



**BOARD OF COUNTY COMMISSIONERS  
CLAY COUNTY  
COUNTY ATTORNEY'S OFFICE**

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July 3, 2001

Sally M. Skull  
Students Working Against Tobacco  
P.O. Box 578  
Green Cove Springs, FL 32043-578

Re: SWAT

Dear Sally:

Enclosed is a copy of the tobacco ordinance which the Board adopted on Tuesday, June 26, 2001. Also enclosed is a copy of Lorillard Tobacco Co. v. Reilly, Attorney General of Massachusetts, decided just last week regarding tobacco advertising and sales. This case may render the placement restrictions on tobacco advertising unconstitutional. I thought the kids would enjoy reading the decision.

Please call if you have any questions.

Very truly yours,

Frances J. Moss  
Assistant County Attorney

FJM/dlp  
Enclosures

*Original Ordinance  
Before Supreme Ct Ruling  
Adopted June 26, 2001  
effective implementation  
date August 1st 2001*

CLAY COUNTY ORDINANCE 01 - 29

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, REGULATING THE MARKETING AND PLACEMENT OF CERTAIN TOBACCO PRODUCTS IN RETAIL STORES FOR THE PROTECTION OF MINORS; PROVIDING FINDINGS; PROVIDING FOR INTENT; PROVIDING DEFINITIONS; PROVIDING FOR PROHIBITED ACTS; PROVIDING EXEMPTIONS; PROVIDING FOR ENFORCEMENT; PROVIDING A TRANSITION PERIOD FOR COMPLIANCE, PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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 eighteen and for the possession of such tobacco products by a person under the age of eighteen; and

WHEREAS, the State of Florida has entered into a settlement agreement with the tobacco industry for billions of dollars to reimburse the state for some of the health care costs incurred by the state due to the prevalence of tobacco use; and

WHEREAS, the settlement agreement between the State of Florida and the tobacco industry provides for a pilot program which is aimed specifically at the reduction of the use of tobacco by persons under the age of eighteen; and

WHEREAS, the U.S. Surgeon General and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco related diseases became addicted to tobacco products prior to reaching the legal age of consent; and

WHEREAS, survey results conducted between October, 2000, and April, 2001, in Clay County, Florida, showed that approximately fifty percent of tobacco retailers have tobacco products located on, in front of, and beside the check out counter, as well as in the candy aisle; additionally, approximately forty-three percent of tobacco retailers have tobacco product displays located directly next to entranceways; and

WHEREAS, survey results conducted between October, 2000, through April, 2001, in Clay County, Florida, also reveal that approximately fifty percent of tobacco retailers also place tobacco advertising next to candy shelves and at heights less than four feet off the floor in the line of sight of children; and

WHEREAS, the Board of County Commissioners and the citizens of Clay County are concerned about the use of tobacco products by persons under the age of eighteen; and

WHEREAS, the Board of County Commissioners believes that a reduction in the availability, both visually and physically, of tobacco products to persons under the age of eighteen will likely lead to a reduction in tobacco product use by that age group; and

WHEREAS, Chapter 569, Florida Statutes, does not prohibit local governments from regulating the placement and merchandising of tobacco products; and

WHEREAS, the Board of County Commissioners of Clay County, Florida finds that the customary business practice of selling cigars and pipe tobacco in 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, the Board of County Commissioners of Clay County, Florida finds that specialty tobacco stores, as defined in this ordinance, are not typically patronized by persons under eighteen years of age; and

WHEREAS, the U.S. 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 illegal purposes do not violate the First Amendment; and

WHEREAS, the Board of County Commissioners desires to regulate the placement of tobacco products and tobacco advertising as it is in the best interests of the health, safety, and welfare of the residents of Clay County, Florida to do so;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, that:

#### SECTION 1. RECITALS AND INTENT

- a. The foregoing recitals are true and correct and incorporated herein by reference.
- b. This ordinance is intended to prevent the sale to and possession of tobacco products by persons under the age of eighteen 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 2. DEFINITIONS

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

a. **Business** means any person, sole proprietorship, joint venture, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or other legal entity other business formed for profit making or non-profit purposes in both the incorporated and unincorporated areas of Clay County, including retail establishments where goods or services are sold.

b. **Person** means any individual, partnership, 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 or assistance of the vendors, store owner, or other store employee. Self-service merchandising also includes open display units which are a case, rack, shelf, counter, table, desk, kiosk, booth, stand, or other surface which allows direct public access to the product placed therein.

d. **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..

e. **Tobacco retailer** means any person, business, 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 who operates a store, stand, booth, concession, or other place at which sales to tobacco products are made to purchasers for consumption or use.

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

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

## SECTION 3. MERCHANDISING PROHIBITED

a. No tobacco retailer subject to this ordinance shall sell, permit to be sold, offer for sale, or display for sale any tobacco products by means of self-service merchandising.

b. No tobacco retailer shall place tobacco products in an open display unit unless such unit is located in an area where public access is restricted.

c. No tobacco retailer subject to this ordinance shall place or maintain or cause to be placed or maintained, inside or outside its premises, any tobacco product promotion or

advertising within two feet of any candy, snack, or non-alcoholic beverage display unless such promotion is located behind the check-out counter or on a vending machine. No tobacco retailer subject to this ordinance shall place or maintain or cause to be placed or maintained, inside or outside its premises, any tobacco product promotion or advertising, the height of which is equal to or less than four feet, within four feet of the floor of the premises.

#### SECTION 4. EXEMPTIONS

- a. An establishment that prohibits persons under eighteen years of age on the premises.
- b. Specialty tobacco stores.

#### SECTION 5. ENFORCEMENT.

a. Clay County may bring a civil action in any court of competent jurisdiction to enforce or administer this ordinance including seeking a temporary or permanent injunction, or appointment of a receiver when it has reasonable cause to believe that a tobacco retailer is operating in violation of this ordinance. Clay County shall be entitled to an award of costs and reasonable attorney's fee, including appellate fees and costs, in an action successfully enforcing the terms of this ordinance.

b. In addition to any civil remedy available to Clay County under this ordinance, the violation of any part of this ordinance shall be a second degree misdemeanor punishable in the manner provided by general Florida law.

#### SECTION 6. TRANSITION PERIOD FOR REGULATIONS

Each tobacco retailer subject to the terms of this ordinance shall have until August 1, 2001, to comply with this ordinance.

#### SECTION 7. APPLICABILITY

This Ordinance shall be applicable throughout the unincorporated area of Clay County.

#### SECTION 8. SEVERABILITY

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

#### SECTION 9. AUTHORITY

In adopting and enacting this ordinance, the County is acting in its capacity as charter county with all of the home rule powers it has or is entitled to exercise under its Charter, the


Constitution of the State of Florida, and the laws of the State of Florida, including but not limited to Chapter 125, Florida Statutes (2001).

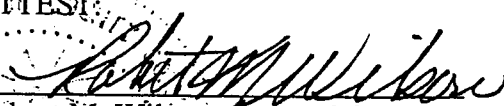
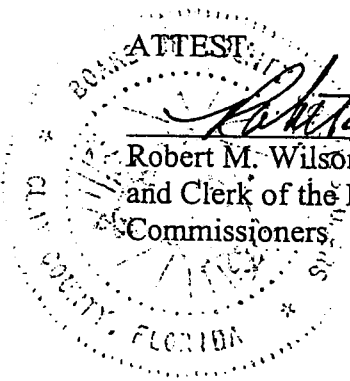
SECTION 10. EFFECTIVE DATE

This ordinance shall take effect as prescribed by Florida law.


DULY ADOPTED by the Board of County Commissioners of Clay County, Florida, this 26th day of June, 2001.

BOARD OF COUNTY COMMISSIONERS  
CLAY COUNTY, FLORIDA

By:   
Glenn R. Lassiter, Its Chairman

ATTEST  
  
Robert M. Wilson, County Manager  
and Clerk of the Board of County  
Commissioners  


I hereby certify that this document consisting of 5 page[s] and further identified as Ordinance 01-29 is a true and correct copy of the original maintained in the custody of ROBERT M. WILSON as County Manager and Clerk of the Board of County Commissioners of Clay County, Florida, this 2 day of July, 2001.

By: , Deputy Clerk  
[Not Valid without the seal of the Board]