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CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO CA 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
Deputy City Attorneys

February 11, 1985

Sacramento City Council
City Hall
Sacramento, CA 95814

Subject: Amendment of Smoking Ordinance

Honorable Members in Session:

Summary

It is recommended that the Council consider the attached draft ordinance amending Section 37.22 of the City Code. The smoking ordinance adopted on January 2, 1985 was first considered by the Law and Legislation Committee. However, Committee Chairman Douglas Pope thinks this amendment should come directly to the Council for consideration.

Background

On February 5, 1985, the Board of Supervisors decided to amend the County's Ordinance regulating smoking in two respects. The first of these amendments changes the "discrimination" clause so that the word "discrimination" is changed to "retaliation". This change was made by the City Council at the time the City's Ordinance was adopted.

The second amendment affects the workplace requirements. Prior to amendment, the Ordinance provided that where accommodation cannot be reached between smokers and objecting non-smokers, the employer must restrict smoking in accordance with the "preferences" of non-smokers. This provision applies, with certain exceptions, to any enclosed area where two or more employees are assigned. The City's Ordinance presently contains these provisions. As amended, however, the Ordinance now requires employers, in such situations, to prohibit smoking to accommodate the "reasonable" preferences of the non-smoker. This change represents a significant departure from the preemptive language of the original County Ordinance, and of the present City Ordinance. The Ordinance Enforcement Agreement between the City and County requires that the two ordinances be "comparable". The amendment destroys the present comparability of the two ordinances. The

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Council should therefore consider amending the City Ordinance so that it conforms to the County's amended ordinance.

The City and County workplace regulations become operative on April 15, 1985. The County amendment will be formally introduced on February 19th, for final adoption on February 26, 1985. It will become effective thirty days thereafter, which date will precede the April 15, 1985 operative date. If the Council decides to amend the City Ordinance, the amendment should become effective prior to April 15, 1985. The City Ordinance could be passed for publication on February 19, 1985 and adopted February 26, 1985.

Attachment "A" is a cross-out/underline version of the proposed changes to Section 37.22, which is the pertinent provision. Attachment "B" is a draft ordinance amending that section. The exact language approved by the Board of Supervisors is utilized.

Recommendation

It is recommended that the Council consider the attached draft ordinance amending Section 37.22 of the City Code.

JAMES P. JACKSON
City Attorney

WILLIAM P. CARNAZZO
Deputy City Attorney

WPC:rmm

Attachment

ATTACHMENT "A"

Sec. 37.22 Workplace -- Smoking Restricted.

Each Commercial Enterprise, Non-Profit Entity and the City maintaining a Workplace other than those described by Sections 37.20 and 37.21 shall, not later than April 15, 1985, adopt, implement and maintain a written Smoking Policy which shall contain, at minimum, the following provisions and requirements:

(a) 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, between the preferences of the nonsmoking and smoking employees.

(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached within a particular Workplace, ~~the preferences of nonsmoking employees shall prevail and the employer shall prohibit smoking in a manner which accommodates the desires of the nonsmoking employees~~. the Commercial Enterprise, Non-Profit 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 37.25.

The Smoking Policy shall be announced within three weeks of adoption to all employees working in the Workplace, and shall be conspicuously posted in all Workplaces. A copy of the written Smoking Policy shall, upon request, be provided to any existing or prospective employee.

85-016

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AN ORDINANCE AMENDING CHAPTER 37, SECTION 37.22, OF THE SACRAMENTO CITY CODE RELATING TO SMOKING

BE IT ENACTED by the Council of the City of Sacramento as follows:

Section 1. Chapter 37, Section 37.22 of the Sacramento City Code is amended to read as follows:

Section 37.22 Workplace -- Smoking Restricted.

Each Commercial Enterprise, Non-Profit Entity and the City maintaining a Workplace other than those described by Sections 37.20 and 37.21 shall, not later than April 15, 1985, adopt, implement and maintain a written Smoking Policy which shall contain, at minimum, the following provisions and requirements:

(a) 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, between the preferences of the nonsmoking and smoking employees.

(b) If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached within a particular Workplace, the Commercial Enterprise, Non-Profit Entity or City who employs the non-smoking 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 37.25.

The Smoking Policy shall be announced within three weeks of adoption to all employees working in the Workplace, and

shall be conspicuously posted in all Workplaces. A copy of the written Smoking Policy shall, upon request, be provided to any existing or prospective employee.

PASSED FOR PUBLICATION: _____

ENACTED: _____

EFFECTIVE: _____

_____
MAYOR

(Seal)

ATTEST:

_____
CITY CLERK