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# County of Santa Cruz

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September 6, 2001

### Agenda: September 18, 2001

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street, Room 500  
Santa Cruz, California 95060

### **Re: Ordinance Repealing Tobacco Advertising Regulations**

Dear Members of the Board:

On June 28, 2001, the United State Supreme Court decided *Lorillard Tobacco Co. v. Reilly No. 00-596* in which the State of Massachusetts' ban on tobacco advertizing near playgrounds and schools was found to have violated both federal law and free-speech rights under the First Amendment of the U.S. Constitution (a copy of this decision can be made available upon request). The Court did uphold the State's law banning self-service displays and sales of tobacco products within stores. This letter will review the Court's decision, evaluate its effect on the County's existing tobacco advertising and sales regulations, and then recommend that your Board consider an ordinance amendment.

The Court's **5-4** majority found that Massachusetts' law was preempted by the Federal Cigarette Labeling and Advertising Act (FCLAA) passed by Congress in 1969, which limits tobacco marketing and requires package warning labels. Justice O'Connor, writing the majority opinion for the Court, said: "Congress enacted a comprehensive scheme to address cigarette smoking and health in advertising and pre-empted state regulation of cigarette advertising that attempts to address that same concern, even with respect to youth." The Court also did not agree with the argument that local ordinances should be allowed if they regulate **only** the location of tobacco advertising and not the content. "From a policy perspective, it is understandable for the States to attempt to prevent

## ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AMENDING CHAPTER 7.89 AND REPEALING  
SUBDIVISION I. OF SECTION 5.50.180 OF THE SANTA CRUZ  
COUNTY CODE RELATING TO TOBACCO ADVERTISING AND SALES**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

**SECTION I**

Chapter 7.89 of the Santa Cruz County Code is hereby amended to read as follows:

**REGULATION OF ~~SELF-SERVICE SALE OF~~ TOBACCO  
~~PRODUCTS~~ ADVERTISING AND SALES**

**Sections:**

- 7.89.010 Purpose.**
- 7.89.020 Definitions.**
- ~~**7.89.030 Restrictions on tobacco advertising.**~~
- ~~**7.89.040 Exceptions.**~~
- ~~**7.89.050 Enforcement; penalties; civil actions.**~~
- ~~**7.89.060 Hardship extension of compliance deadline**~~
- ~~**7.89.030**~~**7.89.070 Restrictions on self-service sale of tobacco products.**
- ~~**7.89.040**~~**Enforcement; penalties; civil actions.**
- ~~**7.89.050**~~**7.89.080 Severability.**
- ~~**7.89.090 Effective date.**~~

**7.89.010 Purpose.**

The purpose of this chapter is to promote the welfare of minors by discouraging the commercial exploitation of potential underage tobacco users and by discouraging actions that promote the unlawful sale of tobacco products to minors as well as the unlawful purchase or possession of tobacco products **by** minors.

**7.89.020 Definitions.**

~~A. “Advertising” means printed matter that calls the public’s attention to things for sale.~~

~~B. “Advertising display” means any sign, billboard, signboard, poster, placard, pennant, banner, graphic display, mural, or similar device that is used to advertise or promote a product.~~

~~C. “Area which minors frequent” means any public kindergarten, elementary, middle, junior high, or high school; private school; public park; public library; or any designated bus stop authorized by the Santa Cruz Metropolitan Transit District..~~

~~D. “Person” means any individual, firm, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.~~

~~E. “Promotion” means a display of any logo, brand name, character, graphic, artwork, colors, scenes, or designs that are a recognized image of a particular product brand that calls the public’s attention to the product brand.~~

~~F. “Private School” means an elementary or high school that is listed in the California Private School Directory published by the California Department of Education pursuant to California Education Code Section 33190.~~

~~G. “Publicly visible location” means any outdoor location that is visible from any street, sidewalk, or other public thoroughfare, or any location inside a commercial establishment that is in or adjacent to a window or doorway and is visible from any street, sidewalk, or other public thoroughfare.~~

**AH.** “Retail tobacco store” means a retail store where at least **fifty** percent of the annual gross receipts are from the sale of tobacco products and smoking accessories and in which the sale of other products is merely incidental.

**BI.** “Tobacco product” means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco.

**CJ.** “Self-service display” means an open display of tobacco products which is accessible without the intervention of a vendor, including, but not limited to a rack, shelf, or counter-top display.

~~DK.~~ “Vendor-assisted sale” means a purchase requiring a direct, face-to-face exchange between the vendor and the customer, in which the vendor does not transfer possession of the product to the customer until the purchase is completed.

#### ~~7.89.030 — Restrictions on tobacco advertising.~~

~~— A. — Except as otherwise provided in this Chapter, no person shall place or maintain, or cause or allow to be placed or maintained, any advertising or promotion of tobacco products on~~

~~any advertising display located at a fixed, publicly visible location.~~

~~— B. — No part of this chapter shall be construed to permit any advertising display that is otherwise restricted or prohibited by law. Nor shall it be construed to permit an otherwise restricted or prohibited advertising display because it is combined with a permitted public service message.~~

~~— C. — No part of this chapter shall be construed to regulate messages that do not propose a commercial transaction.~~

#### ~~7.89.040 — Exceptions.~~

~~— The provisions of section 7.89.030 shall not apply to any advertising display:~~

~~— A. — That is located on a parcel that has one of the following zoning designations, provided that said parcel is more than 1,000 feet in any direction (measured in a straight line from parcel boundary to parcel boundary) from any area which minors frequent:~~

~~— 1. — “VA” Visitor Accommodation District;~~

~~— 2. — “CT” Tourist Commercial District;~~

~~— 3. — “C 1” Neighborhood Commercial District;~~

~~— 4. — “C 2” Community Commercial District;~~

~~5. "C 4" Commercial Service District; or~~

~~B. That is located on the premises of a commercial establishment if the advertising display provides notice that the establishment sells tobacco products, as long as the display does not promote any brand of tobacco product or otherwise constitute a "promotion" as defined by this Chapter, and provided that any such premises shall have no more than one such sign; or~~

~~C. That is located on a commercial vehicle used for transporting tobacco products; or~~

~~D. That is located on tobacco product packaging; or~~

~~E. That is worn as clothing by an individual.~~

#### ~~7.89.050 Enforcement; penalties; civil actions.~~

~~A. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation. After notification, it shall be a separate offense for each day such violation shall continue.~~

~~B. Violations of this Chapter shall be prosecuted as infractions and shall be punishable as provided by Chapter 1.12 of this Code.~~

~~C. This chapter shall be administered and enforced by the Planning Department.~~

~~D. Violations of this chapter are hereby declared to be public nuisances.~~

~~E. In addition to other remedies provided by this Chapter, any violation of this Chapter may be enforced by a civil action brought by the County Counsel, including but not limited to administrative or judicial nuisance abatement proceedings, civil enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.~~

#### ~~7.89.060 Hardship extension of compliance deadline.~~

~~A. Owners of advertising displays in place on the date the ordinance adopting this Chapter was first introduced may, within sixty (60) days after the date that the Board of~~

~~Supervisors takes final action to adopt this ordinance, submit an application for an extension of time for compliance. The application shall include written documentation that demonstrates that timely compliance would cause unreasonable financial hardship and that granting the extension of time would not constitute a grant of special privileges inconsistent with other owners of such advertising who are required to comply. On timely receipt of a completed application, the Zoning Administrator shall conduct a hearing to determine whether, and on what conditions, the extension of time ought to be granted. All regulations and procedures regarding application, review, approval, appeal, enforcement, etc., for an extension of time shall be in accordance with the provisions for a Level V approval under Chapter 18.10 of this Code.~~

~~\_\_\_\_\_ B. \_\_\_\_\_ Whether or not an extension of time to remove a preexisting advertising display is granted pursuant to subdivision A of this section, advertising displays that are prohibited by this chapter shall not be deemed legal nonconforming uses.~~

#### **~~7.89.0307.89.070~~ 7.89.040 Restrictions on self-service sale of tobacco products.**

It is unlawful to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than a vendor-assisted sale. This prohibition shall not apply to a retail tobacco store, or a vending machine authorized by Chapter 7.114 of this Code.

#### **~~7.89.040~~ 7.89.040 Enforcement; penalties; civil actions.**

A. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation. After notification, it shall be a separate offense for each day such violation shall continue.

B. Violations of this Chapter shall be prosecuted as infractions and shall be punishable as provided by Chapter 1.12 of this Code.

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proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

### ~~7.89.050~~ **7.89.080 Severability.**

If any provision of this chapter or its application to any person or circumstance is declared invalid or unenforceable by a court of competent jurisdiction, this chapter, to the extent it can be given effect, or the application of this chapter to persons other than the person to whom it is held invalid, shall not be affected thereby, and to this end, the provisions of this chapter are severable.

## SECTION II

Subsection I. of Section 5.50.180 of the Santa Cruz County Code is hereby repealed.

~~I. Tobacco Advertising Prohibited. On and after May 10, 1999, no person shall place or maintain, or cause or allow to be placed or maintained, any advertising or promotion of tobacco products on any advertising display on a taxicab. This provision shall be interpreted in a manner consistent with Chapter 7.89 of this code.~~

## SECTION III

This ordinance shall take effect on the 31<sup>st</sup> day after the date of final passage.

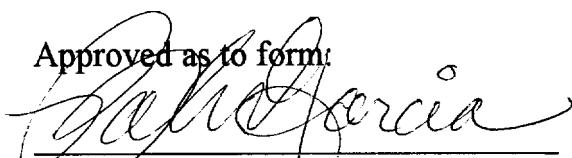
PASSED AND **ADOPTED** by the Board of Supervisors of the County of Santa Cruz, State of California, this \_\_\_\_ day of \_\_\_\_\_, 2001, by the following vote:

AYES: SUPERVISORS  
NOES: SUPERVISORS  
ABSENT: SUPERVISORS  
ABSTAIN: SUPERVISORS

\_\_\_\_\_  
TONY CAMPOS, Chairman  
Board of Supervisors

ATTEST: \_\_\_\_\_  
Clerk of said Board

Approved as to form:

  
\_\_\_\_\_  
Chief Assistant County Counsel

DISTRIBUTION: County Administrative Officer  
Planning Director  
Health Services Agency Administrator

## ORDINANCE NO. \_\_\_\_\_

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COUNTY CODE RELATING TO TOBACCO ADVERTISING AND SALES**

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**SECTION I**

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**REGULATION OF SELF-SERVICE SALE  
OF TOBACCO PRODUCTS**

**Sections:**

- 7.89.010 Purpose.**
- 7.89.020 Definitions.**
- 7.89.030 Restrictions on self-service sale of tobacco products.**
- 7.89.040 Enforcement; penalties; civil actions.**
- 7.89.050 Severability.**

**7.89.010 Purpose.**

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B "Tobacco product" means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco.

C. "Self-service display" means an open display of tobacco products which is accessible without the intervention of a vendor, including, but not limited to a rack, shelf, or counter-top display.

D. "Vendor-assisted sale" means a purchase requiring a direct, face-to-face



exchange between the vendor and the customer, in which the vendor does not transfer possession of the product to the customer until the purchase is completed.

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#### **7.89.040 Enforcement; penalties; civil actions.**

**A.** Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation. After notification, it shall be a separate offense for each day such violation shall continue.

**B.** Violations of this Chapter shall be prosecuted as infractions and shall be punishable as provided by Chapter 1.12 of this Code.

**C.** This chapter shall be administered and enforced by the Planning Department.

**D.** Violations of this chapter are hereby declared to be public nuisances.

**E.** In addition to other remedies provided by this Chapter, any violation of this Chapter may be enforced by a civil action brought by the County Counsel, including but not limited to administrative or judicial nuisance abatement proceedings, civil enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

#### **7.89.050 Severability.**

If any provision of this chapter or its application to any person or circumstance is declared invalid or unenforceable by a court of competent jurisdiction, this chapter, to the extent it can be given effect, or the application of this chapter to persons other than the person to whom it is held invalid, shall not be affected thereby, and to this end, the provisions of this chapter are severable.

## **SECTION II**

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**SECTION III**

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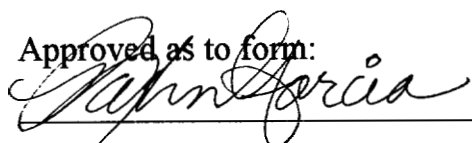
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz,  
State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by the following vote:

AYES:        SUPERVISORS  
NOES:        SUPERVISORS  
ABSENT:     SUPERVISORS  
ABSTAIN:    SUPERVISORS

\_\_\_\_\_  
TONY CAMPOS, Chairman  
Board of Supervisors

ATTEST: \_\_\_\_\_  
Clerk of said Board

Approved as to form:



Chief Assistant County Counsel

DISTRIBUTION: County Administrative Officer  
Planning Director  
Health Services Agency Administrator