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**OFFICE OF THE
CITY ATTORNEY**

SHARON SIEDORF CARDENAS
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO

**CITY OF SACRAMENTO
CALIFORNIA**

921 TENTH STREET
SUITE 700
SACRAMENTO, CA
95814-2717

PH. 916-449-5346
FAX 916-449-6755

DEPUTY CITY ATTORNEYS:
EVELYN M. MATTEUCCI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON
JOSEPH McINERNEY
JOE ROBINSON
LESLIE R. LOPEZ

June 20, 1991

Law and Legislation Committee
Sacramento, California

**SUBJECT: An Ordinance Adding Article II (Sections 37.100-37.103) to Chapter 37
of the Sacramento City Code, Prohibiting the Sale of Tobacco Products
from Vending Machines**

Honorable Members in Session:

SUMMARY

This report presents for Committee review and action an ordinance that would prohibit the sale of tobacco products from vending machines at any location within the City of Sacramento.

BACKGROUND

Several City Council members have requested that the City Attorney's Office prepare an ordinance prohibiting the sale of tobacco products from vending machines in the City of Sacramento. An ordinance has been drafted and is presented with this report.

The major provisions of the ordinance are:

1. Purpose.
 - (a) To further City policy which prohibits smoking of tobacco products in enclosed public places and workplaces.
 - (b) To further City policy which seeks to reduce involuntary exposure of non-smokers to the harmful effects of second-hand smoke.
 - (c) To facilitate enforcement of the City's smoking regulations.
 - (d) To reduce minors' ability to obtain tobacco products unlawfully.

Re: **An Ordinance Adding Article II (Sections 37.100-37.103)
to Chapter 37 of the Sacramento City Code, Prohibiting
the Sale of Tobacco Products from Vending Machines**

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2. Findings.

- (a) Tobacco vending machines increase the likelihood that non-smokers will be exposed to second-hand smoke and make enforcement of the City's smoking regulations more difficult, because they encourage smokers to smoke in the public places where the vending machines are located.
- (b) Tobacco vending machines increase the likelihood that minors will be able to purchase tobacco products unlawfully.
- (c) Three years, reduced by the length of time the machine has been in use, is a reasonable maximum amortization period for a tobacco vending machine currently in use within the City of Sacramento.

3. Regulatory Provisions.

- (a) Sale of tobacco products from vending machines would be prohibited at any location within the City. Tobacco products include tobacco cigarettes, cigars, pipe tobacco, smokeless tobacco and snuff.
- (b) Violation would be a misdemeanor.
- (c) Any tobacco vending machine in use on the effective date of the ordinance would have to be removed within 90 days. If the machine is the subject of a written contract, that removal date would be extended to the first date on which the contract could be terminated by the person on whose premises the machine is installed, or on the date the contract term in effect on the enactment date of the ordinance expires, if the contract contains no permissive termination clause.
- (d) Any person who purchased a tobacco vending machine less than 32 months prior to the enactment of the ordinance would be able to apply for a use extension based on financial hardship. A use extension shall be granted if it is found that the machine was intended for use exclusively within the City of Sacramento, the machine owner will not have recovered his, her or its investment therein before the date of required discontinuance, the machine owner has no practical way to recover the investment in the machine other than its continued use within the City of Sacramento as a tobacco vending machine and the investment not yet recovered exceeds ten percent (10%) of the cost of the machine. The length of the use extension shall not exceed that additional time estimated to be necessary to allow recovery of the owner's investment, provided that no use extension shall be granted which allows the total time during which the machine will be in use within the City to exceed three (3) years.

Re: **An Ordinance Adding Article II (Sections 37.100-37.103)
to Chapter 37 of the Sacramento City Code, Prohibiting
the Sale of Tobacco Products from Vending Machines**

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LEGAL ISSUES

1. State Preemption.

A number of persons interested in the issue presented by this proposed ordinance have provided the City Attorney's Office with legal opinions concluding that the City may not legislate on this subject matter because the California Legislature has preempted the subject area. The materials presented include an opinion of the Legislative Counsel and legislative history which conclude that Penal Code Section 308 preempts all local regulation of tobacco vending machines.

The City Attorney's Office was first presented with the question of Penal Code Section 308's preemptive effect in early 1989, at which time the City Attorney issued an opinion concluding that the plain language of Penal Code Section 308(e) clearly invites local legislation in the area, so long as it is not inconsistent with Section 308. Section 308's only reference to tobacco vending machines concerns the identity of the person who is criminally liable if a minor illegally purchases tobacco products from a vending machine. The City Attorney does not believe that this rather incidental reference to vending machines precludes local regulation relating to the placement of tobacco vending machines. However, this conclusion is hotly contested.

In December, 1990, the City of Rancho Mirage in Riverside County enacted an ordinance prohibiting the sale of tobacco products from vending machines. In February, 1991, a lawsuit seeking to prevent enforcement of the ordinance was filed by Bravo Vending, a limited partnership engaged in the business of providing cigarette vending machines to business establishments in Riverside County. Bravo argued that Penal Code Section 308(e) preempted any local regulation of tobacco vending machines. In March, 1991, the trial court ruled in favor of the City of Rancho Mirage. The matter is now on appeal, and enforcement of the ordinance is stayed pending resolution of the appeal.

The contention that Penal Code section 308 preempts local regulation of tobacco vending machines rests on the ground that Penal Code Section 308 fully occupies the field of regulation of distribution of tobacco products to minors, and assumes that the only purpose for a ban on tobacco vending machines would be to prevent their use by minors. In fact, there are other purposes for the regulation, as set forth above and in the ordinance.

2. Constitutional Concerns.

An ordinance prohibiting the sale of tobacco products from vending machines has financial impacts upon the owners of tobacco vending machines and could affect contracts between vending machine owners and businesses in which the machines are placed. The proposed ordinance addresses those concerns by delaying the application of the ordinance to particular machines when legally appropriate.

In October, 1990, a representative of the California Coin Machine Association and various local coin machine vendors presented written information to the City Council and the City Attorney's office in connection with the Council's consideration of public place and workplace smoking regulations. A copy of that letter is provided with this report. The letter states that the cost of a tobacco vending machine ranges from \$2,000 to \$2,200, and that the machine has a "pay-back" period (investment recovery period) of approximately three years. It is therefore reasonable to limit any continued use of a machine which cannot be used in another jurisdiction

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or converted to another use based on financial hardship to that period of time which is necessary to relieve the financial hardship and will not extend the total time the machine is in use beyond three years.

FINANCIAL DATA

It can be anticipated that there will be some costs related to enforcement of the ordinance. County of Sacramento Environmental Management Department, Environmental Health Division, staff have indicated their willingness to work with the City on this program. Enforcement can be through criminal citation or civil suit to require discontinuance of use. Some staff time will be devoted to applications for use extensions based on financial hardship.

POLICY CONSIDERATIONS

On October 9, 1990, the City Council enacted Ordinance No. 90-051, amending the City's smoking regulations. This ordinance may be viewed as companion legislation to Ordinance No. 90-051, furthering that ordinance's policy objectives related to the health effects of exposure to tobacco products.

MBE/WBE

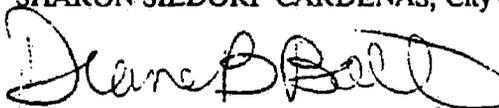
Not applicable.

RECOMMENDATION

It is recommended that the Law and Legislation Committee review the proposed ordinance and make a recommendation to the full Council.

Respectfully submitted,

SHARON SIEDORF CARDENAS, City Attorney



DIANE B. BALTER

Deputy City Attorney

Contact Person to
Answer Questions:

Diane B. Balter
Deputy City Attorney
449-5346

Law and Legislation
June 20, 1991
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**AN ORDINANCE ADDING ARTICLE II (SECTIONS 37.100-37.103)
TO CHAPTER 37 OF THE SACRAMENTO CITY CODE,
PROHIBITING THE SALE OF TOBACCO PRODUCTS FROM
VENDING MACHINES**

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

SECTION 1

Article II (Section 37.100-37.103) is hereby added to Chapter 37 of the Sacramento City Code to read as follows:

ARTICLE II. TOBACCO VENDING MACHINES

§ 37.100 Purpose

It is the policy of the City Council of the City of Sacramento, as expressed in Ordinance No. 90-051, to prohibit the smoking of tobacco products in enclosed public places and workplaces in order to reduce the involuntary exposure of non-smokers to the harmful effects of second-hand smoke. Health hazards of exposure to second-hand smoke include increased risk for developing lung cancer, respiratory infection, broncho-constriction, and bronchospasm.

The availability of tobacco products from vending machines located in public places such as restaurants, bowling alleys, stadiums, workplaces, and office buildings encourages smoking in these public places and increases the likelihood that non-smokers will be exposed to second-hand smoke.

This ordinance prohibiting the sale of tobacco products from vending machines is enacted to further the policy set forth in Ordinance No. 90-051 enacted by the City Council on October 9, 1990. The City Council concludes that enforcement of Ordinance No. 90-051 will be facilitated if the sale of tobacco products from vending machines is prohibited.

It is the policy of the City Council of the City of Sacramento to encourage enforcement of state and local laws prohibiting the sale of tobacco products to, and the purchase of tobacco products by, minors. Unattended tobacco vending machines are a primary source of tobacco products for minors. Enactment of this ordinance will make it more difficult for minors to obtain tobacco products unlawfully.

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FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

37.101 Findings

The City Council finds as follows:

1. The vending of tobacco products from vending machines increases the likelihood that non-smokers will be exposed to second-hand smoke and makes enforcement of the City's no-smoking rules more difficult, because it encourages smokers to smoke in the public places where the vending machines are located.
2. The vending of tobacco products from vending machines increases the likelihood that minors will be able to purchase tobacco products, even though the purchase of tobacco products by minors and the sale of tobacco products to minors is prohibited by state law.
3. Based on evidence presented to it that the owner of a tobacco vending machine can recover the investment in the machine in approximately three years, the City Council finds that a maximum of three years, reduced by the length of time the machine has already been in use, is a reasonable amortization period for tobacco vending machines currently in use within the City of Sacramento which cannot reasonably be converted to a different use.

§ 37.102 Definitions

For the purposes of this article, the following terms shall be defined as set forth herein:

- (a) 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.
- (b) 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.

§ 37.103 Sale of Tobacco Products from Vending Machines Prohibited

- (a) No person, firm or corporation shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any tobacco vending machine for the purpose of selling or distributing any tobacco product therefrom.
- (b) Violation of this section is a misdemeanor.
- (c) Any tobacco vending machine in use on the effective date of this article shall be removed within ninety (90) days after the effective date. Notwithstanding the previous sentence, any tobacco vending machine which is the subject of a written contract authorizing its installation which was entered into prior to the enactment of this article shall be removed within fifteen (15) days after the date specified in 1 or 2 below, whichever occurs later:
 1. The first date on which permissive termination of the written contract by the party on whose premises the tobacco vending machine is located could take effect if said party elected to terminate, or the expiration date of the contract term in effect on the enactment date of this article if no provision of the agreement authorizes permissive termination;

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

2. Ninety (90) days after the effective date of this ordinance.

(d) Any person, firm or corporation who purchased a tobacco vending machine less than thirty-two (32) months prior to the enactment of this article for the purpose of using the tobacco vending machine to sell or distribute tobacco products exclusively within the City of Sacramento and who has not, or will not have, recovered his, her or its investment therein by the date on which discontinuance of use is required pursuant to subsection (c) may apply to the Director of Finance for a use extension based on financial hardship. A use extension shall be granted if the Director of Finance, or the Director's designee appointed to consider the application, makes all of the following findings:

- (i) that the machine was intended for use only within the City of Sacramento;
- (ii) that the machine owner has not, or will not have, recovered his, her or its investment therein before the date of required discontinuance;
- (iii) that the machine owner has no practical way to recover the investment in the machine other than its continued use within the City of Sacramento as a tobacco vending machine; and
- (iv) that the investment not yet recovered exceeds ten percent (10%) of the cost of the machine.

The length of the use extension shall not exceed that additional time period estimated to be necessary to allow recovery of the owner's investment; provided, however, that no use extension shall be granted which allows the total time during which the machine will be in use within the City of Sacramento to exceed three (3) years. The tobacco vending machine owner shall bear the burden of proof on each issue. The decision of the Director of Finance, or the Director's designee, shall be final.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

THE FOLLOWING MATERIALS

WERE SUBMITTED BY

CRAIG POWELL, ESQ

ON BEHALF OF

LOCAL TOBACCO VENDING MACHINE OPERATORS

4-471
RECEIVED
JUL 11 1991

DENTINO, POWELL & DI GIUSTO

A PROFESSIONAL CORPORATION

ATTORNEYS

1545 RIVER PARK DRIVE, SUITE 450
SACRAMENTO, CALIFORNIA 95815

(916) 923-1500

TELECOPIER: (916) 923-1675

City Attorney's Office

OF COUNSEL
DAVID L. PRICE
THOMAS G. MANOLA

WILLIAM DENTINO
CRAIG K. POWELL
JOHN E. DI GIUSTO
RICHARD H. YAMAMOTO
TARAH TRUEBLOOD

July 10, 1991

HAND-DELIVERED

Diane B. Balter, Esq.
Deputy City Attorney
City of Sacramento
921 Tenth Street, Suite 700
Sacramento, CA 95814-2717

Re: Regulation of Tobacco Vending Machines

Dear Diane:

This letter is in response to Ms. Robie's request that I prepare a draft compromise ordinance relating to tobacco vending machines. I have enclosed such a draft, which is red-lined to indicate the differences between my draft and the draft ordinance you prepared as part of your October 10, 1990 staff report to the Law and Legislation Committee.

BACKGROUND

The policy goal of the City Council is to eliminate access by minors to tobacco products. To that end, the City Council enacted an ordinance in 1988 establishing penalties for distribution of tobacco products to minors. That ordinance was strengthened in 1989 through amendments establishing stiffer penalties for violations.

This policy goal is shared by the vending machine operators in Sacramento. While it is estimated that under 2% of all tobacco sales are made through vending machines (since vending machine prices are higher than over-the-counter sales), the vending operators in Sacramento are more than willing to do their part to assure that their businesses do not contribute to the problem.

Diane B. Balter
July 10, 1991
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The City has focused on vending machines for one reason: an unattended vending machine poses the risk that minors could purchase cigarettes without oversight by the business establishment, unlike over-the-counter tobacco sales which require face-to-face contact with an employee of the business establishment who, presumably, would require proof of age as required by law.

COMPROMISE PROPOSAL

Our draft ordinance endeavors to place tobacco sales through vending machines on a par with over-the-counter tobacco sales through the requirement that vending machines be technically modified to require an employee to approve each and every purchase from a vending machine through the operation of a remote controlled device. These devices, now commercially available, signal a chime which sounds behind the counter of a business establishment whenever a customer deposits coins in a vending machine. A prominent notice on the machine instructs the customer that the machine can be activated only through a remote control device accessible only to an employee of the business. The customer must then approach an employee, who can then confirm the legal age of the customer. Once age is confirmed, the employee depresses a button which allows to the customer to make a single purchase from the vending machine. The remote device then automatically resets, requiring any subsequent purchaser to repeat the procedure.

Through this device, tobacco sales via vending machines become indistinguishable from over-the-counter tobacco sales: each requires a "human interface," providing the opportunity to confirm the age of each customer.

It is likely that an ordinance requiring such devices will reduce the total number of tobacco vending machines in Sacramento by more than 50%. The devices will cost vending operators approximately \$250.00 each, plus the cost of installation. Machines which are only marginally profitable (and thus unable to support the additional cost of remote control devices) will be removed from service. Additionally, many business establishments will not want to bother with operating the remote control devices and will request the removal of vending machines.

Requiring vending machines to include remote control devices will substantially increase the operating costs and substantially reduce the revenues of Sacramento's vending machine operators, who consist mostly of locally-based small business people employing a substantial number of modest income employees. Local

vending operators are, however, willing to make such sacrifices in order to help eliminate access to tobacco by minors and to avoid an outright ban on all tobacco vending machines. An outright ban would achieve little and would devastate small business people and their employees.

We ask for the opportunity to demonstrate the operation of a remote control device at the July 18th meeting of the Law and Legislation Committee.

PREEMPTION AND TIMING

As you know, there is substantial legal uncertainty over whether municipalities are preempted from enacting regulations concerning tobacco vending machines under California Penal Code Section 308. The Legislative Counsel has issued an opinion clearly stating that local regulation is preempted by Penal Code Section 308. The matter is currently the subject of an appeal in the case of Bravo Vending v. City of Rancho Mirage. The California Court of Appeals has issued a stay preventing the enforcement of a Rancho Mirage ordinance regulating tobacco vending machines pending the results of the appeal.

We propose that the City Council establish its policy in this area now, but postpone formal enactment of an ordinance until the appellate court hands down its decision in the Rancho Mirage case. Such a course will achieve two goals: (i) the City will be ready to promptly enact an ordinance should the appellate court rule that local regulation is not preempted; and (ii) we will avoid unnecessary duplicative litigation in Sacramento over the preemption issue.

FURTHER REGULATION

In discussing these issues with several council members, a concern was voiced over the overall effectiveness of current local regulation of tobacco sales to minors (whether over-the-counter or via machines). One possibility which we discussed was the enactment of a licensing ordinance applicable equally to all tobacco vendors. Such an ordinance would require all tobacco vendors to acquire a special license to sell tobacco products, with the condition that such licenses (i.e., the right to sell tobacco) could be administratively revoked should a licensee unlawfully sell tobacco to minors (versus the current cumbersome method of bringing court actions to assess fines).

The specter of losing one's right to sell tobacco products would provide a much stronger economic incentive for businesses.

Diane B. Balter
July 10, 1991
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to comply with laws forbidding sales to minors than the current system of levying fines.

At the request of a council member, we are canvassing other communities who have enacted such licensing ordinances. Apparently, the only community in California that has enacted such an ordinance is Rancho Mirage. Their ordinance, however, is on "hold" pending the decision of the appellate court. A copy of the Rancho Mirage ordinance is enclosed.

The vending operators in Sacramento would not be opposed to such a licensing ordinance, so long as it was applied equally to over-the-counter and machine sales of tobacco products. We will support balanced regulation which effectively deals with the problem of access to tobacco by minors.

Should you have any questions concerning these matters, please do not hesitate to contact me.

Very truly yours,

DENTINO, POWELL & DI GIUSTO,
A Professional Corporation

By



Craig K. Powell

CKP:ksm/ce
Enclosures

cc: Mr. Tom Chinn (w/Encls.)
Mr. Josh Pane (w/Encls.)
Ms. Lynn Robie (w/Encls.)
Mr. Joseph Serna (w/Encl.)

[C5132(304)]

ORDINANCE NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON THE DATE OF _____

AN ORDINANCE ADDING ARTICLE II (SECTIONS 37.100-37.101) TO CHAPTER 37 OF THE SACRAMENTO CITY CODE, PROHIBITING THE SALE OF TOBACCO PRODUCTS FROM VENDING MACHINES

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

SECTION 1

Article II (Section 37.100-37.101) is hereby added to Chapter 37 of the Sacramento City Code to read as follows:

ARTICLE II. TOBACCO VENDING MACHINES

Section 37.100 Definitions.

For the purposes of this article, the following terms shall be defined as set forth herein:

- (a) Prohibited tobacco vending machine: A tobacco vending machine prohibited under the provisions of Section 37.101 below.
- (b) Tobacco product: Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized from smoking, chewing, inhalation or other manner of ingestion.
- (c) 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.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

Section 37.101 Sale of Tobacco Products from Vending Machines Prohibited.

- (a) Except as permitted under subsection 37.101(b) below, no person, firm or corporation shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any tobacco vending machine for the purposes of selling or distributing any tobacco product therefrom.
- (b) The prohibition contained in subsection 37.101(a) above shall not be applicable to tobacco vending machines located in (1) a work place for the exclusive use of employees employed in the work place and not open to the general public; (2) places open to the general public to which persons under the age of eighteen (18) are not permitted access under applicable law; or (3) locations where tobacco vending machines are operated by a remote controlled electronic device operated prior to each sale by an employee of the location in which the tobacco vending machine is located.
- (c) Violation of this section is a misdemeanor.
- (d) Any prohibited tobacco vending machine in use on the effective date of this article shall be removed within ninety (90) days after the effective date. Notwithstanding the previous sentence, any prohibited tobacco vending machine which is the subject of a written contract authorizing its installation which was entered into prior to the enactment of this article shall be removed within fifteen (15) days after the date specified in 1 or 2 below, whichever occurs later:
1. The first day on which permissive termination of the written contract by the party on whose premises the prohibited tobacco vending machine is located could take effect if said party elected to terminate, or the expiration date of the contract term in effect on the enactment date of this article if no provision of the agreement authorizes permissive termination;
 2. Ninety (90) days after the effective date of this ordinance.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

(e) Any person, firm or corporation who purchased a prohibited tobacco vending machine less than thirty-two (32) months prior to the enactment of this article for the purpose of using the prohibited tobacco vending machine to sell or distribute tobacco products exclusively within the City of Sacramento and who has not, or will not have, recovered his, her or its investment therein by the date on which discontinuance of use is required pursuant to subsection (d) may apply to the Director of Finance for a use extension based on financial hardship. A use extension shall be granted if the Director of Finance, or the Director's designee appointed to consider the application, makes all of the following findings:

- (i) that the machine was intended for in use only within the City of Sacramento on the effective date of this article;
- (ii) that the machine owner has not, or will not have, recovered his, her or its investment therein before the date of required discontinuance;
- (iii) that the machine owner has no practical way to recover the investment in the machine other than its continued use within the City of Sacramento; and
- (iv) that the investment not yet recovered exceeds ten percent (10%) of the cost of the machine.

The length of the use extension shall not exceed that additional time period estimated to be necessary to allow recovery of the owner's investment; provided, however, that no use extension shall be granted which allows the total time in which the machine will be in use within the City of Sacramento to exceed three (3) years. The prohibited tobacco vending machine owner will bear the burden of proof on each issue. The

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

decision of the Director of Finance, or the Director's
designee, shall be final.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

[D4175.RED(258)]

FOR CITY CLERK USE ONLY

ORDINANCE NO. : _____

DATE ADOPTED: _____

**AN ORDINANCE OF THE CITY OF RANCHO MIRAGE MUNICIPAL CODE
DISALLOWING THE SALE OF CIGARETTES THROUGH VENDING MACHINES AND
ESTABLISHING THE FEE FOR SALE OF CIGARETTES.**

The City Council of the City of Rancho Mirage does ordain as follows:

Section I. CIGARETTES; LICENSE REQUIRED. APPLICATION, ISSUANCE. No person shall keep for retail sale, sell at retail or otherwise dispose of any cigarette or any tobacco product or cigarette paper or cigarette wrapper at any place in the City without a license. Application for a license shall be made to the City of Rancho Mirage on a form supplied by the City. The application shall state the full name and address of the applicant, the location of the building and part intended to be used by the applicant under the license, the kind of business conducted at such location and such other information as shall be required by the application form. Upon the filing of an application with the Rancho Mirage Department of Economic Development, it shall be presented to the department head for consideration. If granted by the department head, a license shall be issued by the City upon payment of the required fee.

Section II. CIGARETTES; LICENSE FEE. The annual license fee for a cigarette vending license shall be \$25.00.

Section III. CIGARETTES; PROHIBITED SALES. No person shall sell or give away any cigarette or any tobacco product, cigarette paper or cigarette wrapper to any person under the age of eighteen (18) years. No person shall sell or dispense any cigarettes or tobacco product, cigarette paper or cigarette wrapper through the use of a vending machine.

Section IV. CEQA. The passage of this Ordinance is not a project nor will it have a significant impact on the environment.

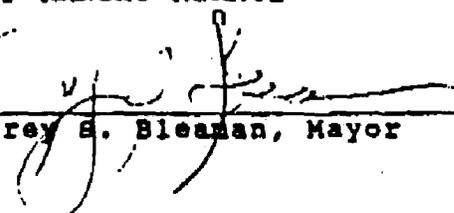
Section V. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council of the City of Rancho Mirage hereby declares that it would have passed this ordinance, and each section, subsection, clause, sentence or phrase thereof, irrespective of the fact that any one or more other sections, subsections, clauses, sentences or phrases may be declared invalid or unconstitutional.

Section VI. Savings Clause. Neither the adoption of this ordinance nor the repeal of any other ordinance of this city shall in any manner affect the prosecution for violations of the ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penalty provisions application to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

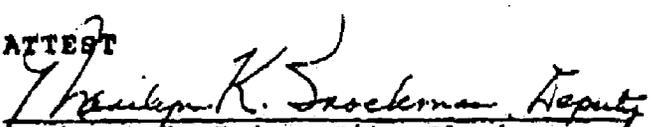
Section VII. The City Clerk shall certify to the passage hereof and cause the same to be posted as required by law. This ordinance shall take effect on the 30th day following the date of its adoption.

PASSED AND ADOPTED this 6th day of December, 1990.

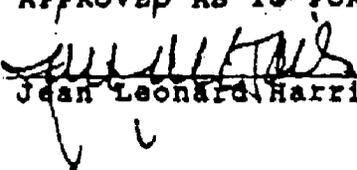
CITY OF RANCHO MIRAGE

By 
Jeffrey S. Bleaman, Mayor

ATTEST


Barbara E. Dohn, City Clerk

APPROVED AS TO FORM


Jean Leonard Harris, City Attorney