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**CITY OF SACRAMENTO
CALIFORNIA**

September 19, 1990

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Law and Legislation Committee
Sacramento, California

**SUBJECT: An Ordinance Amending Chapter 37 of the Sacramento
City Code (Smoking Pollution Control Ordinance)**

Honorable Members in Session:

SUMMARY

This report presents the Environmental Commission's recommendation to amend the City's existing ordinance relating to Smoking Pollution Control (Chapter 37 of the City Code). The Environmental Commission's recommended ordinance is titled "Sacramento Clean Indoor Air and Health Protection Ordinance." It strengthens existing regulations by prohibiting all smoking in the workplace, and adds to the existing public places where smoking is prohibited. This report also describes for the Committee's information the ordinance which the Sacramento County Board of Supervisors tentatively approved on September 11, and is expected to approve on September 25. The Board of Supervisors indicated its intent to enact regulations for restaurants and recreation halls which are stricter than those recommended by the Commission. This information is presented because the City Council and Board of Supervisors have expressed in the past their desire that the City's smoking regulations and the County's smoking regulations be identical.

BACKGROUND

During the past year, the Environmental Commission, first through a task force and then sitting as a commission, has considered proposals for revision of the City and County's smoking regulations. The proposals address concerns raised by enforcement staff in the

Law and Legislation Committee
Subject: An Ordinance Amending Chapter 37 of
the Sacramento City Code
September 19, 1990
Page 2

Environmental Health Division of the County's Environmental Management Department, which enforces smoking regulations in both the City of Sacramento and the unincorporated area of the County of Sacramento. On September 11, 1990, Environmental Health Division staff and the Environmental Commission presented the Commission's recommendation to the Sacramento County Board of Supervisors. Attachment 1 is the staff report to the Board of Supervisors (dated August 28, 1990). Attachment 2 is the Environmental Commission's recommended ordinance, revised in accord with City Code format.¹

Significant provisions of the Commission's ordinance which differ from the City's existing regulations include:

1. Title of ordinance changed to "Clean Indoor Air and Health Protection Ordinance."

2. Section on Purposes is revised.

3. Prohibits smoking in all City buildings.

4. Prohibits all smoking in any enclosed workplace of commercial enterprises, non-profit entities and all City owned and managed buildings. Exceptions include restaurants, bars, recreation halls, etc., which are treated separately.

5. Requires not less than 50% of available seating in restaurants be designated as non-smoking. When a bar shares the same enclosed area with a restaurant, the bar seats must be counted with the restaurant seats in determining the total number of nonsmoking restaurant seats required. Applies to all restaurants, not just those with seating capacity of 50 or more.

¹County staff also prepared a report on the task force's work on behalf of the Commission. That report, "Revisions to the County Smoking Code to be Submitted to the Sacramento Environmental Commission on January 10, 1990," is not attached hereto because its recommendations are different in many important details from the ordinance which the Environmental Commission ultimately recommended to the City Council and Board of Supervisors. A copy of the report on the task force's work is available for review in the City Clerk's office.

6. Residences serving as licensed day care facilities for children are added to the definition of "Workplace." Smoking is prohibited in private residences during the time when such residences are operated as licensed day care facilities for children.

7. Prohibits smoking throughout the County Courthouse, including jury lounges and jury deliberation rooms.

8. Hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to members of the general public shall be smoke-free. Exception provided for certain facilities treating psychiatric or chemically impaired patients.

9. Hotels/motels shall designate nonsmoking rooms, post them as smoking prohibited and remove ashtrays therefrom, prominently post availability of nonsmoking rooms in lobby and routinely advise customers seeking accommodations of the availability of nonsmoking rooms.

10. Prohibits smoking in lobbies of theaters, meeting halls and auditoriums.

11. Prohibits smoking in enclosed common areas or malls within retail shopping centers.

12. Prohibits smoking in sports pavilions, arenas, bowling alleys, and other recreational facilities. "Smoking permitted" areas would no longer be designable by the operator of the facility. Enclosed restaurants and bars within such facilities would be governed by the regulations relating to restaurants and bars.

13. Recreation halls for playing bingo, cards, dancing, etc. may permit smoking within a portion of the facility, not to exceed 50%.

14. Where the ordinance permits smoking in enclosed areas of a place of employment (e.g. restaurants), the employer shall accommodate the reasonable preferences and needs of all nonsmoking employees.

15. Exemptions or modifications may be granted on (1) a showing of significant financial hardship due to compliance, or (2) the proposed implementation of an alternative approach or technology which would provide equivalent protection from the health hazards of sidestream smoke.

Law and Legislation Committee
Subject: An Ordinance Amending Chapter 37 of
the Sacramento City Code
September 19, 1990
Page 4

The Sacramento County Board of Supervisors held a hearing on the Environmental Commission's recommended ordinance on September 11. At that time, the Board expressed its intention to adopt the ordinance, with the following amendment and referral:

a. Restaurants and recreation halls shall be at least 50% non-smoking upon the effective date of the new ordinance, 75% non-smoking by July 1, 1992, and 100% non-smoking by December 31, 1993.

b. The issue of smoking in bars was referred to the Environmental Commission for further discussion and recommendations. The subject will be introduced at the Commission's September 24, 1990, meeting, and a public workshop on the subject has been scheduled for October 10, 1990, in the City Council chamber.

As currently scheduled, the Board of Supervisors will take final action on smoking regulations for the unincorporated area of the County on September 25. Attachment 3 is the staff report back to the Board of Supervisors (dated September 18, 1990). Staff will report on the outcome of any Board actions at the Law and Legislation Committee meeting on September 26.

FINANCIAL DATA

The City contracts with the Environmental Health Division of the County Environmental Management Department for enforcement of smoking control regulations. County staff has indicated that some of the proposed amendments will make enforcement more efficient. There has not been any indication from County staff that the enactment of the amended regulations will increase the cost of enforcement.

POLICY CONSIDERATIONS

In the past, the City Council and Board of Supervisors have considered it desirable to have identical smoking control regulations.

MBE/WBE

Not applicable.

Law and Legislation Committee
Subject: An Ordinance Amending Chapter 37 of
the Sacramento City Code
September 19, 1990
Page 5

RECOMMENDATION

It is recommended that the Law and Legislation Committee review the amended smoking regulations as proposed by the Environmental Commission and the actions taken by the Board of Supervisors and make a recommendation to the full Council relating to amendment of the City's Smoking Pollution Control regulations (Chapter 37).

Respectfully submitted,

JAMES P. JACKSON, City Attorney



DIANE B. BALTER
Deputy City Attorney

Contact Person to
Answer Questions:

Diane B. Balter
Deputy City Attorney
449-5346

Law and Legislation
September 25, 1990
All Districts

COUNTY OF SACRAMENTO
California

August 28, 1990
2:30 P.M.

TO: Board of Supervisors
FROM: Norm Covell, Director
Environmental Management Department
SUBJECT: TIMED ITEM: Amendments To The Sacramento County
Smoking Ordinance #610, Chapter 6.84

RECOMMENDATIONS:

1. Accept the attached report from the Sacramento Environmental Commission relative to the Sacramento County Smoking Ordinance.
2. Approve amendments as proposed to the existing ordinance.

BACKGROUND:

The attached proposal forwarded to your Board for consideration comes with a unanimous recommendation for approval from the Sacramento Environmental Commission. The proposal is for a comprehensive revision of Chapter 6.84 of the County Code relating to smoking that resulted from recommendations developed by a task force of the Commission, as well as subsequent public workshops and meetings conducted by the Commission.

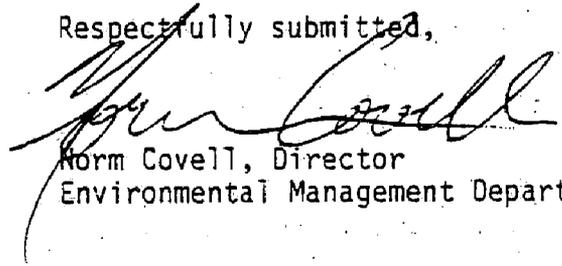
The existing Smoking Ordinance was adopted by your Board in 1984. Implementation was assigned to the Environmental Health Division, now with the Environmental Management Department. Since 1985, annual reports have been prepared that logged the number of complaints received. In addition, comments regarding specific problem areas were identified with the corresponding code sections (see 1989 report attached).

On June 14, 1989 the Environmental Health staff requested that the Environmental Commission consider developing proposals for revisions of the Smoking Ordinance which would address staff concerns. The Commission responded by appointing a task force that subsequently met on five occasions before identifying possible amendments which have been delineated in a staff report (Attachment 2).

Board of Supervisors
TIMED ITEM
August 28, 1990 - 2:30 p.m.
Page 2

The changes proposed by the Environmental Commission has satisfactorily addressed the concerns by staff. A copy of the proposed amended ordinance as prepared by the Commission has been forwarded to County Counsel for their review. (Attachment 3). I recommend your Board's approval of these changes to the Smoking Ordinance as proposed.

Respectfully submitted,



Norm Covell, Director
Environmental Management Department

Approval recommended:

Brian Richter
County Executive

NC:KCS:dc
062490

Attachments (3)

cc: Auditor-Controller
Environmental Management Department (3)
County Counsel

(120kcs/511/90)

Sacramento County
Environmental Management Department
Division of Environmental Health

ANNUAL REPORT OF
THE CITY/COUNTY
SMOKING ORDINANCES
1989

Background

Comprehensive Smoking Pollution Control Ordinances were adopted by the Sacramento County Board of Supervisors and the Sacramento City Council in 1984 and went into effect in 1985. Enforcement of the ordinances is under the jurisdiction of the Environmental Health Division of the Environmental Management Department, with smoking control staff consisting of one full-time enforcement officer and a supervisor who is responsible for all aspects of the program.

Enforcement of the ordinances are based on public requests for service response regarding workplace/public areas and food facilities being routinely inspected for compliance by present field staff.

Telephone Calls

Logs of all telephone calls concerning the City/County Smoking Ordinances have been maintained by the Smoking Enforcement Officer, and in the twelve month period from January through December 1989, the calls logged are as follows:

A. Number of information requests and public information responses:

1. City of Sacto	196
2. County of Sacto	<u>498</u>

Total Calls 694

B. Number of Complaints received:

1. City of Sacto	66
2. County of Sacto	<u>117</u>

Total Complaints 183

Complaints

The Environmental Health Division received 183 complaints staff determined to be violations of the Sacramento City/County Smoking Ordinances. The total number of complaints have been broken into the following location categories:

Annual Report of
 City/County Smoking Ordinances
 1989
 Page 2

Location

	<u># of Complaints</u>	<u>% of Total</u>
1. <u>Workplace</u>		
a. Common Open Work Area	45	25%
b. Lounge (Area too small to accommodate both smokers and non-smokers)	46	25%
c. Private offices (Inadequate ventilation/door not being kept shut thus allowing smoke to drift into adjacent work areas)	18	10%
d. Other (Conference rooms, restrooms, hallways, and lobbies)	18	10%
Subtotal	127	70%
2. <u>Restaurants</u>		
(No nonsmoking section/No-smoking area not posted)	15	8%
3. <u>Retail Stores</u>		
(Customers/Employees smoking in store/No-smoking sign not posted)	23	13%
4. <u>Recreation Halls</u>		
(Inadequate ventilation/No smoking areas not posted)	2	1%
5. <u>Arenas</u>		
(Employee/Patrons smoking throughout arena/Smoking in restrooms/No-smoking signs not posted)	3	1%
6. <u>Beauty Shops</u>		
(Employees/Customers smoking in shop/ No smoking sign not posted)	7	4%

7. Other Public Areas

Bus Stations, Auctions, Hotel/lobbies Motel	<u>6</u>	<u>3%</u>
	183	100%

Complaints (continued)

As the data above reveals, the most frequently violated sections of the ordinances are the Workplace (6.84.105/37.13), Restaurants (6.84.105/37.13), Retail Stores (6.84.060/37.04), Recreation Halls (6.84.100/37.12), Arenas (6.84.095/37.11), Beauty Shops (6.84.095/37.04), and other public places - public auction, bus terminal, motel/motel lobbies (6.84.055/37.03).

Workplace: Most complaints received concerning the workplace involve private offices and bay or bull pen seating arrangements where both smokers and nonsmokers work.

6.84.165 SUBSECTION a and b WORKPLACE

Language in this section of the code states that when a nonsmoker complains about smoke in his/her workplace, the employer shall attempt to reach a reasonable accommodation between the preferences of the nonsmoker and smoking employees. The language "reasonably accommodates" usually does not provide a quick solution in a smoking dispute regarding the workplace. In some cases, management attempts to accommodate the nonsmokers by creating a smoking and nonsmoking area within common open workplaces; however, either the areas are too small, the ventilation system is inadequate, or a combination of both of these factors results in a continued smoking problem.

*Under current code, there is no section addressing a smoking complaint in shared office space between separate private companies. Complaints received cannot be resolved under the existing codes.

6/84.175 EXCEPTIONS - PRIVATE OFFICE

Code states an owner/manager or operator may authorize smoking within an office occupied exclusively by smokers. However, when a nonsmoker complains about smoke from a private office (i.e., inadequate ventilation due to recirculating HVAC System, smoke drifting out from private offices into adjacent work areas) an employer, in some cases, may not be willing to resolve this type of smoking dispute as the language heading uses the word "exception".

6.84.155 WORKPLACE - SMOKING SEGREGATED

This Section of the Code addresses the employee's cafeteria, breakroom, or lounge. Current Code instructs employers to designate 50% of the break area shared by smoking and nonsmoking employees as nonsmoking.

Lunchroom/lounge area complaints stem from the problem that most of these rooms are too small and/or have inadequate ventilation systems.

In 100% of these three types of workplace complaints (common open workplace areas, private office, and employee breakrooms) the only satisfactory solution resulted when management either designated the entire affected areas as 100% nonsmoking, or permitted smoking in a separate enclosed room with a separate HVAC system.

Restaurants: Complaints concerning restaurants are usually not found to be violations of the Smoking Ordinances as the restaurant's manager/owner has set aside the minimum 10% for nonsmoking or the restaurant has less than fifty seats and is thus exempted by Code from setting aside a nonsmoking area. However, when the area is full or the nonsmoking section reservations are overbooked, this can prompt the patron to file a complaint with this office.

Other complaints received by this Division from the public regarding restaurants include the following:

1. Patron seated next to smoking section.
2. Inadequate ventilation.
3. Host/hostess in a restaurant with more than fifty seats not asking customer whether they prefer smoking or nonsmoking.

684.095 ARENAS/RECREATION HALLS

Complaints regarding Arenas/Recreation halls are also usually not found to be violations because, under current codes, there are no restrictions as to where and how large a portion of the smoking area is to be designated. This makes enforcement of the ordinances difficult, and it would be beneficial to set minimum standards for the location and percent/portion of smoking areas. Such a change could also result in nonsmoking areas which are now available for smoking (i.e. restroom).

6.84.180 POSTING

Code is vague in that it does not specify size dimension for the international "No Smoking" symbol consisting of the pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

*Presently, there is no section of the ordinance addressing ash trays. Large ash trays which are often left in nonsmoking areas are intended to provide an acceptable method for smokers to extinguish tobacco products in nonsmoking areas. Unfortunately, this practice tends to facilitate smoking.

ENFORCEMENT AND RESPONSES

The enforcement policy maximizes the basis of voluntary compliance through correspondence. Complaints involving the Smoking Ordinance in the City owned or occupied buildings are referred to the City Manager, and those complaints in County owned or occupied buildings are referred to the responsible department head for enforcement of the ordinances.

Complaints involving all other buildings, including food facilities, are sent warning notices first, and if needed, second warning notices are sent. If this office should receive a third complaint, a field investigation is conducted, and if compliance has not been achieved, there are three possible actions by the enforcement officer: 1) A written notice of the violation may be issued on-site and the facility rechecked for compliance; 2) An Infraction Citation may be issued; 3) The case may be referred to the City Attorney or County Counsel for Civil prosecution.

To date, correspondence through warning notices and on-site written notices have proven to be very effective in achieving compliance. Only one infraction ticket has been issued since the Smoking Ordinance has been in effect.

CONCLUSIONS AND RECOMMENDATIONS

Based on this information, field investigations by staff and conversations with complainants, the Environmental Health Division recommends the following items be considered for amendment to the Sacramento City and County Smoking Ordinances:

1. Many problems were encountered enforcing the existing code to protect nonsmokers in shared offices and in buildings with poor ventilation systems. The code should be revised to address these circumstances.
2. Most of the complaints received by the Environmental Health Division regarding restaurants involve violations of the minimum 10% smoking area requirement. Complaints about the inadequacy of the minimum (10%) requirements were not taken or responded to by the smoking enforcement staff.
3. Under the current codes, there are no restrictions as to where and how large a smoking area in arenas or recreation halls are to be designated. This makes enforcement of the ordinances difficult and it would be beneficial to set minimum standards for the percent/portion of smoking areas. Such a change would result in nonsmoking areas which are now available for smoking (e.g., restrooms).
4. Presently, there is no section of the ordinance addressing ash trays. Large ash trays which are often left in nonsmoking areas are intended to provide an acceptable method for smokers to extinguish tobacco products.

in nonsmoking areas. Unfortunately, this practice tends to facilitate smoking; therefore, it would be worthwhile to consider amending the codes to prohibit ash trays in nonsmoking areas.

5. There are no smoking codes which presently regulate size or dimensions for the international "No Smoking" symbol consisting of the pictorial representation of a burning cigarette enclosed in a red circle with a red bar. This causes confusion for those businesses who wish to post this type of sign; therefore, development of code language addressing size dimensions for the international smoking symbol is recommended.

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ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING CHAPTER 37 OF THE SACRAMENTO CITY CODE, RELATING TO SMOKING CONTROL

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

SECTION 1.

Chapter 37 of the Sacramento City Code is hereby amended to read as follows:

CHAPTER 37 Clean Indoor Air and Health Protection Ordinance

§ 37.01 Purposes.

The City Council hereby finds as follows: The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's 1986 report on the Health Consequences of Involuntary Smoking concludes that exposure to tobacco smoke places healthy nonsmokers at increased risk for developing lung cancer. Other health hazards of involuntary smoking include respiratory infection, bronchoconstriction, and bronchospasm. While all members of the population are truly at increased risk due to exposure to sidestream tobacco smoke, it constitutes a special health hazard for children, the elderly and people with chronic lung disorders.

The Surgeon General labels smoking "the largest single preventable cause of death and disability for the U.S. population."

Employees subject to prolonged exposure to sidestream smoke in the workplace have been found in scientifically conducted studies to experience a loss of job productivity and some have been forced to take periodic sick leave because of reactions to second hand smoke. Furthermore, studies have shown higher costs to the employer are associated with smoking in the workplace due to increases in absenteeism, accidents, costs of medical care, loss of productivity, and cleaning and

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DATE ADOPTED: _____

maintenance requirements. A recent scientific study has reported that sidestream smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with sidestream smoke. Smoking in public places and workplaces is a major cause of fires and damage to merchandise and equipment as well as costly maintenance and repairs to furniture and fixtures.

The health care costs produced by smoking-related ailments and diseases constitute a heavy and avoidable financial drain on our community.

More than three-quarters of Sacramento residents are nonsmokers and the number of nonsmokers is steadily increasing. Opinion surveys show that a majority of both nonsmokers and smokers favor restrictions on smoking in public places and places of employment.

Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of nonsmokers and constitutes a public nuisance in public places and workplaces.

§ 37.02 Authority.

This chapter is enacted pursuant to the provisions of Section 25946 of the Health and Safety Code for the purpose of restricting and regulating smoking in public places and in places of work in order to reduce the hazards and nuisance which smoking causes to those who are involuntarily exposed.

§ 37.03 Definitions.

As used in this chapter, those terms identified in this section shall, unless the context indicates otherwise, be ascribed the meaning contained herein.

(a) Bar.

The term "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption on the premises and in which the serving of food, if any, is incidental to the consumption of alcoholic drinks. When a bar is operated within a building in conjunction with another use, such as a restaurant, only the area utilized primarily for the consumption of alcoholic beverages shall constitute the Bar. The dining area of a restaurant utilized primarily for the serving and consumption of food shall not constitute a Bar, even though alcoholic beverages may be served therein.

**(b) Commercial Enterprise - Non-profit Entity - Person.
[Operators of Public Places]**

The term "Commercial Enterprise" means any business entity formed for profit making purposes, including professional corporations and other entities under which legal, medical, dental, engineering, architectural, or other professional services are delivered, and also any person charged with the responsibility of controlling conduct in behalf of the Enterprise upon any premises regulated by this chapter.

The term "Non-Profit Entity" shall mean any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from operations of which are committed to promotion of the objects or purposes of the organization and not to private gain, together with any person charged with the responsibility of controlling conduct in behalf of the Entity upon any premises regulated by the provisions of this chapter.

A public agency is not a "Non-Profit Entity" within the meaning of this Section.

The term "Person" means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club, or other organization of any kind, except the City of Sacramento or any other public agency.

(c) Enclosed Area.

The term "Enclosed Area" means all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system and is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping," or similar structures.

(d) Members of the General Public.

The term "Members of the General Public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of a Commercial Enterprise or Non-Profit Entity; and excludes employees thereof, sales representatives, service repair persons and persons delivering goods, merchandise or services to a Commercial Enterprise, Non-Profit Entity or the City of Sacramento.

(e) Office.

The term "office" means an area enclosed by walls containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesaling or storage, or manufacturing, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, and conference rooms within or associated with the complex of such enclosures, including: (i) legal, medical, dental, engineering, accounting, counseling and other professional offices; (ii) insurance, real estate, ticket, collection agency, and other offices where business services are offered to or goods or services are offered to or may be ordered by or may be paid for by Members of the General Public; and (iii) offices to which Members of the General Public are admitted in order to promote the objects or purposes of the Non-Profit Entities.

(f) Restaurant.

The term "Restaurant" means any coffee shop, cafeteria, luncheonette, soda fountain, "fast food service" and other establishment where cooked or otherwise prepared food is sold to Members of the General Public for consumption on the premises. The term does not include a cafeteria or lunchroom defined as a "workplace" by subparagraph (3) of subsection (i), whether or not Members of the General Public incidentally frequent the facility.

(g) Smoking.

The term "Smoking" means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant or other ignited combustible substance in any manner or in any form.

(h) Tobacco Store.

The term "Tobacco Store" means a place utilized primarily for the sale to Members of the General Public at retail of tobacco products or accessories and in which the sale of any other products is merely incidental.

(i) Workplace.

The term "Workplace" means any enclosed area which is occupied by two or more employees of a Commercial Enterprise, Non-Profit Entity or the City of Sacramento including but not limited to places:

(1) Utilized for: (i) the manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or (ii) the physical storage for purposes of wholesaling, future utilization for operational purposes, or future transfer preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment, tools, appliances or furnishings;

(2) Utilized or operated for a purpose described by sections 37.05 through 37.19 and from which Members of the General Public are excluded;

(3) Utilized as a union hall, cafeteria, lounge, lunchroom, restroom, conference room, training room, lecture room or classroom primarily for the use or benefit of employees.

Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed day care facility for children.

§ 37.04 Smoking Prohibitions, Public Places.

Except as otherwise provided in this Chapter, it is unlawful for any Member of the General Public or any other person including an employee to smoke in the Public Places named and described in sections 37.05 through 37.19 and other Public Places similarly situated, including but not limited to the following Enclosed Areas:

- a. Common work areas occupied by employees performing clerical, technical, administrative or other business or work functions;
- b. Merchandise display areas, checkout stations, and counters and other pay stations;
- c. Hallways;
- d. Restrooms;
- e. Escalators, elevators and stairways;
- f. Lobbies;
- g. Reception areas;
- h. Waiting rooms;
- i. Service lines;

- j. Classrooms, meeting or conference rooms, or lecture halls; and
- k. Other places in which Members of the General Public congregate for service or otherwise frequent.

§ 37.05 Stores.

The prohibitions contained in section 37.04 above shall be applicable to: (i) the enclosed common areas of Shopping Malls; (ii) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale at retail; (iii) grocery, specialty, department and other stores which sell goods or merchandise at retail, and (iv) service stations, stores or shops for the repair or maintenance of appliances, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video game, pool hall and other amusement centers, and other similar establishments offering services or products to Members of the General Public.

§ 37.06 Banks.

The prohibitions of section 37.05 shall be applicable to banks, including savings and loan associations, credit unions and other similar institutions which offer financial services to Members of the General Public.

§ 37.07 Hotels/Motels.

The prohibitions of section 37.05 shall be applicable to hotels and motels in which guests typically rent lodging for continuous periods less than thirty days. Smoking is permissible in rental rooms and in on-premise restaurants and bars as provided in sections 37.13 and 37.22(b). The availability of nonsmoking rooms will be prominently posted in the lobby sign-in area. The rooms so designated will be posted as smoking prohibited and ash trays removed. Customers seeking accommodations will be routinely advised of the availability of nonsmoking rooms.

§ 37.08 Terminals.

The prohibitions of section 37.05 shall be applicable to depots and other terminals utilized by Members of the General Public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis.

§ 37.09 Buses and Taxis.

Smoking by either passengers or operators shall be prohibited within buses, taxicabs and all public transit conveyances operated by or licensed by the City.

§ 37.10 Theaters.

The prohibitions of section 37.05 shall be applicable to theaters, including motion picture theaters, meeting halls and auditoriums where motion pictures or live theatrical musical or dramatic productions are made to an audience consisting of Members of the General Public assembled for the purpose of witnessing the performance or presentation; provided that neither this section or section 37.05 shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs.

§ 37.11 Recreational Facilities.

The prohibitions contained in section 37.05 shall be applicable to sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where Members of the General Public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourses where food and beverages are dispensed.

Smoking may be allowed in enclosed on-site Restaurants, subject to the provisions of section 37.13, and in enclosed on-site bars.

§ 37.12 Recreation Halls.

The prohibitions of section 37.05 shall be applicable to recreation halls and other similar facilities where Members of the General Public play bingo or cards, dance or engage in recreational, character building or cultural activities.

An owner or operator may permit persons to smoke within a portion, not exceeding 50 percent, of the main activities area of such facility not including restrooms, lounges and kitchens. Signs will be posted in the manner prescribed by section 37.24. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized.

The provisions of this section shall not be construed to in any manner restrict or otherwise impair the authority of an owner or operator to increase the nonsmoking seating in a recreation hall or other facility described in this section.

§ 37.13 Restaurants.

Within all restaurants, the prohibitions in section 37.05 shall be applicable to lobbies, waiting areas, restrooms and such dining seating areas as are allocated for nonsmoking. The owner, manager or operator of a restaurant shall designate not less than 50 percent of the available seating in a contiguous grouping as nonsmoking, post "no smoking" signs as prescribed by section

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ORDINANCE NO.: _____

DATE ADOPTED: _____

37.24 and remove ashtrays from tables in the area. Where a bar shares the same Enclosed Area with the restaurant, the bar seats must be counted with the restaurant seats in determining the total number of nonsmoking restaurant seats. The owner, manager, or operator shall post a notice at the restaurant entrance that a nonsmoking section is available. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized.

The provisions of this section shall not be construed to in any manner restrict or otherwise impair the authority of an owner or operator to increase the nonsmoking seating in a restaurant or bar.

§ 37.14 City Buildings.

Smoking is prohibited in all City buildings.

§ 37.15 County Courthouse.

The prohibitions contained in section 37.05 shall be applicable to the County Courthouse including Jury Lounges and Jury Deliberation Rooms.

§ 37.16 Places of Exhibition.

The prohibitions contained in section 37.05 shall be applicable to libraries, museums, aquariums, galleries, convention halls and similar facilities where Members of the General Public assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services.

§ 37.17 Hospitals.

The prohibitions contained in section 37.05 shall be applicable to hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to Members of the General Public. Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas provided the medical director of such facility has determined in writing that the practice is beneficial for the recovery or treatment of such patients and that the practice will not interfere with the recovery and treatment of nonsmoking patients, and provided that adequate nonsmoking areas are made available for nonsmoking patients.

§ 37.18 Schools.

The prohibitions contained in section 37.05 shall be applicable to any school or educational institution operated by a Commercial Enterprise or Non-Profit Entity for the purpose of providing academic classroom instruction, trade, craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.

The prohibitions contained in section 37.05 shall be applicable to public school facilities when school district management authorizes their use by Members of the General Public other than students.

§ 37.19 Day Care Facilities.

The prohibitions contained in section 37.05 shall be applicable to private residences during the time when such residences are operated as licensed day care facilities for children.

§ 37.20 Smoking Prohibitions, Workplace.

Smoking is prohibited in enclosed Workplaces of Commercial Enterprises, Non-Profit Entities and all City owned and managed buildings including but not limited to open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, and waiting rooms, classrooms, meeting or conference rooms, and auditoriums.

On-site cafeterias, lunchrooms and lounges shall be deemed workplaces and smoking prohibited therein, whether or not such facilities are open to Members of the General Public.

Each Commercial Enterprise, Non-Profit Entity and the City shall comply with these smoking prohibitions and be responsible for their implementation in the workplace, and "No smoking" signs shall be posted in the manner prescribed by section 37.24.

§ 37.21 Places Where Smoking Permissible.

Smoking may be permitted in all locations where smoking is not prohibited by this ordinance, including the following locations:

- a. Private clubs during events attended exclusively by members of the organization and their invited guests and from which Members of the General Public are excluded.
- b. Within conference/meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or areas of restaurants, hotels and motels, while these places are occupied for private functions to which only persons specially invited are entitled to attend and from which Members of the General Public are excluded.
- c. In any enclosed place wherein this ordinance specifically permits smoking, notwithstanding the fact that such location is a workplace.

It shall not constitute a violation of section 37.05 for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

The foregoing places are not considered workplaces subject to the provisions of section 37.21. Employers will, however, attempt to find a reasonable alternative accommodation where feasible for nonsmoking employees who do not wish to be assigned to work in a smoking permissible area.

Notwithstanding any provision in this Ordinance which permits smoking in a place of employment, any nonsmoking employee may object to his or her employer about smoke in his or her workplace. The employer shall attempt to reach a reasonable accommodation, insofar as possible. If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached within a particular workplace, the commercial enterprise, nonprofit entity or city who employs the nonsmoking employees shall formulate, promulgate and implement restrictions or prohibitions upon smoking in a manner which accommodates the reasonable preferences and needs of the nonsmoking employees in relation to the nuisance and health impacts of the smoking upon the nonsmokers. The area in which smoking is prohibited shall be posted by "No Smoking" signs in the manner prescribed by the provisions of section 37.24.

§ 37.22 Exemption Procedures.

Any owner or manager of a business or other establishment subject to this chapter may apply to the Chief of the Environmental Health Division for an exemption or modification to its provisions. Exemptions may only be granted on (1) a showing by the petitioner of significant financial hardship due to compliance, or (2) the proposed implementation of an alternative approach or technology which would provide equivalent protection from the health hazards of sidestream smoke.

An application for exemption will be accompanied by a reasonable fee to cover the cost of preparation for the hearing, and the application will include any data required by the Division. The Division will review the application and submit it, with recommendations, for hearing by the Sacramento Environmental Commission. The applicant will be entitled to present evidence at the hearing, which will be scheduled within sixty (60) days of the receipt of the application.

The Commission will, after taking into consideration the testimony received at the hearing, issue its findings and recommendations within twenty (20) days of the completion of the hearing. The Division will complete procedural action on the application and notify interested parties within twenty (20) days of its receipt from the Commission.

The applicant may appeal the Commission's decision to the City Council within thirty (30) days of receipt of the action notification by the Division. Upon appeal, the City Council will set a hearing within sixty (60) days and make a final determination at that hearing.

§ 37.23 Posting Requirements.

Each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter shall conspicuously post in every place where smoking is prohibited "No Smoking" signs (or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), with letters not less than one inch in height.

An owner, operator, or manager of a building wherein, pursuant to these regulations, there is no smoking permitted in any space in the building may limit the "No Smoking" postings to first floor entrances and exits and to the elevator lobby areas of all other floors.

Motion picture theaters shall show upon the movie or live action screens for at least five seconds prior to the showing of each feature motion picture, the message that smoking is prohibited within the audience seating and other areas as specified.

Restaurants shall post at their entrances a sign stating that nonsmoking seats are available. Likewise, Recreational Halls shall post signs alerting users of the availability of nonsmoking areas. Smoking permitted areas will be posted as such.

Motels and Hotels will prominently post in the lobby a sign notifying patrons of the availability of nonsmoking accommodations. The rooms so designated will be posted as nonsmoking rooms and ashtrays removed.

§ 37.24 Retaliation Prohibited.

It shall be unlawful for a Commercial Enterprise, Non-Profit Entity or City to retaliate against any Member of the General Public or an employee or applicant for employment of the enterprise, entity or City because such Member of the General Public, employee or applicant seeks enforcement of the provisions of this chapter or otherwise protests smoking by others.

§ 37.25 Violation - Smoking or Posting.

Any person who violates the prohibitions contained in sections 37.05 through 37.19 and any person who violates section 37.24 by failing to post the signs or take the other actions required by this section shall be guilty of an infraction, punishable in the manner hereinafter prescribed.

Fines for the crimes made infractions by this section shall be levied in the amounts prescribed by Section 36900(b) of the Government Code, as that section may hereinafter be amended or renumbered.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

§ 37.26 Retaliation Remedies.

Violation of any of the provisions of section 37.25 or 37.27 shall be remedied through civil action filed in a court of competent jurisdiction for injunctive or other appropriate relief.

§ 37.27 Enforcement.

It shall be the responsibility of the Chief of the Environmental Health Division, Sacramento County Department of Environmental Management to enforce, in behalf of the City, the provisions of this chapter. The Chief shall be authorized to prosecute, in the name of the City, pursuant to the provisions of Sections 25132 and 39600 of the Government Code, civil actions for the recovery of fines for violations of this chapter made infractions by section 37.26 for violations of sections 37.05 through 37.24.

In the performance of the enforcement responsibilities assigned by this chapter, the Chief of the Environmental Health Division shall:

- a. Establish a telephone number through which all complaints by citizens relating to violations of this chapter may be directed or referred;
- b. Reduce such complaints to writing, and analyze the frequency and volume thereof in relation to alleged violations of this chapter by or at particular establishments or facilities;
- c. Conduct an on-site inspection of any establishment or facility with respect to which the nature and volume of complaints suggests long-standing and pronounced violations of any of the provisions of this chapter;
- d. Provide to the owner, operator or manager of any such establishment or facility a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter;
- e. Follow up such investigation and advice with a written directive explaining in detail the steps required in order to achieve future compliance with the provisions of this chapter; and
- f. If the violations do not cease following the expiration of a reasonable period of time, commence civil actions for the recovery of infraction fines pursuant to the provisions of section 37.26 or request commencement of a civil proceeding by the County Counsel pursuant to the provisions of section 37.27 as may be appropriate.

The Environmental Health Division shall affirmatively seek the support and cooperation of other local public agencies, such as Fire Protection Districts, to provide information, assistance and advice in the enforcement of the provisions of this chapter, during the conduct by any of such agencies of on-site inspections of establishments or facilities.

The provisions of section 37.25 shall not be remedied by either the Chief of Environmental health or any other County or City official. Any Member of the General Public, an employee or applicant for employment may, pursuant to the provisions of section 37.27, commence in his or her name a civil action for injunctive relief, monetary damages or other appropriate relief against a person who violates section 37.25 pursuant to the provisions of section 37.27. A Member of the General Public or employee shall also be authorized to individually commence a civil action pursuant to the provisions of section 37.27 for injunctive relief, monetary damages or other appropriate relief for the purpose of remedying any other violation of the provisions of this chapter.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

September 18, 1990
Item #45

To : Board of Supervisors
From : Norm Covell, Director
Environmental Management Department
Subject : SEPARATE MATTER: AMENDMENTS TO THE SACRAMENTO COUNTY SMOKING
ORDINANCE #610, CHAPTER 6.84

RECOMMENDATIONS:

1. Repeal the existing Sacramento County Smoking Ordinance #610, Chapter 6.84 of the Sacramento County Code.
2. Add a new Chapter 6.84 of the Sacramento County Code entitled the Sacramento Clean Indoor Air and Health Protection Ordinance.
3. Instruct the Environmental Health Division to include an evaluation of the new ordinance in their 1991 Annual Report on the City/County Smoking Ordinances.

BACKGROUND:

On September 11, 1990, you heard testimony on the proposed amendments to the Sacramento County Smoking Ordinance, discussed the proposed amendments, determined the amendments listed below should be included, approved the proposed revised ordinance, and instructed the Department to work with County Counsel and submit the amended ordinance to you for adoption on September 18, 1990. The following amendments have been included in the ordinance:

1. Recreational Facilities: The word "enclosed" has been added to the reference of sports pavilions, swimming pools, and so forth.
2. Recreation Halls: A phase-in clause requiring 50% nonsmoking on October 18, 1990, 75% nonsmoking on July 1, 1992, and 100% nonsmoking on December 31, 1993 has been added.
3. Restaurants: A phase-in clause requiring 50% nonsmoking on October 18, 1990, 75% nonsmoking on July 1, 1992, and 100% nonsmoking on December 31, 1993 has been added.

In addition, the entire ordinance has been renumbered to provide continuity.

The issue of smoking in bars was referred to the Sacramento Environmental Commission for discussion and then submittal of recommendation(s) to you. This subject will be introduced at their September 24, 1990 meeting, and a public workshop on the subject has been scheduled for October 10, 1990 at 6:30 p.m. in the Sacramento City Council Chambers.

Respectfully submitted,



Norm Covell, Director
Environmental Management Department

Approval recommended:

Brian Richter
County Executive

NC:KCS:leh

Attachment