



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 4/10/2012

Report Type: Consent

Title: (Pass for Publication) Tobacco Retailing Near Schools (M10-021)

Report ID: 2012-00210

Location: Citywide

Recommendation: Review an Ordinance relating to the sale of tobacco near public and private K-12 schools and pass for publication the Ordinance title as required by Sacramento City Charter 32(c) to be adopted April 17, 2012.

Contact: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Presenter: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Department: Community Development Dept

Division: Zoning

Dept ID: 21001224

Attachments:

- 1-Description/Analysis
- 2-Background Information
- 3-Tobacco Retail Locations
- 4-Title 17 Tobacco Ordinance Redlined
- 5-Title 17 Tobacco Ordinance Clean

City Attorney Review

Approved as to Form
 Sabina D. Gilbert
 3/30/2012 3:10:54 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
 Russell Fehr
 3/21/2012 4:11:57 PM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 3/23/2012 10:26:09 AM



Description/Analysis

Issue: At the City Council meeting of January 12, 2010, Council members McCarty and Sheedy noted that there was an effort in California communities to explore regulations regarding limitations of distance and hours of operation on the sale of tobacco products near schools. The City Council directed staff to bring forward a discussion on the sale of tobacco products near schools to the Law and Legislation Committee. At the committee meetings of January 18, 2011 and October 18, 2011, committee members discussed the policies surrounding tobacco sales within 1,000 feet of schools. The committee directed Planning staff to prepare an ordinance requiring a zoning administrator's special permit for tobacco retailers within 1,000 feet of a school.

The proposed code amendment adds definitions to Title 17 for "tobacco retailer" and "tobacco product". These definitions are the same as those found in Title 5 (Business Licenses and Regulations) of the City Code. The Zoning Code land use chart is proposed for amendment to add the land use category of "tobacco retailer" and allow tobacco retailers in the zones where retail is a permitted use. The chart will also indicate that a tobacco retailer is permitted in the Highway Commercial (HC) zone as long as the square footage of the tobacco sales area does not exceed 10% of the total square footage of the store (the HC zone generally does not allow retail stores). Footnote 89 and 90 will be added to the land use footnotes to indicate that in the zones where a tobacco retailer is a permitted use a zoning administrator special permit is also required if the tobacco retailer is located within 1,000 feet of a public or private school (K-12) and the tobacco retailer's business is 15,000 square feet or less in gross floor area.

Policy Considerations: The City of Sacramento 2030 General Plan policies encourage a healthy lifestyle for Sacramento residents to improve overall public health. The Public Health and Safety Goal 5.1 states that a goal of the General Plan is to: "Improve the provision of human services and promote public health and safety."

Environmental Considerations: The proposed ordinance, which imposes regulations and permit requirements on tobacco retailers, is a general policy and procedure making activity, not conducted in conjunction with a specific project. As such, the proposed ordinance is not a project under the California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(2).

Sustainability: There are no applicable sustainability considerations.

Commission/Committee Action: On January 26, 2012 the proposed ordinance was heard by the Planning Commission. Tobacco retailers, Sacramento business associations and members of the public who attended previous Law & Legislation Committee meetings were informed of the hearing. Two members of the public spoke in support of the proposed amendment. By a vote of 9 ayes, 0 noes, 0 absent (2 vacant), the Planning Commission voted to recommend that the City Council approve the proposed Zoning Code amendment to require a Zoning Administrator Special Permit for tobacco retailers within 1000 feet of a school.

On March 6, 2012 the proposed ordinance was reviewed by the Law and Legislation Committee. The committee voted unanimously to recommend approval of the proposed ordinance and forward to City Council.

Rationale for Recommendation: The proposed ordinance is consistent with General Plan policies to promote a healthy lifestyle for residents of the City of Sacramento.

Financial Considerations: None.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.



Background Information:

In November of 2009, California State Senator Alex Padilla wrote a letter to local governments asking them to consider adopting an ordinance prohibiting and/or restricting the sale of tobacco near schools. The Senator noted in his letter that surveys confirm that the closer a tobacco retailer is to a school, the more likely they are to sell to children. On February 27, 2009 Senator Alex Padilla introduced SB203, Tobacco Sales Near Schools. This bill would have prohibited the sale of tobacco within 600 feet of a school. SB 203 was not adopted. Senator Padilla is currently sponsoring SB 331. This bill would allow the California Board of Equalization to deny new tobacco retail licenses within 600 feet of a school.

Since November 2009 local governments have discussed this issue. In January 2010, San Francisco Mayor Newsom sponsored an ordinance amending the San Francisco Health Code prohibiting the sale of tobacco within 1,000 feet of public or private schools. This proposed ordinance was referred to the City Operations and Neighborhood Services Committee but was not heard. The Chula Vista City Council also discussed the issue on January 7, 2010, but decided not to support an ordinance that would outlaw tobacco sales near schools. The City of Union City adopted an ordinance in February 2010 which prohibits tobacco related sales within 1,000 feet of any sensitive use (Ord. 728-10). Sensitive uses are defined as any park, playground, public library, recreation center, religious institution, school, or youth oriented establishment. On November 9, 2010, the Santa Barbara County Board of Supervisors adopted an ordinance amending the tobacco control sections of the Santa Barbara County Code. These changes included restricting new retailers from selling tobacco products within 1,000 feet of schools, strengthening requirements and penalties associated with selling tobacco to youth, and increasing tobacco retail licensing fees. The goals of the regulations are to encourage responsible tobacco retailing and discourage the sale or distribution of tobacco products and paraphernalia to minors.

Currently the City of Sacramento does not have a distance or hours of operation requirement on the sale of tobacco products near schools. The City does, however, have other regulations in the City Code related to tobacco sales including, but not limited to, prohibitions on: the use of self service tobacco merchandising (Chapter 5.122.030); sales of tobacco products from vending machines (Chapter 5.140.040); smoking in public places (Chapter 8.80.040); smoking in the work place (Chapter 8.80.200); distribution of tobacco products to minors, including requirements on proof of age to purchase tobacco products and posting of signs regarding minimum age (Chapter 9.12.120); and tobacco sales within the Del Paso Boulevard/Arden Way Special Planning District (Chapter 17.108).

In addition, on March 30, 2004, the City Council adopted Sacramento City Code Section 5.138, the Tobacco Retailer Ordinance. This ordinance regulates tobacco retailers

located within the City by requiring yearly non-transferrable licenses, regular business compliance inspections, under-age sales sting operations, and license suspension/revocation procedures. Currently there are approximately 430 licensed tobacco retailers located within the city. Since passage of these regulations, the Community Development Department has conducted sting operations at approximately 300 retailers, resulting in 30 license suspensions, and conducted approximately 1,000 routine business compliance inspections. All other incoming tobacco related complaints are handled by the Community Development Department and are processed in the order they are received.

As of July 31, 2011 there were 104 tobacco retailers within 1000 feet of a public school in the City of Sacramento. In 2011 Community Development Department staff conducted sting operations at tobacco retailers within 1000 feet of a school on February 28, 2011, May 21, 2011 and September 17, 2011. Staff checked a total of 51 retailers during the three stings. Of the 51 retailers, four of the stores sold to a minor decoy. These retailers have completed the minimum mandatory 30 day suspension of their tobacco license for a first time offense. The latest sting operation was on February 11, 2012. Staff checked a total of 11 licensed retailers (three downtown and eight located in the south area of Sacramento). One of the 11 retailers sold to a minor decoy and Community Development Department staff issued a "Notice of Intent to Suspend" the license for 30 days. Since adoption of the Tobacco Retailer Ordinance in 2004 the rate of illegal sales during a sting operation ranges between 10 and 20 percent.

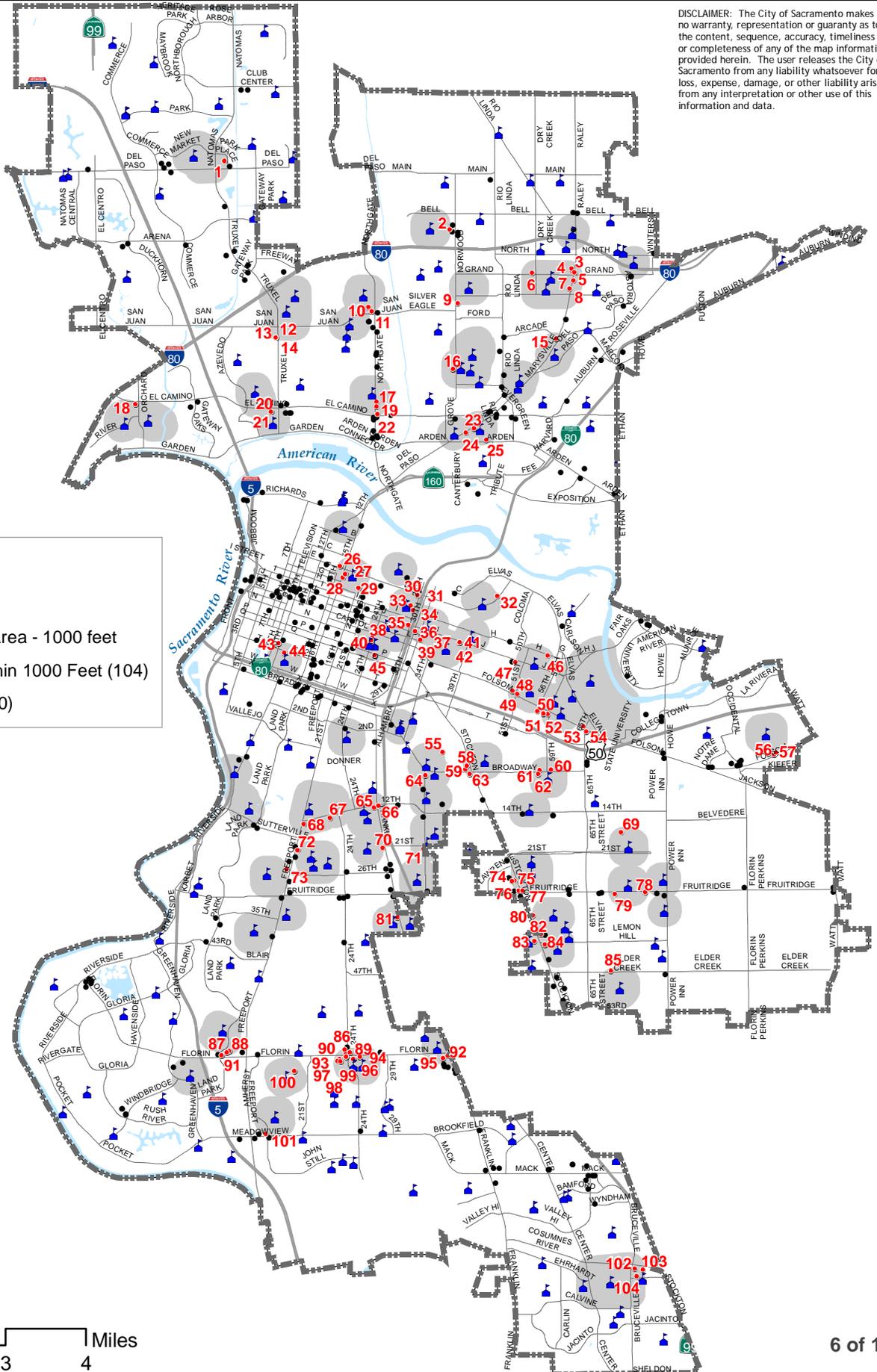
The Law and Legislation Committee reviewed the information on the number of tobacco retailers and information on the sting operations at their October 18, 2011 committee meeting. The committee directed Planning staff to prepare a Zoning Code amendment that required a Zoning Administrator's special permit for tobacco retailers within 1000 feet of a school. The direction was that the amendment should be similar to the special permit requirements for alcohol sales for off-site consumption.



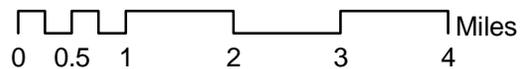
DISCLAIMER: The City of Sacramento makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the map information provided herein. The user releases the City of Sacramento from any liability whatsoever for any loss, expense, damage, or other liability arising from any interpretation or other use of this information and data.

Legend

- Public Schools
- Public School Buffer Area - 1000 feet
- Tobacco Retailers within 1000 Feet (104)
- Tobacco Retailers (400)



Map Created by:
D. Wilcox, Community Development /GIS
Map Date : 08.02.2011





ORDINANCE NO.

Adopted by the Sacramento City Council

**AN ORDINANCE AMENDING SECTIONS
17.16.010, 17.24.030, AND 17.24.050 OF TITLE 17 OF
THE SACRAMENTO CITY CODE (THE ZONING
CODE) RELATING TO TOBACCO RETAILERS
(M10-021)**

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

SECTION 1.

Section 17.16.010 of Title 17 of the Sacramento City Code (the Zoning Code) is amended as follows:

A. A definition for “tobacco retailer” is added to Section 17.16.010 to read as follows:

“Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers to exchange, for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange. Tobacco retailer includes a tobacco store.

B. A definition for “tobacco product” is added to Section 17.16.010 to read as follows:

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

C. Except as specifically amended by adding a definition for “tobacco retailer” and “tobacco product” as set forth in subsections A and B, above, Section 17.16.010 remains unchanged and in full force and effect.

SECTION 2.

Section 17.24.030 Commercial Land Use Chart of Title 17 of the Sacramento City Code (the Zoning Code) is amended as follows:

A. The matrix set forth in Table 17.24.030 A is amended to add “tobacco retailer” to read as follows:

| Uses Allowed | RE | R-1 | R-1A | R-1B | R-2 | R-2A | R-2B | R-3 | R-3A | R-4 | R-4A | R-5 | RMX | RO | OB |
|--------------------------|----|-----|------|------|-----|------|------|-----|------|-----|-------------|-------------|--------------|----|-----------------|
| <u>Tobacco retailer*</u> | | | | | | | | | | | <u>7/89</u> | <u>7/89</u> | <u>69/89</u> | | <u>64/18/89</u> |

B. The matrix set forth in Table 17.24.030 B is amended to add “tobacco retailer” to read as follows:

| Uses Allowed | EC | HC | SC | C-1 | C-2 | C-3 | C-4 | M-1 | M-1(S) | M-2 | M-2(S) | MIP | MRD | H | SPX | TC | A | AOS | F | AR P-F | |
|--------------------------|--------------|--------------|--------------|-----------|-----------|-----------|--------------|--------------|-----------------|--------------|-----------------|-----|-----|---|-----------------|----|---|-----|---|--------|--|
| <u>Tobacco retailer*</u> | <u>53/89</u> | <u>16/90</u> | <u>15/89</u> | <u>89</u> | <u>89</u> | <u>89</u> | <u>12/89</u> | <u>12/89</u> | <u>12/20/89</u> | <u>12/89</u> | <u>12/20/89</u> | | | | <u>14/70/89</u> | | | | | | |

C. Except as specifically amended to add “tobacco retailer” to the land use matrix, Section 17.24.030 and Tables 17.24.030 A and 17.24.030 B remain unchanged and in full force and effect.

SECTION 3.

Section 17.24.050 of Title 17 of the Sacramento City Code (the Zoning Code) is amended as follows:

A. Footnote 89 is added to Section 17.24.050 to read as follows:

89. Tobacco retailers. Tobacco retailers are allowed in this zone. A zoning administrator special permit is required for a tobacco retailer that has 15,000 square feet or less of gross floor area and is located within 1,000 feet, measured from the nearest property lines of the affected parcels, of a public or private school (K—12).

B. Footnote 90 is added to Section 17.24.050 to read as follows:

90. Tobacco retailers. Tobacco retailers are allowed in this zone if the space allocated to tobacco products does not exceed 10% of gross square footage of floor area. A zoning administrator special permit is required for a tobacco retailer that has 15,000 square feet or less of gross floor area and is located within 1,000 feet, measured from the nearest property lines of the affected parcels, of a public or private school (K—12).

C. Except as specifically amended to add footnotes 89 and 90, Section 17.24.050 remains unchanged and in full force and effect.



ORDINANCE NO.

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**AN ORDINANCE AMENDING SECTIONS
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B. A definition for “tobacco product” is added to Section 17.16.010 to read as follows:

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

C. Except as specifically amended by adding a definition for “tobacco retailer” and “tobacco product” as set forth in subsections A and B, above, Section 17.16.010 remains unchanged and in full force and effect.

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Section 17.24.030 Commercial Land Use Chart of Title 17 of the Sacramento City Code (the Zoning Code) is amended as follows:

A. The matrix set forth in Table 17.24.030 A is amended to add “tobacco retailer” to read as follows:

| | | | | | | | | | | | | | | | |
|-------------------|----|-----|------|------|-----|------|------|-----|------|-----|------|------|-------|----|----------|
| Uses Allowed | RE | R-1 | R-1A | R-1B | R-2 | R-2A | R-2B | R-3 | R-3A | R-4 | R-4A | R-5 | RMX | RO | OB |
| Tobacco retailer* | | | | | | | | | | | 7/89 | 7/89 | 69/89 | | 64/18/89 |

B. The matrix set forth in Table 17.24.030 B is amended to add “tobacco retailer” to read as follows:

| | | | | | | | | | | | | | | | | | | | | | |
|-------------------|-------|-------|-------|-----|-----|-----|-------|-------|----------|-------|----------|-----|-----|---|----------|----|---|-----|---|--------|--|
| Uses Allowed | EC | HC | SC | C-1 | C-2 | C-3 | C-4 | M-1 | M-1(S) | M-2 | M-2(S) | MIP | MRD | H | SPX | TC | A | AOS | F | AR P-F | |
| Tobacco retailer* | 53/89 | 16/90 | 15/89 | 89 | 89 | 89 | 12/89 | 12/89 | 12/20/89 | 12/89 | 12/20/89 | | | | 14/70/89 | | | | | | |

C. Except as specifically amended to add “tobacco retailer” to the land use matrix, Section 17.24.030 and Tables 17.24.030 A and 17.24.030 B remain unchanged and in full force and effect.

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