) 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.

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

(g) Restricted access area means an area reasonably physically confined with access designated by the vendor as limited to the vendor.

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Sec. 14.5-17. Self-service merchandise prohibited.

No person, business, tobacco retailer, or other establishment subject to this Article, shall sell, permit to be sold, offer by sale, or display for sale any tobacco products by means of self-service merchandising, or any other means other than vendor-assisted sales, unless access to the premises by persons under the age of 18 is prohibited by the person, business, tobacco retailer, or other establishment, or prohibited by law.

Sec. 14.5-18. Designation of enforcement official.

The city manager shall be the enforcing official. The city manager may designate one (1) or more subordinates who shall be charged with the duty of administering the applicable standards of this article and securing compliance therewith, and carrying out all other duties as specified by this Code.

Sec. 14.5-19. Liability of city officers, employees.

No officer, agent or employee of the city shall render himself/herself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of duties under this article. Any suit brought against an officer, agent or employee of the city as a result of any act required or permitted in the discharge of his/her duties under this article shall be defended by the city as required by law.

1 Sec. 14.5-20. Service of Notice of Violation.

2 Whenever the enforcing official determines that a violation of this article exists, he/she
3 shall take action as follows:

4 (1) Give written notice of the violation to the occupants and/or owners.

5 (2) The notice shall include:

6 a. A description of the location of the *business* involved, either by street
7 address or legal description;

8 b. A statement indicating the nature of the violation and the reason or reasons
9 why the notice of violation is issued;

10 c. A specification of the section or sections of this article upon which the
11 notice of violation is based;

12 (3) The written notice of violation referred to in subsections (1) and (2) above
13 shall in all cases be served upon the owner, as well as upon the occupant of the
14 premises, if the owner does not occupy the premises. Such service shall be
15 deemed complete if personally delivered or upon sending same by regular mail to
16 the last known address of the owner as shown on the tax rolls of the city.

17 (4) The time for correcting any violation(s) on a notice of violation shall be
18 not less than five (5) days nor more than ten (10) days.

19 **Section 2.** Section 2-377, Code of Ordinances of the City of Gainesville, Applicability;
20 jurisdiction, is amended to read as follows:

1 **Sec.2-377. Applicability; jurisdiction.**

2 (a) The Gainesville Code Enforcement Board shall have jurisdiction to hear
3 and decide cases in which violations are alleged of any provisions of the following
4 provisions of this Code of Ordinances as they may exist or may hereafter be amended by
5 ordinance:

- 6 (1) Chapter 6, Article II, "Building Code";
- 7 (2) Chapter 6, Article III, "Electrical Code";
- 8 (3) Chapter 6, Article IV, "Plumbing Code";
- 9 (4) Chapter 6, Article V, "Gas Code";
- 10 (5) Chapter 6, Article VI, "Mechanical Code";
- 11 (6) Chapter 6, Article VII, "Swimming Pools";
- 12 (7) Chapter 6, Article IX, "Downtown Minimum Property Standards";
- 13 (8) Chapter 10, "Fire Prevention and Protection";
- 14 (9) Chapter 13, "Housing and Commercial Building Codes";
- 15 (10) Chapter 16, Article II, "Dangerous Building and Hazardous Land
16 Code";
- 17 (11) Chapter 16, Article III, "Perilous Land Code";
- 18 (12) Chapter 16, Article IV, "Mosquito Breeding Grounds";
- 19 (13) Chapter 23, "Streets, Sidewalks and Other Public Places";
- 20 (14) Chapter 25, Article III, "Occupational License Tax";
- 21 (15) Chapter 26, Article III, Division 5, "Abandoned, Wrecked, Non-
22 operating Vehicles";
- 23 (16) Chapter 27, Article III, "Garbage and Refuse Disposal";
- 24 (17) Chapter 30, "Land Development Code";
- 25 (18) Chapter 14.5, Article II, "Merchandising of Tobacco Products."

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27 (b) Any alleged violation of the aforesaid provisions may also be enforced in
28 any court of competent jurisdiction.

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30 **Section 3.** Section 2-339, Code of Ordinances of the City of Gainesville, Applicable
31 codes and ordinances, is amended to read as follows:

32 **Sec.2-399. Applicable codes and ordinances.**

33 The following ordinances are enforceable by the procedures described in this division:

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10-4-02

Section	Description	Class	Penalty
2-67(b)	Declaration of water emergency imposing water use restrictions	I	\$50.00
Chapter 5 except as provided below	Animal control	I	\$50.00
5-2(c)	Animal molesting or biting pedestrian or bicyclist	IV	\$200.00
6-3	104.1.1 of adopted Standard Building Code, as amended Building, electrical, plumbing, gas, and/or mechanical work within a required permit	II	\$75.00
6-183(1)	False advertising	III	\$125.00
6-185	Acting as a contractor without a valid contractor certificate	IV	\$200.00
6-186(b)(2)	No journeyman or certified craftsman on the job site	II	\$75.00
Article IX of Chapter 6	Downtown minimum property standards	I	\$50.00
Chapter 10	All adopted fire prevention & protection codes, except NFPA 101 Chapters 5, 6, 7 and SFPC Chapters 6, 8, 31 and 42	II	\$75.00
Chapter 10	NFPA 101 Chapters 5, 6, 7 SFPC Chapters 6, 8, 31 and 42	IV	\$200.00
11.5-1	Availability of potable water	I	\$50.00
Article III of Chapter 13	Commercial building code	II	\$75.00
13-171	Insects, storage, trash and yard maintenance	I	\$50.00

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10-4-02

13-181	Hazardous conditions on residential property	I	\$50.00
<u>Article II of Chapter 14.5</u>	<u>Merchandising of Tobacco Products</u>	<u>II</u>	<u>\$75.00</u>
Article III of Chapter 14.5	Towing from certain private property	II	\$75.00
14.5-1	Not having landlord permit	II	\$75.00
Chapter 15	Noise violations	I	\$50.00
16-19	Dangerous buildings/hazardous lands	I	\$50.00
17-2	Fliers on utility poles or other fixtures	I	\$50.00
19-2	Violation of regulations for peddling in Downtown Plaza	I	\$50.00
19-34	Violation of permit requirements for commercial peddlers, solicitors, or canvassers	I	\$50.00
19-52	Unauthorized solicitation of alms or financial assistance	I	\$50.00
19-53	Unauthorized sale or transfer of goods and services; religious and charitable organizations soliciting for contributions without a permit	I	\$50.00
19-55	Violation of restrictions and requirements for permitted soliciting	I	\$50.00
19-96	Operation of mobile food cart in prohibited area	I	\$50.00
19-97	Violation of regulations on permitted mobile food cart	I	\$50.00

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10-4-02

Chapter 5 except as provided below	Animal control	I	\$50.00
19-112	Unauthorized soliciting of funds	I	\$50.00
21-53(b)(6)	Non-permitted, revoked or suspended alarm system	IV	\$200.00
21-58(a)	Failure to register alarm monitoring company	II	\$125.00
21-58(c)	Failure to maintain records	II	\$125.00
21-59	Failure to make alarm verified call	II	\$125.00
21-60(a)	Failure to register - Alarm system contractors	II	\$125.00
21-60(b)	Maintenance, repair, alter or service of system for compensation by noncontractor	II	\$125.00
21-60(c)	Failure to issue ID	I	\$50.00
21-60(d)	Use of equipment or methods below minimum standards	II	\$125.00
21-60(e)	Activation/servicing non-permitted alarm	II	\$125.00
21-60(f)	Causing false alarm during servicing	II	\$125.00
21.60(g)	Failure to provide blank alarm permit application	I	\$50.00
21-61(a)	Operating automatic dialing device	II	\$125.00
21-61(b) 21-61(c)	Failure to remove non-permitted features	I	\$50.00
21-62	Operating alarm system without auxiliary power	II	\$125.00
Chapter 22	Secondhand Goods	III	\$125.00

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10-4-02

	Secondhand Dealers		
26-137	Abandoned vehicles	I	\$50.00
27-73	Solid waste violations except (4), (8) and (9)	I	\$50.00
27-76(b)(1)b.	Improper use of cart	I	\$50.00
27-79(a) and (f)	Commercial franchise violations	IV	\$200.00
Chapter 28	Taxicab regulation	I	\$50.00
30-45	Prohibited use in zoning district	I	\$50.00
30-51(c)	Permitted uses in single family districts	II	\$75.00
30-56(b) and (c)	Residential parking	I	\$50.00
30-59(c)	Permitted uses in office districts	I	\$50.00
30-61(c)	Permitted uses in general business district	I	\$50.00
30-62(c)	Permitted uses in automotive oriented business district	I	\$50.00
30-63(c)	Permitted uses in tourist-oriented business district	I	\$50.00
30-64(e)	Permitted uses in mixed use low intensity district	I	\$50.00
30-65(c)	Permitted uses in mixed use medium intensity district	I	\$50.00
30-66(c)	Permitted uses in central city district	I	\$50.00
30-67(g)	Illegal outdoor storage and sales	I	\$50.00
30-68(c)	Permitted uses in warehousing and wholesaling district	I	\$50.00
30-69(c)	Permitted uses in limited industrial district	I	\$50.00

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10-4-02

30-70(c)	Permitted uses in general industrial district	I	\$50.00
30-86	Use, parking, storage and keeping of recreational vehicles	I	\$50.00
30-315 et seq.	Violation of sign regulations	I	\$50.00
30-357	New business, expansion or change of use without zoning compliance permit	I	\$50.00

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2 Second violation of the same Class I or Class II offense shall be double the amount
3 shown on the penalty schedule.

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5 Third and subsequent violations of the same Class I or II offense shall require a
6 mandatory court appearance.

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8 **Section 4.** It is the intention of the City Commission that the provisions of Sections 1,
9 Section 2, and Section 3 of this ordinance shall become and be made a part of the Code of
10 Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of
11 this Ordinance may be renumbered or relettered in order to accomplish such intentions.

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13 **Section 5.** If any section, sentence, clause or phrase of this ordinance is held to be
14 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall
15 in no way affect the validity of the remaining portions of this ordinance.

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17 **Section 6.** All ordinances or parts of ordinances in conflict herewith are to the extent
18 of such conflict hereby repealed.

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1 **Section 7.** Any person who violates any of the provisions of this ordinance shall be
2 deemed guilty of a municipal ordinance violation and shall be subject to fine or
3 imprisonment as provided by section 1-9 of the Gainesville Code of Ordinances.

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5 **Section 8.** This ordinance shall become effective on January 1, 2003.

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PASSED AND ADOPTED this ____ day of _____, 2002.

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THOMAS D. BUSSING
MAYOR

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ATTEST:

Approved as to form and legality

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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20 This Ordinance passed on first reading this ____ day of _____, 2002.

21 This Ordinance passed on second reading this ____ day of _____, 2002.

