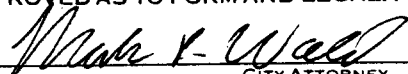


INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEYORDINANCE No. 11434 C. M. S.

JPT:cmf

**AN ORDINANCE REGULATING THE PLACEMENT OF
TOBACCO PRODUCT VENDING MACHINES IN THE CITY
OF OAKLAND IN PLACES ACCESSIBLE TO MINORS**

WHEREAS, scientific and medical research supports the conclusion that the smoking and use of tobacco products is an addictive habit, and

WHEREAS, the availability of tobacco products in vending machines accessible to minors is likely to increase opportunities for minors to obtain tobacco products for their personal consumption; and

WHEREAS, as a result of public hearings conducted by the Health and Human Services Committee of the City Council of Oakland, and the City Council of Oakland, it has been determined that limiting access to tobacco products in vending machines would serve the public welfare by eliminating a means by which minors obtain tobacco products; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970 and the provisions of the Statement of Objectives, Criteria and Procedure for Implementation of CEQA, have been satisfied and the City Review Officer has determined that, in accordance with Section 15061(b) (3) of the CEQA Guidelines, this Ordinance is exempt from CEQA.

The Council of the City of Oakland does ordain as follows:

Section 1. The Oakland Municipal Code is amended to add Chapter 4, Article 12 to read as follows:

"ARTICLE 12

REGULATION OF VENDING MACHINES IN PLACES ACCESSIBLE TO MINORS

SEC. 4-12.01 TITLE. This Article shall be known as the Ordinance to Regulate Vending Machines in Places Accessible to Minors.

SEC. 4-12.02 FINDINGS. The City Council of the City of Oakland hereby finds that:

- A. The adverse effects of smoking are well established by studies conducted in the health and medical fields; and
- B. The smoke emitted by tobacco products contains over 4,000 chemicals, many of which are known carcinogens, mutagens, irritants and toxins; and
- C. The Surgeon General has identified the smoking of tobacco products as the single most preventable cause of death in our society, accounting for an estimated 390,000 premature deaths per year in the United States alone; and
- D. The smoking of cigarettes and other related products is highly addictive, so that the chances are only one out of twenty that a smoker attempting to quit smoking will succeed; and
- E. Minors are generally not informed of the adverse effects of smoking or are led through advertisements and commercial promotions to believe that cigarette smoking will enhance their image or lifestyle; and
- F. Tobacco product vending machines provide minors unregulated access to smoking products, increasing the risk of early exposure to smoking which may result in a life-long addiction to tobacco products; and
- G. In order to minimize the use of tobacco products by minors it is necessary that an ordinance be adopted which restricts access to tobacco vending machines by minors, in the interest of promoting their health, safety and welfare.

SEC. 4-12.03 DEFINITIONS. The following words and phrases, whenever used in this Article, shall be construed as defined in this section:

- A. "Tobacco product" shall mean any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco.

- B. "Tobacco product vending machine" shall mean any mechanical or electrical device requiring the insertion of coins or paper bills, or other thing representative of value, to dispense or release a tobacco product and/or tobacco accessories.
- C. "Tobacco accessories" shall mean cigarette papers or wrappers, pipes, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.
- D. "Person" shall mean an individual, firm, partnership, joint venture, unincorporated association, corporation, estate, trust, trustee, or any other group or combination of the above acting as a unit.
- E. A "six-month owner" shall mean a person who purchased a tobacco product vending machine fewer than six months prior to the effective date of this Article for the purpose of using the machines to sell or distribute tobacco products exclusively within the City of Oakland and who on the effective date of this Article was using the vending machine in an area accessible to minors and who has not, or will not have, recovered his or her investment therein by the date on which discontinuance of use is required pursuant to Section 4-12.04(B).

SEC. 4-12.04 REGULATION OF TOBACCO PRODUCT VENDING MACHINES IN PLACES ACCESSIBLE TO MINORS.

- A. No person shall place, maintain, use, or permit the placement, maintenance, or use, of any tobacco product vending machine ("machine") on his or her premises for the purpose of selling or distributing any tobacco products or tobacco accessories when persons under eighteen (18) years of age have access to the premises.
- B. All machines in use on premises accessible to minors shall be removed within ninety (90) days after the effective date of this ordinance except a machine owned by a person who has purchased the machine within six months prior to the effective date of this ordinance, and who has applied for and received a use extension based on financial hardship, as described in (c) below.
- C. A use extension shall be granted to an owner of a

machine who has purchased such a machine within six months prior to the effective date of the Article, upon a showing of financial hardship, determined if all the following are present:

1. That the tobacco product vending machine had been in use in the City of Oakland in an area accessible to minors on the effective date of this Article;
2. That the tobacco product vending machine owner ("owner") had owned the machine for less than six months prior to the effective date of this Article;
3. That the owner will not have recovered his or her investment in the machine before the date of required discontinuance;
4. That the investment not recovered at the date of required discontinuance will exceed ten percent (10%) of the actual cost of the machine; and
5. That the machine will be located so as to allow for constant supervision by the owner or a responsible employee.

The length of the use extension shall be determined by the City Manager or his/her designee, provided that the use extension shall in no event exceed one (1) year from the date of installation of the machine. The owner shall bear the burden of proof on each issue, and the decision of the City Manager or his/her designee shall be final. The City Manager's power to grant a use extension shall expire six (6) months after the effective date of this Article.

SEC 4-12.05 EXEMPTION.

- A. A tobacco product vending machine equipped with an approved electronic security device which notifies an adult proprietor, employee, or other adult individual in custody and control of the tobacco vending machine of an impending vending machine transaction, and which requires said proprietor or employees or individual to unlock the vending machine security device before the transaction can be consummated, is exempt from the provisions of Section 4-12.04, provided that the vending machine cannot be accessed without deactivating the

subsections, paragraphs, sentences or words of this Article, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this Article shall be deemed severable."

Section 2. The City Council makes the following findings in support of adoption of this Ordinance:

a. This Ordinance is necessary to protect the public health, safety and welfare; and,

b. The findings set forth in Section 4-11.02 are true and correct and provide a further basis for this Ordinance.

Section 3. The City Council finds and determines that this ordinance complies with the California Environmental Quality Act and all local CEQA implementing regulations. The City's Review Officer is directed to file a Notice of Exemption with the Alameda County Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 7 1992, 19 _____

PASSED BY THE FOLLOWING VOTE:

AYES— BAZILE, CANNON, GIBSON HASKELL, MILEY, MOORE, OGAWA, RILES, SPEES, and PRESIDENT HARRIS , - 9

NOES— NONE

ABSENT— NONE

ABSTENTION— - 5 -

NONE

ATTEST: _____


ARRECE JAMESON

City Clerk and Clerk of the Council