

ORDINANCE NO. 91-089

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF DEC 0 3 1991

AN ORDINANCE ADDING ARTICLE II (SECTIONS 37.100-37.103) TO CHAPTER 37 OF THE SACRAMENTO CITY CODE, PROHIBITING THE SALE OF TOBACCO PRODUCTS FROM VENDING MACHINES

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

SECTION 1

Article II (Section 37.100-37.103) is hereby added to Chapter 37 of the Sacramento City Code to read as follows:

ARTICLE II. TOBACCO VENDING MACHINES

§ 37.100 Purpose

It is the policy of the City Council of the City of Sacramento, as expressed in Ordinance No. 90-051, to prohibit the smoking of tobacco products in enclosed public places and workplaces in order to reduce the involuntary exposure of non-smokers to the harmful effects of second-hand smoke. Health hazards of exposure to second-hand smoke include increased risk for developing lung cancer, respiratory infection, broncho-constriction, and bronchospasm.

The availability of tobacco products from vending machines located in public places such as restaurants, bowling alleys, stadiums, workplaces, and office buildings encourages smoking in these public places and increases the likelihood that non-smokers will be exposed to second-hand smoke.

This ordinance prohibiting the sale of tobacco products from vending machines is enacted to further the policy set forth in Ordinance No. 90-051 enacted by the City Council on October 9, 1990. The City Council concludes that enforcement of Ordinance No. 90-051 will be facilitated if the sale of tobacco products from vending machines is prohibited.

It is the policy of the City Council of the City of Sacramento to encourage enforcement of state and local laws prohibiting the sale of tobacco products to, and the purchase of tobacco products by, minors. Unattended tobacco vending machines are a primary source of tobacco products for minors. Enactment of this ordinance will make it more difficult for minors to obtain tobacco products unlawfully.

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§ 37.101 Findings

The City Council finds as follows:

1. The vending of tobacco products from vending machines increases the likelihood that non-smokers will be exposed to second-hand smoke and makes enforcement of the City's no-smoking rules more difficult, because it encourages smokers to smoke in the public places where the vending machines are located.
2. The vending of tobacco products from vending machines increases the likelihood that minors will be able to purchase tobacco products, even though the purchase of tobacco products by minors and the sale of tobacco products to minors is prohibited by state law.
3. Based on evidence presented to it that the owner of a tobacco vending machine can recover the investment in the machine in approximately three years, the City Council finds that a maximum of three years, reduced by the length of time the machine has already been in use, is a reasonable amortization period for tobacco vending machines currently in use within the City of Sacramento which cannot reasonably be converted to a different use.

§ 37.102 Definitions

For the purposes of this article, the following terms shall be defined as set forth herein:

- (a) Tobacco product: Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other manner of ingestion.
- (b) Tobacco vending machine: Any electronic or mechanical device the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or vends a tobacco product.

§ 37.103 Sale of Tobacco Products from Vending Machines Prohibited

- (a) No person, firm, or corporation shall locate, install, keep, maintain, or use or permit the location, installation, keeping, maintenance, or use on his, her, or its premises of any tobacco vending machine for the purpose of selling or distributing any tobacco product therefrom.
- (b) Any tobacco vending machine in use on the effective date of this article shall be removed within ninety (90) days after the effective date. Notwithstanding the previous sentence, any tobacco vending machine which is the subject of a written contract authorizing its installation which was entered into prior to the enactment of this article shall be removed within fifteen (15) days after the date specified in 1 or 2 below, whichever occurs later:

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1. The first date on which permissive termination of the written contract by the party on whose premises the tobacco vending machine is located could take effect if said party elected to terminate, or the expiration date of the contract term in effect on the enactment date of this article if no provision of the agreement authorizes permissive termination;
2. Ninety (90) days after the effective date of this ordinance.

Within thirty (30) days after the effective date of this article, any machine owner who contends that a prohibited tobacco vending machine is entitled to remain in use pursuant to this subsection shall present a copy of the written contract and an application for extension of use which sets forth the applicant's calculation of the later of the two dates specified above to the Director of Finance. The Director, or the Director's designee, shall review the submittals and issue a written notice within sixty (60) days after submittal of the application which states the last date upon which the machine may be operated. A copy of the notice shall be posted on the machine in plain view by the machine owner.

(c) Within thirty (30) days after the effective date of this article, any person, firm, or corporation who purchased a tobacco vending machine less than thirty-two (32) months prior to the enactment of this article for the purpose of using the tobacco vending machine to sell or distribute tobacco products exclusively within the City of Sacramento and who has not or will not have recovered his, her, or its investment therein by the date on which discontinuance of use is required pursuant to subsection (b) may apply to the Director of Finance for a use extension based on financial hardship. A use extension shall be granted if the Director of Finance, or the Director's designee appointed to consider the application, makes all of the following findings:

- (i) that the machine was intended for use only with the City of Sacramento;
- (ii) that the machine owner has not or will not have recovered his, her, or its investment therein before the date of required discontinuance;
- (iii) that the machine owner has no practical way to recover the investment in the machine other than its continued use within the City of Sacramento as a tobacco vending machine; and
- (iv) that the investment not yet recovered exceeds ten percent (10%) of the cost of the machine.

The length of the use extension shall not exceed that additional time period estimated to be necessary to allow recovery of the owner's investment; provided, however, that no use extension shall be granted which allows the total time during which the machine will be in use within the City of Sacramento to exceed three (3) years. The tobacco vending machine owner shall bear the burden of proof on each issue. The Director shall issue a written decision and notice within sixty days after submittal of the application which states the last date upon which the machine may be operated. A copy of the notice shall be posted on the machine in plain view by the machine owner.

- (d) Any applicant aggrieved by the decision of the Director pursuant to subsection (b) or (c) may appeal the decision to the City Manager by filing a written notice of appeal with the City Manager within ten (10) days after the date of the Director's written decision. The notice of appeal shall contain a brief statement of the grounds for the appeal. The City Manager, or the City Manager's designee, shall review the application and the notice of appeal and may, by written decision, confirm or modify the Chief's determination. The decision of the City Manager shall be final.
- (e) Each application submitted pursuant to subsection (b) or (c) shall be accompanied by a non-refundable application fee of \$50 per machine.
- (g) Violation of subsection (a) is a misdemeanor. Violation of any other provision of this article is an infraction.

DATE PASSED FOR PUBLICATION: November 12, 1991

DATE ENACTED: December 03, 1991

DATE EFFECTIVE: January 03, 1992


MAYOR

ATTEST:


CITY CLERK

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