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Law and Legislation Committee
City Council Chambers
Sacramento, California 95814

**RE: An Ordinance Adding Sections 24.9 through
24.13 to Chapter 24 of the Sacramento City
Code and Repealing Section 24.5, Relating to
the Furnishing of Tobacco Products to Minors**

Honorable Members in Session:

SUMMARY

This report presents for Committee review an ordinance relating to distribution of tobacco products to minors under the age of eighteen. The ordinance would make it an infraction to distribute tobacco products to minors, whether by means of direct retail sale, vending machine sale or promotional free distribution.

BACKGROUND

At the request of Councilmember Lynn Robie and Board of Supervisors Chairman Jim Streng, the County Counsel's Office and the City Attorney's Office have been working together for a number of months to develop identical ordinances to prohibit distribution of tobacco products to minors under the age of eighteen, whether by direct retail sale, vending machine sale, or promotional free distribution.

State law prohibits knowingly providing tobacco products to persons under the age of 18 years. [Penal Code §308(a)]. Penal Code §308(c) explicitly allows additional local ordinances regulating sale of tobacco products to persons under the age of 18 years.

To prove a violation of Penal Code §308(a), one must prove that the distributor knew the recipient was under 18 years of age. The County Counsel and City Attorney agree that a local ordinance may be enacted which makes unknowing distribution to a minor an offense.

Several approaches have been considered and set aside at least temporarily:

1. Ban on distribution of free samples.
2. Requiring that all purchasers show proof of age.
3. Licensing all tobacco distributors with a special license, and revoking the privilege to distribute tobacco products if sales or gifts to minors are proved.
4. Banning all tobacco vending machines that are accessible to minors.

The ordinance here proposed is less onerous than any of the foregoing options. It permits the continued use of vending machines, promotional free samples, etc., but imposes upon the distributor the responsibility to ensure that the purchaser or recipient is not a minor. It is not a defense that the distributor did not know the person was a minor.

The proposal authorizes a distributor of tobacco products, whether a retail merchant, vending machine owner, or distributor of free samples, to ask for age identification of potential purchasers and recipients. Having been shown identification of specified types is a complete defense to any violation charged. This mechanism is similar to that currently used by clerks and others to preclude distribution of alcoholic beverages to those under 21.

As to vending machines, the responsibility to ensure that no sales are made to minors is placed on two persons: (1) the person who owns the vending machine and installs it on any premises for the purpose of distributing tobacco products therefor; and (2) the person who authorizes installation of a machine on premises which such person manages or controls. The exact method of compliance has been left to the persons involved. A similar situation involves player-activated Lotto machines, which those under 18 years of age may not use. It has been reported that these machines will be placed where clerks can view them and turn them off if a minor tries to purchase a Lotto ticket.

Violation of the ordinance would be an infraction, punishable by a maximum fine of \$100 for a first conviction, \$200 for a second conviction within one year, and \$500 for a subsequent

conviction within one year. Repeated violations would subject the violator to the possibility of misdemeanor prosecution or an action for injunctive relief as well.

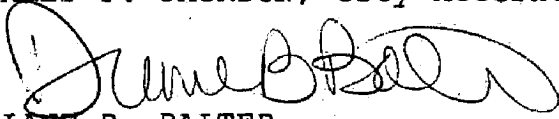
Staff has determined that enforcement of this ordinance will be handled by the Revenue Manager, with the assistance of the City Attorney's Office.

RECOMMENDATION

It is recommended that the Law and Legislation Committee review the attached ordinance relating to furnishing of tobacco products to minors and make a recommendation to the City Council.

Respectfully submitted,

JAMES P. JACKSON, City Attorney



DIANE B. BALTER
Deputy City Attorney

DBB:je
Att.

May 19, 1988
Law and Legislation
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE ADDING SECTIONS 24.9 THROUGH
24.13 TO CHAPTER 24 OF THE SACRAMENTO
CITY CODE AND REPEALING SECTION 24.5,
RELATING TO THE FURNISHING OF
TOBACCO PRODUCTS TO MINORS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Sections 24.9 through 24.13 are hereby added to the Sacramento City Code to read as follows:

Sec. 24.9 Purposes.

The protection of the public welfare requires that potential access by minors to all forms of tobacco products be strictly regulated.

Harvard University and the National Institute on Drug Abuse have reported that the nicotine in tobacco is a powerful, habit-forming drug that leads to compulsive use, and produces strong withdrawal symptoms. The U.S. Public Health Service has described nicotine addiction as the most widespread example of drug dependence in our country.

Studies have found that nicotine addiction typically begins in childhood. It has been estimated that thousands of American children smoke for the first time every day. Many youth, particularly male teenagers, use smokeless tobacco. Reported tests have shown that minors as young as 11 years of age have experienced little or no difficulty in purchasing tobacco products.

The purpose of this ordinance is to reduce the likelihood of minors obtaining tobacco products in the City of Sacramento by regulation of the potential sources thereof, without unduly interfering with permitted transactions or entirely prohibiting tobacco vending machines. This ordinance enables affected persons to determine for themselves the methods they will employ to achieve compliance herewith.

Sec. 24.10 Definitions.

For the purposes of Section 24.11, the following terms shall be defined as set forth herein:

- (a) **Distribute:** To sell, give away, or in any way furnish as part of a commercial transaction, including by means of direct retail sale, vending machine sale or promotional free distribution.
- (b) **Person:** An individual, partnership, corporation, unincorporated association, joint venture, or other entity.
- (c) **Tobacco product:** Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.
- (d) **Tobacco vending machine:** Any electronic or mechanical device the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or vends a tobacco product.
- (e) **Tobacco vending machine owner:** Any person who has an ownership or leasehold interest in a tobacco vending machine and who installs or places, or causes to be installed or placed, such tobacco vending machine on any premises for the purpose of distributing a tobacco product therefrom.

Sec. 24.11 Distribution of tobacco products to minors prohibited.

- (a) Any person, including a tobacco vending machine owner, who distributes a tobacco product to a minor who is in fact under the age of 18 years, whether or not the fact of such minority was known to such person at the time of distribution, is guilty of an infraction.
- (b) Any person who authorizes the installation or placement of a tobacco vending machine on premises which the person manages or controls and who permits or suffers, knowingly or unknowingly, any tobacco product to be distributed from such tobacco vending machine to a minor under the age of 18 years is guilty of an infraction.

Sec. 24.12 Proof of age.

For the purpose of preventing the violation of Section 24.11(a) or 24.11(b), any person may refuse to distribute a tobacco product to a person who is unable to produce adequate written evidence that he or she is over the age of 18 years.

Sec. 24.13 Evidence of age and identity: Proof of demand therefor as defense.

Proof that the defendant, or his employee or agent, demanded, was shown or acted in reliance upon bona fide evidence of majority and identity in any transaction prohibited by Section 24.11(a) or 24.11(b) shall be a defense to any criminal prosecution therefor or to any civil proceedings based thereon. Bona fide evidence of majority and identity of the person shall be a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, which contains the name, date of birth, description, and picture of the person, including, without limitation, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces.

SECTION 2.

Section 24.5 of the Sacramento City Code is hereby repealed.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK