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NEIGHBORHOODS,  
PLANNING, AND DEVELOPMENT  
SERVICES DEPARTMENT

**CITY OF SACRAMENTO**  
CALIFORNIA

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October 9, 1997

Law and Legislation Committee  
Sacramento, California

Honorable Members in Session:

**SUBJECT: ORDINANCE ADDING CHAPTER 37.03 TO TITLE 37 OF THE  
SACRAMENTO CITY CODE PROHIBITING SELF-SERVICE  
MERCHANTISING OF TOBACCO PRODUCTS**

**LOCATION AND COUNCIL DISTRICT:** City-wide

**RECOMMENDATION:**

It is recommended that the Law and Legislation Committee review the proposed ordinance prohibiting self-service merchandising of tobacco products and forward the proposed ordinance to City Council with the recommendation that it be adopted.

**CONTACT PERSONS:** Max B. Fernandez, Director, Area 3, 277-6092

**FOR LAW AND LEGISLATION COMMITTEE MEETING OF:** October 21, 1997

**SUMMARY:**

In early 1997, the County Board of Supervisors enacted an ordinance prohibiting self-service merchandising of tobacco products. This report presents a similar ordinance for Committee review, at the request of Councilmembers Steinberg and Pannell.

**BACKGROUND:**

In early 1997, the Board of Supervisors of Sacramento County enacted an ordinance prohibiting self-service merchandising of tobacco products, with a limited exception permitting self-service merchandising if the products are located within 8 feet of, and in the direct line of sight of, an

employee of the business. The objective of the regulation is to reduce the availability of tobacco products to minors. It has been reported that shoplifting of self-service tobacco products is the primary source of cigarettes for as many as 10% of all minors who smoke.

Councilmembers Darrell Steinberg and Sam Pannell requested that the City Attorney prepare a similar ordinance for consideration by the City Council. The ordinance presented with this report is substantially similar to that enacted by the County Board of Supervisors.

The proposed ordinance would:

- Make it unlawful for any business to sell tobacco products by means of self-service merchandising.
- Require all tobacco products would have to be located so that an employee of the business must assist the purchaser to take possession of the tobacco product.
- Contain an exception which allows purchasers to take possession of tobacco products prior to purchase if those tobacco products are under the direct and continuous surveillance of an employee of the business and located no more than eight feet from a regular work station of an employee. This exception was requested by the Retail Grocers' Association during the County hearings on this ordinance.

Enforcement of the ordinance would be coordinated by the Chief of Code Enforcement, consistent with available resources in the existing enforcement budgets, emphasizing informational activities to notify and educate tobacco retailers concerning the provisions of the ordinance.

Violations of the ordinance would be infractions, with penalties ranging from a fine not exceeding \$100 and/or 5 days of community service for the first violation to a fine not exceeding \$500 and/or fifteen days of community service for a third violation within one year.

#### **FINANCIAL CONSIDERATIONS:**

Enactment of the ordinance would not have any significant financial impact. Enforcement efforts would be absorbed by the current budget for code enforcement.

#### **ENVIRONMENTAL CONSIDERATIONS:**

The proposed action is exempt under the provisions of CEQA under Section 15061(b)(3) because there is no adverse environmental effect as a result of the enacting the proposed ordinance.

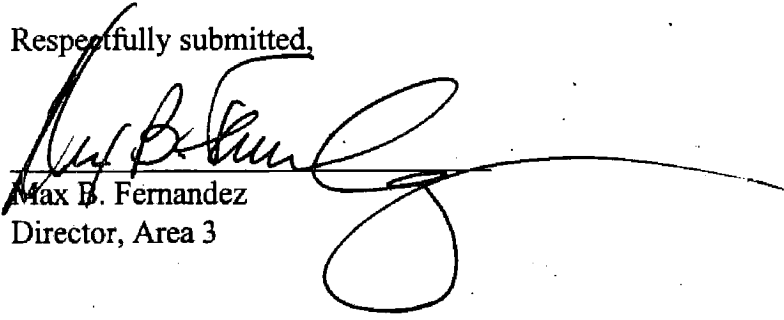
**POLICY CONSIDERATIONS:**

Enactment of the proposed ordinance would be consistent with previous City efforts to reduce community exposure to smoking and environmental tobacco smoke through prohibitions on smoking in enclosed places and prohibition of sale of tobacco products from vending machines.

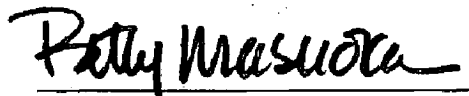
**MBE/WBE EFFORTS:**

Not applicable. No goods or services are being purchased.

Respectfully submitted,

  
Max B. Fernandez  
Director, Area 3

Recommendation Approved:

  
Betty Masuoka  
Deputy City Manager

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# ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

## AN ORDINANCE ADDING CHAPTER 37.03 TO THE SACRAMENTO CITY CODE PROHIBITING SELF-SERVICE MERCHANTISING OF TOBACCO PRODUCTS

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

### SECTION 1.

Chapter 37.03 (Sections 37.03.301 through 37.03.309) is hereby added to the Sacramento City Code, to read as follows:

### Chapter 37.03 PROHIBITION OF SELF-SERVICE TOBACCO MERCHANTISING

**37.03.301 Findings and Purposes.** Substantial scientific evidence exists that the use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the U.S. has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S.;

The National Centers for Disease Control and Prevention have found that at least four hundred thirty-four thousand (434,000) Americans die each year from tobacco-caused diseases. The Surgeon General of the U.S. and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent;

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The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the U.S.;

Studies have shown that shoplifting tobacco products is a common behavior among smoking teens; in fact, 1 in 10 teenagers reported shoplifting as their primary means of obtaining cigarettes;

Tobacco is a "gateway" to other drug dependencies. Kids who smoke heavily (one pack per day) are 3 times more likely to use alcohol, 8 times more likely to use marijuana, and 22 times more likely to use cocaine;

Children are starting to smoke at younger and younger ages. The average teen smoker begins smoking at age 14 ½ years and becomes a daily smoker before age 18. Studies show that if people do not begin smoking as a teenager they will likely never start smoking.

Accordingly, the City Council finds and declares that, in order to reduce youth access to tobacco products and tobacco paraphernalia, it is necessary to prohibit self-service merchandising of tobacco products and paraphernalia and permit only vendor-assisted merchandising of tobacco products and paraphernalia.

**37.03.302 Definitions.** The following words and phrases, whenever used in this chapter, shall be construed as defined in this section.

(a) "Business" shall mean any sole proprietorship, joint venture, corporation, or other business entity formed for profit making purposes.

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(b) "Person" shall mean any individual, partnership, corporation, or any other legal entity.

(c) "Self-service merchandising" shall mean open display of tobacco products and tobacco promotional products to which members of the public, especially children, have access without the intervention of an employee of the business.

(d) "Tobacco paraphernalia" shall mean cigarette papers, or any other instrument or paraphernalia designed for the smoking or ingestion of tobacco.

(e) "Tobacco product" shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form or manner of tobacco for ingestion.

(f) "Tobacco retailer" shall mean any person who owns, operates, or manages a business, store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use, and includes any person who is responsible for supervising the day-to-day operation of the business.

(g) "Vendor-assisted merchandising" shall mean an arrangement by which only means only an employee of the tobacco retailer has access to the tobacco product and an employee must assist the customer by retrieving the product for the customer. The customer may not and does not take possession of the product until it has been purchased.

(h) "Employee" shall mean any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services of a non-profit entity.

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(i) "Employer" shall mean any person, including a municipal corporation or non-profit entity, who employs one or more employees.

(j) "Minor" shall mean any individual who is less than 18 years old.

(k) "Within line of sight of an employee" means that tobacco products themselves (and not merely the racks, shelves, kiosks, etc. on which the products are located) are under the direct and continuous surveillance of an employee and located no more than eight feet from a regular work station of an employee.

**37.03.303 Self-Service Tobacco Merchandising Prohibited .**

It shall be unlawful for any person, business, or tobacco retailer in the City to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia, except tobacco pipes and pipe tobacco, by means of self-service merchandising or by any means other than vendor-assisted merchandising (unless the tobacco products are within line of sight of an employee.

Any person, business, tobacco retailer, or owner, manager, or operator of any establishment subject to this chapter shall have the following responsibilities:

(1) to eliminate self-service merchandising of tobacco products and tobacco paraphernalia except to the extent permitted by this Chapter; and

(2) to sell tobacco products and tobacco paraphernalia only by means of vendor-assisted sales unless otherwise permitted by this Chapter.

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**37.03.304 Enforcement.**

(a) It shall be the responsibility of the Chief of Code Enforcement to enforce, in behalf of the City, and consistent with available resources, the provisions of this Chapter.

(b) Any person who desires to register a complaint under this Chapter may initiate a complaint with the Chief of Code Enforcement. The Chief of Code Enforcement shall notify, and keep a record of notice, any establishment subject to this Chapter of all citizen complaints under this Chapter regarding apparent violation of this Chapter by said person, tobacco retailer, or any owner, manager or operator of any establishment subject to this Chapter.

(c) Notwithstanding any other provision of this Chapter, a private citizen may bring legal action to enforce this Chapter.

**37.03.305 Violations.**

It shall be unlawful for any tobacco retailer to fail to comply with any provisions of this chapter.

**37.03.306 Penalties.**

(a) Any person, business, tobacco retailer, or owner, manager, or operator of any establishment subject to this Chapter who violates any provision of this Chapter shall be deemed guilty of an infraction, punishable by:

(1) A fine, not exceeding one hundred dollars (\$100) and/or five (5) days of community service, for the first violation.

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(2) A fine, not exceeding two hundred dollars (\$200) and/or ten (10) days of community service, for a second violation of this Chapter within one (1) year.

(3) A fine, not exceeding five hundred dollars (\$500) and/or fifteen (15) days of community service, for a third violation of this Chapter within one (1) year.

**37.03.307 Non-Retaliation.** No employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant agrees to abide or abides by the provisions of this Chapter.

**37.03.308 Severability.** If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or applications, and to this end the provisions of this Chapter are declared to be severable.

**37.03.309 Voluntary Compliance Measures.** In order to increase voluntary compliance with this Chapter, the Chief of Code Enforcement may, consistent with available resources, conduct informational activities to notify and educate tobacco retailers and the public of the requirements of this Chapter.

DATE PASSED FOR PUBLICATION:  
DATE ENACTED:  
DATE EFFECTIVE:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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DATE ADOPTED: \_\_\_\_\_

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