



APPROVED
BY THE CITY COUNCIL

APR 29 1997

17

NEIGHBORHOOD SERVICES
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

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CITY CLERK
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April 17, 1997

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Application to Food and Drug Administration Regarding Tobacco Vending Machines

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

Staff recommends that the City Council authorize the City Manager to execute and submit an application to the United States Food and Drug Administration which will allow the City of Sacramento's ban on tobacco vending machines to remain in place when somewhat weaker federal regulations take effect on August 28, 1997.

CONTACT PERSON: John Vanella, Assistant Code Enforcement Manager, 264-8185

FOR COUNCIL MEETING OF: April 29, 1997

SUMMARY:

The City of Sacramento enacted an ordinance prohibiting the sale of tobacco products from vending machines in 1991. Federal regulations relating to tobacco vending machines have been adopted by the U.S. Food and Drug Administration (FDA) and are scheduled to take effect on August 28, 1997. These federal regulations will preempt local regulation of tobacco vending machines. The FDA has created a waiver process through which local governments with tobacco vending machine regulations more stringent than the FDA's regulations on the subject may apply to retain their more stringent provisions in effect. This report asks the City Council to authorize the City Manager to submit an application for waiver to the FDA.

City Ordinance

- City of Sacramento enacted an ordinance prohibiting the sale of tobacco products from vending machines in 1991 (Title 37, Chapter 37.02).
- Ordinance bans tobacco vending machines in all locations, including bars and other places from which minors or those under the age of 21 are excluded.
- Excepted from the ban were (1) vending machines placed under long-term contract -- for the term of that contract -- prior to enactment of the ordinance, and (2) vending machines which had not yet been in service for three years.
- Three year amortization period has already expired. As contracts for the remaining lawful tobacco vending machines expire, Sacramento approaches the date when sale of tobacco products from vending machines is totally prohibited throughout the City.

FDA Regulations

- U.S. Food and Drug Administration tobacco vending machine regulations take effect on August 28, 1997.
- FDA regulations permit sale of tobacco products from vending machines in places from which those under the age of 18 are excluded, including bars and other locations which exclude minors.
- FDA tobacco vending machine regulations will preempt local ordinances unless (1) the local ordinance is more stringent than the FDA regulations, and (2) the local entity submits a successful application for waiver to the FDA.

Application Being Prepared

- The City Attorney is preparing an application for waiver.
- Application to be signed by an individual "who is authorized to request an exemption on behalf of the local government."
- Attached resolution authorizes execution and submittal of application.

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CONSIDERATIONS:

This report has no financial implications. There is no cost to submit an application for waiver to the FDA.

ENVIRONMENTAL CONSIDERATIONS:

It can be determined with certainty that submittal of an application for waiver to the FDA will not have a negative effect on the environment. No environmental review is required.

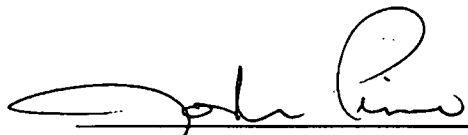
POLICY CONSIDERATIONS:

Application to the FDA for a waiver will allow the City Council policy embodied in the City's tobacco vending machine ordinance to remain in effect.

MBE/WBE:

This report does not concern procurement of goods or services.

Respectfully submitted,



for: KELLY MONTGOMERY
Director, Area 4
Neighborhood Services Department

RECOMMENDATION APPROVED:

APPROVED:



WILLIAM H. EDGAR
City Manager



JACK CRIST
Deputy City Manager

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BY THE CITY COUNCIL

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OFFICE OF THE
CITY CLERK

RESOLUTION NO. 97-199

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION AUTHORIZING THE CITY MANAGER OR DEPUTY CITY MANAGER TO EXECUTE AND SUBMIT AN APPLICATION TO THE FOOD AND DRUG ADMINISTRATION TO PROTECT THE CITY OF SACRAMENTO ORDINANCE PROHIBITING THE SALE OF TOBACCO PRODUCTS FROM VENDING MACHINES

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

1. The City Manager or Deputy City Manager is hereby authorized to execute and submit to the United States Food and Drug Administration an application for waiver which will permit the City of Sacramento's more stringent prohibition against sale of tobacco products from vending machines to remain in effect when the FDA's somewhat weaker prohibition relating to tobacco vending machines takes effect on August 28, 1997.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____ 4