



1

**OFFICE OF THE
CITY ATTORNEY**

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
GARLAND E. BURRELL, JR.

**CITY OF SACRAMENTO
CALIFORNIA**

November 6, 1989

921 TENTH STREET
7TH FLOOR
SACRAMENTO, CA
95814-2694

916-449-5346

DEPUTY CITY ATTORNEYS:
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
TAMARA MILLIGAN-HARMON
RICHARD E. ARCHIBALD
KATHLEEN L. McCORMICK
TIMOTHY N. WASHBURN
SABRINA M. THOMPSON

Law and Legislation Committee
Council Chambers
Sacramento, CA 95814

Re: An Ordinance Adding Article XII (Sections
61.1201 through 61.1206) to Chapter 61 of
the Sacramento City Code, Relating to
Pay Telephones

Honorable Members in Session:

SUMMARY

This report presents for review an ordinance relating to pay telephones which was developed at the request of Councilmember Lynn Robie. The ordinance would give the City authority to seek removal of pay telephones which constitute public nuisances because they contribute to drug dealing, prostitution, public drinking, loitering, or excessive noise.

BACKGROUND

According to Councilmember Robie, from time to time council members find that a certain pay telephone causes neighborhood problems when it is used as an instrumentality for criminal activity such as drug dealing or prostitution, or becomes a focal point for public drinking or loitering. Telephones installed on vacant lots are problems because there is no supervision from a property owner or tenant. In the past, it was possible to work with the single local telephone company, and where necessary remove the telephone to relieve the neighborhood problems. Now, however, with multiple pay telephone providers on the scene, such cooperative action will not solve the problem. One pay telephone vendor

may remove a telephone, only to see another vendor install a telephone in the same place.

The proposed ordinance would prohibit pay telephones on unimproved property. It would also create a mechanism by which other pay telephones which create neighborhood problems could be declared a public nuisance and ordered removed. No replacement telephone could be installed for one year.

One hundred thirty pay telephone vendors in Sacramento and surrounding areas received notification of Councilmember Robie's intention to seek such an ordinance. Thirty-three requested additional information.

Councilmember Robie conducted two public meetings with pay telephone vendors to discuss this ordinance. Some twenty-one vendor representatives attended an August 31, 1989 meeting and provided their suggestions for improving the ordinance. Seven representatives attended a follow-up meeting on October 19, 1989. As a result of these meetings, a provision was added requiring the City to make reasonable efforts to work with the property owner or pay telephone vendor to resolve the nuisance problem before proceeding to seek a removal order. In addition, provisions that would allow a telephone to be declared a public nuisance because of parking, litter, and noise problems were removed. However, based upon further discussions with neighborhood representatives, Councilmember Robie has requested that the provision relating to excessive noise be reinserted, and that has been done.

Written notice of this Law and Legislation Committee hearing was sent to all persons who attended either meeting.

It is anticipated that initial efforts to resolve pay telephone problems prior to instituting nuisance abatement proceedings will be undertaken by the Citizens Assistance Officer and the administrative assistant for the affected council district. If abatement proceedings are necessary, the responsibility would shift to the Neighborhood Services Division (formerly Nuisance Abatement).

FINANCIAL DATA

None. However, enactment of this ordinance can be expected to add to the workload of the Citizens Assistance Officer, Council administrative assistants, and Neighborhood Services Division.

POLICY CONSIDERATIONS

None.

November 6, 1989
Law and Legislation Committee
Page 3

MBE/WBE

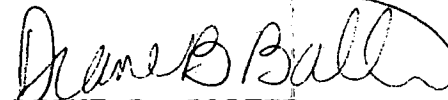
Not applicable.

RECOMMENDATION

It is recommended that the Law and Legislation Committee review the proposed ordinance relating to pay telephones, and make its recommendation to the full Council.

Respectfully submitted,

JAMES P. JACKSON, City Attorney



DIANE B. BALTER,
Deputy City Attorney

CONTACT PERSON:

Diane B. Balter, Deputy
City Attorney - 449-5346

Law and Legislation
November 16, 1989
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**AN ORDINANCE ADDING ARTICLE XII (SECTIONS
61.1201 THROUGH 61.1206) TO CHAPTER
61 OF THE SACRAMENTO CITY CODE,
RELATING TO PAY TELEPHONES**

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

SECTION 1

Article XII (Sections 61.1201 through 61.1206) is hereby added to Chapter 61 of the Sacramento City Code, to read as follows:

ARTICLE XII. PAY TELEPHONES

§61.1201 Pay telephones--prohibited locations.

- (a) No pay telephone shall be installed, located, or maintained on unimproved property.
- (b) Any existing pay telephone which is located or maintained in violation of subsection (a) shall be removed within ninety (90) days after the effective date of this ordinance. Notwithstanding the previous sentence, any pay telephone which is the subject of a written contract authorizing its installation which was entered into prior to the enactment of this ordinance and which contains provisions for termination shall be removed by the first date after enactment of this ordinance on which permissive termination of the written contract by either party could take effect, if either party elected to terminate, or within ninety (90) days after the effective date of this ordinance, whichever occurs later.
- (c) Any pay telephone which is installed, located, maintained, or operated in violation of this section is hereby declared to be a public nuisance.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

§61.1202 Pay telephones--public nuisance.

Any pay telephone which is used as an instrumentality for or contributes substantially by its presence to any of the following conditions is hereby declared to be a public nuisance:

- (a) Selling or giving away controlled substances (as defined in Division 10 of the California Health and Safety Code); soliciting, agreeing to engage in, or engaging in any act of prostitution; or other criminal activity;
- (b) Consumption of alcoholic beverages on nearby outdoor public or private property except where outdoor consumption of alcoholic beverages is specifically authorized pursuant to a license issued by the Department of Alcoholic Beverage Control;
- (c) Loitering on nearby public or private property.
- (d) Excessive noise.

As used in this section, "loitering" shall mean remaining on any property under such circumstances that a reasonable person would conclude that the person who remains on the property does not have a purpose connected with the usual and ordinary use to which such property is put, does not have bona fide intent to exercise a constitutional right, and is causing public inconvenience or annoyance.

§61.1203 Abatement generally.

- (a) Whenever the department head determines that any pay telephone constitutes a public nuisance as defined in Section 61.1201 or 61.1202, the department head may commence proceedings to abate the nuisance. The abatement proceedings shall conform to Articles V, VII and X of this Chapter, except as specified in this Article.
- (b) No proceedings to abate a public nuisance as defined in Section 61.1202 shall be commenced unless the department head first has made a reasonable effort to work with the property owner where the pay telephone is located or the pay telephone vendor to eliminate the conditions described in 61.1202 by voluntary measures, such as blocking incoming calls, adding lighting, changing the telephone's location on the parcel, making the telephone temporarily inoperative, or temporarily removing the telephone.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

§61.1204 Replacement prohibited.

If the public nuisance to be abated is one defined in Section 61.1202:

- (a) the hearing notice required by Section 61.502 shall specify that abatement shall consist of removal of the pay telephone, and that no pay telephone shall be installed on the same parcel, or on any contiguous parcel owned by the same property owner, to replace the removed telephone for a period of one year from the date of removal; and
- (b) any decision of the hearing officer ordering abatement shall specify that no pay telephone shall be installed on the same parcel, or on any contiguous parcel owned by the same property owner, to replace the removed telephone for a period of one year from the date of removal.

§61.1205 Notice to pay telephone vendor.

All notices shall also be sent to the vendor of the pay telephone, if known to the department head.

§61.1206 List of abated locations.

The department head shall maintain, and make available upon request, a list of locations where installation of pay telephones is prohibited pursuant to Section 61.1204.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

ATTEST:

MAYOR

CITY CLERK

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____