



Jesse Arreguin
Councilmember, District 4

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COUNCIL MEETING OF:

39

JUL 13 2010

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

REVISED
CONSENT CALENDAR
July 13, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to City Manager and Community Health and Planning
Commissions: Tobacco Free School Zones

RECOMMENDATION:

Refer the proposed ordinance to the City Manager, and Community Health Commission, and Planning Commission to prohibit the sale of tobacco near schools and request that the Zoning Adjustments Board review the proposal and make a recommendation to the City Council within 90 days.

BACKGROUND:

Surveys continue to confirm that the closer a tobacco retailer is to a school, the more likely they are to sell to children. A 2004 study by the Tobacco Related Disease Research Program found that 33% of tobacco sales to minors take place within 1,000 feet of a school and that 90% of all smokers start smoking as teenagers. According to the California Department of Health Services, 15.4% of California high school students smoke and around 300 new youth smoke for the first time each day.

In September 2009, the Los Angeles City Attorney announced the suspension of 24 tobacco retailers' licenses due to repeated sales of tobacco to minors, with the majority of these violations taking place near schools. In July 2009, the City of New Orleans, Louisiana became the latest city in the nation to adopt an ordinance restricting tobacco sales near schools, churches, playgrounds, public libraries, and any places "offering structure, organized care for youth."

Fortunately, Berkeley does have responsible local tobacco retailers who have been recognized by City Council for their commendable commitment to public health and anti-youth smoking. However, the City must ensure that the potential for bad actors do not have the opportunity to provide tobacco to minors by adopting tobacco-free zones near schools.

The City may wish to also consider grandfathering-in existing tobacco retailers but look at limited hours of tobacco sales during school hours and a tougher

penalty schedule, including license revocation after a third violation of selling tobacco to minors.

FINANCIAL IMPLICATIONS:

Unknown.

CONTACT PERSONS:

Jesse Arreguín, Councilmember, District 4 981-7140

Attachments:

1. Proposed Ordinance

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING THE BERKELEY ZONING ORDINANCE TO RESTRICT TOBACCO PRODUCT SALES NEAR SCHOOLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

SECTION 1.

FINDINGS The City Council of Berkeley hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and imposes great social and economic costs, as evidence by the following:

- More than 440,000 people die in the United States from tobacco-related disease every year, making it the nation's leading cause of preventable death; and
- The medical and economic costs the nonsmokers suffering from lung cancer or heart disease cause by secondhand smoke are nearly \$6 billion per year in the United States; and
- The total annual cost of smoking in California was estimate at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

WHEREAS, in California, 13.3% of the adult population and 15.4% of high school students smoke; and

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, although it is unlawful to sell tobacco products to minors, 8.6% of California retailers surveyed do sell to minors. In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimate 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers; and

WHEREAS, Berkeley has a substantial interest in promoting compliance with state laws prohibiting the sales of tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of state law; and

WHEREAS, the California Constitution, Article XI, section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, a recent study found the 33% of tobacco underage sales took place within 1000 feet of a school; and

WHEREAS, zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products from the protection of public health, safety and welfare; and

WHEREAS, the City of Berkeley intends to restrict the location of tobacco retailers in the City for the protection of public health, safety and welfare of children; and

NOW, THEREFORE, THE CITY COUNCIL OF BERKELEY DOES ORDAIN AS FOLLOWS:

SECTION 2. _____ OF THE CITY OF BERKELEY ZONING ORDINANCE IS HEREBY AMENDED TO READ AS FOLLOWS:

Section ___ Definitions

The following words and phrases, whenever used in this article, shall have the meanings defined in this section unless the context clearly requires otherwise:

Tobacco Product means any product(s) that is used to consume tobacco or any product that contains any tobacco leaf, including but not limited to: cigarettes, cigars, cigarillos, blunts, snuff, creamy snuff, dipping/chewing tobacco, flavored tobacco, tobacco water, tobacco paste, gutka, kretek, shisha, roll-your-own cigarettes, cigarette or cigar rolling papers, or pipes.

Tobacco Retailer means any person, retail establishment, or any other legal entity who knowingly sells, donates, distributes, or delivers to any person(s), for any form of consideration, tobacco products.

Section ___ Zoning Regulations

It is hereby declared that the sense and policy of this section is that no tobacco retailer shall be permitted to sell, donate, distribute, or deliver to any person(s), for and form of consideration, tobacco products within 1000 feet of any playground, church, public library, school, or any childcare facility or similar entity providing structured, organized care for youth.

Section ___ How distance measured

- (a) The 1000-foot distance provided for in section ___ shall be measured as a person walks, using the sidewalk, from the nearest point of the property line of the playground, church, public library, school, or childcare facility or similar entity providing structured, organized care for youth, to the nearest of the property line of the tobacco retailer.
- (b) If a tobacco retailer has an interruption of the continuity of business for a period in excess of six months, in order to reopen for business, the requirements set forth above must be complied with.

Section ___ Enforcement

- (a) Enforcement of this chapter shall be the responsibility of [___]. In addition, any peace officer or code enforcement official also may enforce this chapter.