

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

*Mark P. Wall*  
CITY ATTORNEY

ORDINANCE No. 11433 C. M. S.

JPT:cmf

**AN ORDINANCE PROHIBITING THE NONSALE  
DISTRIBUTION OF TOBACCO PRODUCTS AND TOBACCO  
ACCESSORIES IN THE CITY OF OAKLAND**

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 through nonsale distribution is likely to increase opportunities for citizens 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 the nonsale distribution of tobacco products would serve the public welfare by eliminating a means by which citizens 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 11 to read as follows:

"ARTICLE 11

PROHIBITION OF TOBACCO PRODUCT GIVEAWAYS

SEC. 4-11.01 TITLE. This Article shall be known as the Ordinance to Prohibit Tobacco Product Giveaways.

SEC. 4-11.02 FINDINGS. The City Council of the City of Oakland hereby finds that:

- A. Scientific evidence indicates a causal relationship between tobacco smoking and diseases such as cancer, chronic bronchitis, heart disease and emphysema; and
- B. The Surgeon General of the United States has determined that smoking is the leading preventable cause of death in this country; and
- C. Smoking is responsible for one-quarter of all deaths caused by fire; and
- D. The use of smokeless or chewing tobacco is a hazard to the health of the user and may cause gum disease, mouth or oral cancers, and leukoplakia; and
- E. There is medical evidence that addiction to nicotine, a component of tobacco products, can result from smoking a single pack of cigarettes; and
- F. The free distribution of tobacco products and accessories is intended to encourage people to consume tobacco products which leads to a form of addiction, discourages those who already smoke or chew tobacco from quitting, and tempts those who have quit using tobacco to resume consumption; and
- G. The marketing practice of tobacco product giveaways is commonly pursued through the use of multimedia equipped vans and promotion teams which distribute tobacco product samples at shopping areas, public parks and other areas where contact with the general public is frequent; and
- H. Encouraging smoking and discouraging smokers from quitting smoking endangers the public health by leading more people to form or renew habits that cause illness and death; and
- I. Tobacco product giveaways promote unsightly litter, thereby increasing the costs to the public in cleaning the streets, and also causes pedestrian and vehicular traffic congestion; and

- J. Educators, health workers, parents, church leaders and business owners have complained about this marketing practice which targets low income urban neighborhoods.

SEC. 4-11.03 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 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.
- C. "Nonsale distribution" shall mean the dispensing to the general public at no cost or at nominal cost of tobacco products or tobacco accessories, or the distribution of coupons or rebate offers for tobacco products and tobacco accessories to the general public. Distribution of tobacco products or tobacco accessories, coupons and rebate offers in connection with the sale of another item, including tobacco products, magazines, newspapers or other items shall not constitute a nonsale distribution.
- 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. "Dispensing" or "distribution" shall mean to give, sell, deliver, issue, offer or cause or hire any person to give, sell, deliver, issue or offer tobacco products, tobacco accessories and/or coupons or rebate offers for such products or accessories.

SEC. 4-11.04 PROHIBITION OF NONSALE DISTRIBUTION OF TOBACCO PRODUCTS AND ACCESSORIES.

- A. It is unlawful for any person to engage in the nonsale distribution of any tobacco product or tobacco accessory within the City of Oakland for

any purpose, including but not limited to promotional, marketing, advertising, testing, and consumer research purposes.

SEC. 4-11.05 ENFORCEMENT AND PENALTIES.

- A. Any person who violates or refuses to comply with the provisions of this Article shall be guilty of an infraction.
- B. Each day such violation is committed or permitted to continue shall constitute a separate offense.
- C. Any person convicted of an infraction under the provision of this Article shall be punished upon a first conviction by a fine of not more than \$100.00 and, for a second conviction within a period of one year, by a fine of not more than \$200.00 and, for a third or any subsequent conviction within a one year period, by a fine of not more than \$500.00. Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$1000.00 or by imprisonment in the County Jail for a period of not more than six months or by both.
- D. The City Manager or his/her designee shall enforce this Article against violations by any of the following actions:
  - 1. Receiving and investigating complaints related to the violation of this Article;
  - 2. Serving notice requiring the correction of any violation of the Article;
  - 3. Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this Article and to cause the correction of any such violation through all appropriate equitable and legal means.

SEC. 4-11.06 SEVERABILITY. This Article shall be enforced to the full extent of the authority of the City of Oakland. If any section, subsection, paragraph, sentence or word of this Article is deemed to be invalid or beyond the authority of the City of Oakland, either on its face or as applied, the invalidity of such provision shall not affect the other sections,

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.

*I certify that the foregoing is a full, true and correct copy  
of an Ordinance passed by the City Council of the City of  
Oakland, California on*

*April 17, 1992*

**CEDA FLOYD**

*City Clerk and Clerk of the Council*

Per *Gnetha Middleton* Deputy