



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

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September 6, 2001

**MEMORANDUM**

TO: Sally M. Skull, Tobacco Prevention Program

FROM: Daphne L. Padgett, Legal Secretary *DL*

RE: Ordinance 01-42 amending Ordinance 00/01-29 regulating placement of tobacco products in self-service displays accessible to minors

*Ordinance Amendment  
to remove advertising /  
marketing restrictions  
to eliminate conflict  
with Supreme Ct Ruling  
June 28, 2001.*

Attached for your file is a copy of Ordinance 01-42, adopted August 28, 2001, amending Ordinance 00/01-29 to eliminate the marketing restrictions from the ordinance.

/dlp  
Attachment

CLAY COUNTY ORDINANCE 01-42.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA, AMENDING CLAY COUNTY ORDINANCE 00/01-29 WHICH REGULATES THE MARKETING AND PLACEMENT OF CERTAIN TOBACCO PRODUCTS IN RETAIL STORES FOR THE PROTECTION OF MINORS IN ORDER TO ELIMINATE MARKETING RESTRICTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AUTHORITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 26, 2001, the Board of County Commissioners of Clay County, Florida, enacted an Ordinance 00/01-29 (the Ordinance) which sought to regulate both the marketing and the placement of certain tobacco products in retail stores for the protection of minors; and

WHEREAS, on June 28, 2001, the Supreme Court of the United States issued its decision in *Lorillard Tobacco Co. et al., v. Reilly, Attorney General of Massachusetts, et al.*, \_\_\_ U.S. \_\_\_ (2001), which upheld provisions of a Massachusetts regulation regarding tobacco product placement but struck down as unconstitutional certain provisions regarding marketing and advertising of tobacco products; and

WHEREAS, the regulation adopted by the Board of County Commissioners of Clay County on June 26, 2001, is virtually identical to the Massachusetts regulation in *Lorillard Tobacco Co., et al., v. Reilly, Attorney General*; and

WHEREAS, the Board of County Commissioners desires to amend its ordinance in order to delete those portions regulating tobacco marketing and advertising which may render it in conflict with the Supreme Court's decision.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY:

SECTION 1. Section 1.b. of the Ordinance is amended as follows with deletions indicated by strike-through:

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. Section 2.c. of the Ordinance is deleted in its entirety with the deleted section indicated by strike-through:

~~e. 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 3. In all other respects the Ordinance shall remain in full force and effect.

SECTION 4. 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 5. 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 6. 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 28 day of August, 2001.

BOARD OF COUNTY COMMISSIONERS  
CLAY COUNTY, FLORIDA

By: Glenn R. Lassiter  
Glenn R. Lassiter, Its Chairman

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

ords/tobacco products amendment.doc:07-20-01

I hereby certify that this document consisting of 2 page[s] and further identified as Ordinance 01-42 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 4 day of Sept, 2001.

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