

ITEM NO: 3

ROLL CALL

NEIGHBORHOOD AND PUBLIC SAFETY ISSUES COUNCIL COMMITTEE

MOVED BY: _____ SECONDED BY: _____ DATE: 11-10-93

MOTION: Approved staff recommendation

		AYE	NO	ABSTAIN	ABSENT
KERTH	D2				✓
ORTIZ	D5	✓			
PANNELL	D8				✓
STEINBERG	D6	✓			

NOTES: _____

SEQUENCE ORDER: 3



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OFFICE OF THE
CITY ATTORNEY

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CITY OF SACRAMENTO
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November 1, 1993

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Neighborhood and Public Safety Committee
Sacramento, California

SUBJECT: PAY TELEPHONES

LOCATION AND COUNCIL DISTRICT: City-wide.

RECOMMENDATION

It is recommended that the Committee determine whether to consider the adoption of an ordinance that regulates the location of public pay telephones and/or prohibits coin-operated pay telephones.

CONTACT PERSON: Theodore H. Kobey, Jr., Assistant City Attorney
Telephone: (916) 264-5346

FOR COMMITTEE MEETING OF: November 10, 1993.

SUMMARY

Under appropriate circumstances, the City could regulate, by a permit procedure, the location of new public pay telephones and could prohibit the installation of coin-operated public pay telephones. The City does not appear to be preempted by any state law or Public Utilities Commission rule or order.

BACKGROUND INFORMATION

Two questions have been asked regarding public pay telephones. The first is whether the City, through a special permit or other permit procedure, can regulate the location of pay telephones within the City. The second question is whether, as a condition of regulation, coin-operated phones could be prohibited. Instead, only credit card calls could be made.

We believe the City could require that a special permit must be obtained under the Zoning Ordinance before pay telephones are located anywhere in the City. Given appropriate

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facts, such a permit could limit the pay phones to credit card calls only, thus prohibiting the use of coins.

At the outset, we note that the general rule seems to be that absent state law or Public Utilities Commission regulations on the subject, the City can enact reasonable regulations pertaining to the location of, and operation of, pay telephones within the City. For example, it has been held that issuance by the Commission of Public Convenience and Necessity Certificates does not negate the power of a city to tax the business of the utility, unless the tax is inextricably linked to regulations imposing additional substantive qualifications to do business. *Willingham Bus Lines, Inc. v. Municipal Court* (1967) 66 Cal.2d 893. Nor is a local agency prohibited from requiring a Commission regulated utility to collect taxes from customers of the utility, and pay those taxes over to the governmental entity. *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 139. Local ordinances regulating the speed of Commission governed railroads have been sustained in the absence of contrary Commission regulation. *Wright v. L.A. Railroad Corp.* (1939) 14 Cal.2d 168, 177; *Switzler v. Atchison Etc. Railway Co.* (1930) 104 Cal.App. 138, 152. A local government is permitted to regulate passenger boarding of Commission regulated street cars. *Schultheiss v. L.A. Railway Corp.* (1936) 11 Cal.App.2d 525. A city is empowered to exercise zoning control over a terminal for a ferry utility service, but must authorize the terminal somewhere within the Commission prescribed point for delivery of service. *Harbor Carriers, Inc. v. City of Sausalito* (1975) 46 Cal.App.3d 773. The common thread of all of these decisions is the freedom of the local laws from conflict with or overlapping of Commission regulation or orders. *Bay Cities Transit Co. v. City of L.A.* (1940) 16 Cal.2d 772, 778.

We have not found any state law or PUC regulations, orders, or PUC-approved tariffs that would operate to preempt the City regulation of the location and operation of public telephones in the manner described above.

Based on the foregoing, we conclude that the City could enact a zoning ordinance amendment that would require a special permit for the location of public telephones anywhere in the City. In addition, in areas where conditions warrant, a requirement of a specific special permit could be that credit card calls only are permitted and that coin-operated calls are prohibited.

FINANCIAL CONSIDERATIONS

None.

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POLICY CONSIDERATIONS

Whether to consider the adoption of an ordinance that would regulate the location of pay telephones by requiring special permits, and for prohibiting coin-operated pay telephones.

MBE/WBE

Not applicable.

Respectfully submitted,

SHARON SIEDORF CARDENAS
City Attorney

By:


THEODORE H. KOBAY, JR.
Assistant City Attorney