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OFFICE OF THE
CITY ATTORNEY

CITY OF SACRAMENTO
CALIFORNIA

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July 6, 1988

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Transportation and Community
Development Committee
1231 I Street, Room 102
Sacramento, CA 95814

Law and Legislation Committee
1231 I Street, Room 102
Sacramento, CA 95814

**RE: An Ordinance Adding Sections 24.9 through
24.15 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 Joint Session:

SUMMARY

This report presents three options concerning a proposed ordinance regulating the furnishing of tobacco products to minors.

BACKGROUND

On June 14, 1988, the City Council reviewed an ordinance relating to the furnishing of tobacco products to minors which had been recommended for passage by the Law and Legislation Committee. The matter was continued to the council meeting of June 21, 1988, at which time the matter was referred back to this joint committee for further review. This report describes the original proposal presented to the Council, along with two modifications of the original proposal, which attempt to respond to various concerns raised by council members.

EXHIBIT A

Exhibit A (pages A-1 through A-4) is the proposal in its original form. It is identical to the ordinance which has already been enacted by the County of Sacramento. It prohibits distribution of tobacco products to persons under the age of 18 years, whether or not the distributor knows at the time of distribution that the recipient is under 18 years. The proposal authorizes a distributor of tobacco products to ask for identification to verify age. Having been shown certain types of identification is a complete defense to any violation charged. A distributor is authorized to refuse distribution to anyone who cannot produce adequate age verification.

Under this proposal, the following persons can be criminally liable if tobacco products are distributed to a minor under the age of 18 years:

1. The person who makes a direct distribution to a minor (e.g., a store clerk).
2. A minor under 18 years who purchases tobacco products.
3. A tobacco vending machine owner who installs the machine on any premises for the purpose of distributing tobacco products therefrom and does not take adequate precautions to prevent purchase from the machine by a minor.
4. The manager of premises where a tobacco vending machine has been installed who does not take adequate precautions to prevent purchase from the machine by a minor.

The offense is an infraction, punishable by a fine only. After three convictions within a one-year period, the fourth offense may be charged as a misdemeanor which is punishable by a fine, or jail time, or both. However, it is anticipated that rather than pursuing multiple criminal prosecutions, a civil injunctive action would be pursued against a repeat offender.

EXHIBIT B

Exhibit B (pages B-1 through B-4) is a modified ordinance which responds to concerns raised by several council members that it is not appropriate to impose criminal liability on a tobacco vending machine owner who is not in control of the premises where the prohibited transaction occurs. The specific reference to distribution by a tobacco vending machine owner in Section 24.11(a) is deleted. However, a provision has been added which

imposes on tobacco vending machine owners the responsibility to provide a copy of the ordinance to the manager of every premise where a machine is installed. Variations from the original proposal are indicated in Exhibit B by lining out deletions and underlining new text.

EXHIBIT C

The proposal labeled Exhibit C (pages C-1 through C-4) would approach the subject of tobacco vending machines in a different manner. Instead of imposing a responsibility for supervising machines upon premises managers and vending machine owners, Exhibit C would prohibit placement of tobacco vending machines in locations accessible to minors under the age of 18 years. All machines are declared to be accessible to minors unless: (1) located where minors are prohibited; (2) placed in a location not open to the general public, where only adult employees are customarily allowed, if the machine is inaccessible to minors; or (3) the machine can be operated only by the manager of the premises, or the manager's employee, either directly or by a remote control device which is inaccessible to the customer and operated for each sale.

While Exhibit C contains the basics of such a proposal, several legal issues which could require some revisions to the proposal have not yet been addressed by the City Attorney's Office. One issue concerns the effect that the ban on tobacco vending machines in certain locations would have on existing contracts between machine owners and premises managers. The United States Constitution prohibits the City from taking actions which "impair" existing contracts, and the implications of that prohibition, if any, for this proposal must be examined. A second issue, raised by representatives of vending machine owners, is a claim that the ban cannot take effect immediately, but must be delayed to enable vending machine owners to amortize their investment in their equipment. Should the joint committee desire to explore further a ban on machines accessible to minors, it will be necessary to refer the matter to the City Attorney's Office for further study.

OVERVIEW

Option A or Option B may be endorsed at this time by the joint committee for enactment by the full council. Should the Council enact Option A or Option B, it may also direct further study of Option C, the ban on accessible machines, by the City Attorney's Office. Alternatively, the Council may defer such further review until the less restrictive ordinance has been in effect for some period of time, perhaps a year, and its impact can be evaluated.

RECOMMENDATION

It is recommended that the joint Transportation and Community Development/Law and Legislation Committee:

- a. Consider whether to recommend Option A or Option B to the full council for enactment.
- b. Determine whether to ask the City Attorney to further explore legal issues concerning the proposal to ban accessible machines, or refer that decision to the full council.

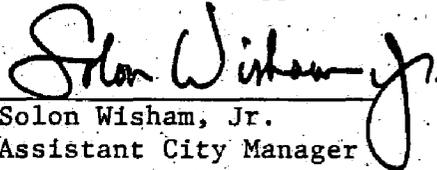
Respectfully submitted,

JAMES P. JACKSON, City Attorney



DIANE B. BALTER
Deputy City Attorney

Recommendation Approved:



Solon Wisham, Jr.
Assistant City Manager

July 12, 1988
Joint Transportation and
Community Development/
Law and Legislation
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE ADDING SECTIONS 24.9 THROUGH
24.15 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 24.15 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 Sections 24.11 and 24.12, 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 Purchase of tobacco products by minors prohibited.

It shall be unlawful and an infraction for any person under the age of 18 years to purchase a tobacco product within the City of Sacramento.

Sec. 24.13 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. 24.14 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.

Sec. 24.15 Posting of signs required.

- (a) Every person who distributes tobacco products within the City of Sacramento shall post conspicuously and keep so posted in each place of business from which tobacco products are distributed a sign in letters at least one inch (1") high which states as follows:

It is unlawful to distribute tobacco products to any person under the age of 18 years.

It is unlawful for any person under the age of 18 years to purchase tobacco products.

Sacramento City Code
Sections 24.11 and 24.12

- (b) Every tobacco vending machine owner shall affix and keep affixed to the front of each tobacco vending machine within the City of Sacramento a sign as described in subsection (a).

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

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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 Sections 24.11 and 24.12, 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 Purchase of tobacco products by minors prohibited.

It shall be unlawful and an infraction for any person under the age of 18 years to purchase a tobacco product within the City of Sacramento.

Sec. 24.13 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. 24.14 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.

Sec. 24.15 Posting of signs required; Copies of Ordinance to be Provided.

- (a) Every person who distributes tobacco products within the City of Sacramento shall post conspicuously and keep so posted in each place of business from which tobacco products are distributed a sign in letters at least one inch (1") high which states as follows:

It is unlawful to distribute tobacco products to any person under the age of 18 years.

It is unlawful for any person under the age of 18 years to purchase tobacco products.

**Sacramento City Code
Sections 24.11 and 24.12**

- (b) Every tobacco vending machine owner shall affix and keep affixed to the front of each tobacco vending machine within the City of Sacramento a sign as described in subsection (a).

(c) Every tobacco vending machine owner shall provide a copy of this ordinance to the manager of every premises upon which such owner has a tobacco vending machine in place on the effective date of this ordinance and to the manager of every premises upon which such owner installs or places, or causes to be installed or placed, a tobacco vending machine after the effective date of this ordinance.

SECTION 2.

Section 24.5 of the Sacramento City Code is hereby repealed.

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ATTEST:

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Sec. 24.10 Definitions.

For the purposes of Sections 24.11 and 24.12, the following terms shall be defined as set forth herein:

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- ~~(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.~~

(b) Any person who maintains in a place of business or other premises which the person manages or controls a tobacco vending machine accessible to minors under the age of 18 years is guilty of an infraction.

(c) Tobacco vending machines are deemed accessible to minors under the age of 18 years except when:

- (1) in a location where minors under the age of 18 years are prohibited; or
- (2) in a location not open to the general public, where only adult employees are customarily allowed, if the location is inaccessible to minors under the age of 18 years; or
- (3) the machine can be operated only by the manager of the premises, or the manager's employee, either directly or by a remote control device which is inaccessible to the customer and operated for each sale.

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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.

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Sec. 24.15 Posting of signs required.

~~(a)~~ Every person who distributes tobacco products as defined in Section 24.10 within the City of Sacramento shall post conspicuously and keep so posted in each place of business from which tobacco products are distributed a sign in letters at least one inch (1") high which states as follows:

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It is unlawful for any person under the age of 18 years to purchase tobacco products.

Sacramento City Code
Sections 24.11 and 24.12

~~(b) Every tobacco vending machine owner shall affix and keep affixed to the front of each tobacco vending machine within the City of Sacramento a sign as described in subsection (a).~~

SECTION 2.

Section 24.5 of the Sacramento City Code is hereby repealed.

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MAYOR

ATTEST:

CITY CLERK