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OFFICE OF THE  
COUNTY COUNSEL



COUNTY OF SANTA CRUZ

GOVERNMENT CENTER  
(408)454-2040  
FAX(408)454-2115

701 OCEAN STREET, ROOM 505, SANTA CRUZ, CALIFORNIA 95060-4068

HARRY A. OBERHELMAN III

MARIE COSTA  
JANE M. SCOTT  
RAHN GARCIA  
TAMYRA RICE  
PAMELA FYFE  
ELLEN LEWIS  
KIM BASKETT  
LEE GULLIVER  
DANA McRAE

ASSISTANTS

DWIGHT L. HERR  
COUNTY COUNSEL

DEBORAH STEEN  
SAMUEL TORRES, JR.  
CHIEF ASSISTANTS

AGENDA: OCTOBER 20, 1998

October 9, 1998

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street, Room 500  
Santa Cruz, California 95060

RE: ORDINANCE REGULATING TOBACCO ADVERTISING

Dear Members of the Board:

On September 15, 1998, your Board gave conceptual approval to an ordinance that would regulate the advertising of tobacco products by prohibiting their use near locations where minors frequent. In addition, your Board gave further directions to have the ordinance return on this date for final consideration and a report concerning several proposed amendments.

SELF-SERVICE DISPLAYS

One of the amendments proposed was to consider the inclusion of regulations prohibiting the self-service sale of tobacco products within the County. This regulation would require merchants to store or display tobacco products in locations that are not directly accessible by customers. Furthermore, customers would not receive possession of the product until the purchase is completed. The intent of this provision is similar to the other regulations proposed in this ordinance, which is to reduce the unlawful sale and possession of tobacco products by minors. Excepted from this prohibition would be tobacco product sales within a retail tobacco store, or sales by way of a vending machine

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authorized by Chapter 7.114 of this Code, which limits such machines to bars which prohibit persons under the age of 21 years from entering.

ADDITIONS TO THE AREAS FREQUENTED BY MINORS  
THAT ARE SUBJECT TO THE ADVERTISING RESTRICTIONS

Your Board gave directions that additional areas be considered for inclusion under the definition of "areas frequented by minors" that would subject to the tobacco advertising restrictions. Working in conjunction with the Health Services Agency, this Office reviewed and analyzed the inclusion of fast food restaurants, video arcades, video stores, and published bus routes. Many of these newly proposed sites are already subject to the ordinance's advertising restrictions due to their location next to schools, parks, and libraries. In addition, some of the categories such as fast food restaurants or video stores may be difficult to define with precision (e.g., would a retail food outlet which includes a small video rental service be defined as a video store?) and are therefore not recommended for inclusion as restricted areas.

Bus stop information for the numerous public and private school systems is not readily available, nor are the stops used easily identifiable. Discussions with Planning staff revealed that the County already had access to the location of bus stops designated by the Santa Cruz Metropolitan Transit District (SCMTD). All of the bus stops established by the SCMTD are also identified by a posted sign. Because of the difficulties mentioned in obtaining public and private school bus information, the proposed ordinance amendment was limited to SCMTD bus stops. SCMTD bus stops are an appropriate site to exclude tobacco advertising due to the large number of minors using the bus system, many of whom are otherwise without a transportation alternative. Marketing information maintained by the SCMTD indicates that approximately 15-20% of the system's total ridership is made up of students 17 years of age and under (in addition, approximately 28% of the ridership is made up of Cabrillo and U.C. Santa Cruz students).

Most of the SCMTD's bus stop locations are already entered into the County's GIS computer mapping system (a small percentage of stops are not yet entered into the system due to inadequate location descriptions). An analysis of the effect of adding SCMTD bus stops indicates that approximately 34 parcels with the requisite commercial zoning (there are currently 1,367 commercially zoned parcels within the County) would be free from any tobacco advertising restrictions. It is therefore recommended that SCMTD bus stops be the only additional criteria added to the definition of areas frequented by minors.

## REGULATION OF TAXICABS

It was previously recommended to your Board that taxicabs be excluded from the ordinances' regulation of tobacco advertising. At that time it was thought that enforcement of the ordinance against vehicles that operated both inside and outside the jurisdictional control of the County could prove problematic. This concern would be avoided if a similar ordinance were adopted by the municipalities within Santa Cruz county,

The County currently requires a license for any taxicab having its principal place of business within the unincorporated area of the county. County Code Section 5.50.030. If the County were to prohibit tobacco advertising on any taxicab operating within the unincorporated area, regardless of who it is licensed by, the County could be subject to legal challenge for attempting to regulate a business acting under a valid license granted by another jurisdiction. Regulating taxicabs raises additional issues such as whether the regulations would apply to out-of-county taxicab companies, airport transport services, trains, interstate bus or tour bus operations. Attempts to regulate out-of-county business operations, particularly those involved in interstate commerce, present additional legal concerns that would require more time for legal analysis.

Based on these concerns, it is recommended that your Board consider prohibiting tobacco advertising only on those taxicabs licensed by the County. Appropriate amendments to the taxicab regulations found in Chapter 5.50 of the County Code are included for your review. In addition, Section 7.90.030 A. of the ordinance has been revised to limit its application to fixed locations, thus precluding its use against out-of-county based vehicles involved in interstate commerce.

IT IS THEREFORE RECOMMENDED that your Board:

1. Review and consider adopting in concept, the attached draft ordinance adding Chapter 7.90 to the Santa Cruz County Code relating to the regulation of tobacco advertising and adding amendments concerning the regulations application to fixed locations, the regulation of SCMTD bus stops, as well as the regulation of self-service sale of tobacco products; and amending Chapter 5.50 by prohibiting tobacco advertising on taxicabs licensed by the County; and

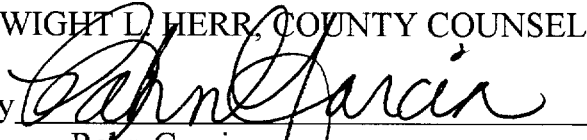
2. Direct that a summary of the ordinance be published by the Clerk of the Board; and

3. Direct that the proposed ordinance be returned to the Board for final consideration on November 10, 1998.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL

By

  
Rahn Garcia  
Assistant County Counsel

RECOMMENDED:

  
SUSAN A. MAURIELLO  
County Administrative Officer

Attachment

cc: HSA  
Planning

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ORDINANCE NO. \_\_\_\_

**ORDINANCE ADDING CHAPTER 7.90 TO THE SANTA CRUZ COUNTY CODE RELATING TO THE REGULATION OF TOBACCO ADVERTISING AND SELF-SERVICE SALE OF TOBACCO PRODUCTS AND AMENDING SECTION 5.50.180 OF THE COUNTY CODE RELATING TO THE PROHIBITION OF TOBACCO ADVERTISING PLACED ON TAXICABS**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

**SECTION I**

The Santa Cruz County Code is hereby amended by adding new Chapter 7.90 to read as follows:

**REGULATION OF TOBACCO ADVERTISING AND SALES**

**Sections:**

- 7.90.010 Purpose.**
- 7.90.020 Definitions.**
- 7.90.030 Restrictions on tobacco advertising.**
- 7.90.040 Exceptions.**
- 7.90.050 Enforcement; penalties; civil actions.**
- 7.90.060 Hardship extension of compliance deadline**
- 7.90.070 Restrictions on self-service sale of tobacco products.**
- 7.90.080 Severability.**
- 7.90.090 Effective date.**

**7.90.010 Purpose.**

The purpose of this chapter is to promote the welfare of minors by discouraging the commercial exploitation of potential underage tobacco users and by discouraging actions that promote the unlawful sale of tobacco products to minors as well as the unlawful purchase or possession of tobacco products by minors.

**7.90.020 Definitions.**

- A. "Advertising" means printed matter that calls the public's attention to things for sale.
- B. "Advertising display" means any sign, billboard, signboard, poster, placard, pennant, banner, graphic display, mural, or similar device that is used to advertise or promote a product.

C. "Area which minors frequent" means any public kindergarten, elementary, middle, junior high, or high school; private school; public park; public library; or any designated bus stop authorized by the Santa Cruz Metropolitan Transit District..

D. "Person" means any individual, firm, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.

E. "Promotion" means a display of any logo, brand name, character, graphic, artwork, colors, scenes, or designs that are a recognized image of a particular product brand that calls the public's attention to the product brand.

F. "Private School" means an elementary or high school that is listed in the California Private School Directory published by the California Department of Education pursuant to California Education Code Section 3 3 190.

G. "Publicly visible location" means any outdoor location that is visible from any street, sidewalk, or other public thoroughfare, or any location inside a commercial establishment that is in or adjacent to a window or doorway and is visible from any street, sidewalk, or other public thoroughfare.

H. "Retail tobacco store" means a retail store where at least fifty percent of the annual gross receipts are from the sale of tobacco products and smoking accessories and in which the sale of other products is merely incidental.

I. "Tobacco product" means any substance containing any tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and smokeless tobacco.

J. "Self-service display" means an open display of tobacco products which is accessible without the intervention of a vendor, including, but not limited to a rack, shelf, or counter-top display.

K. "Vendor-assisted sale" means a purchase requiring a direct, face-to-face exchange between the vendor and the customer, in which the vendor does not transfer possession of the product to the customer until the purchase is completed.

**7.90.030 Restrictions on tobacco advertising.**

A. Except as otherwise provided in this Chapter, no person shall place or maintain, or cause or allow to be placed or maintained, any advertising or promotion of tobacco products on any advertising display located at a fixed, publicly visible location.

B. No part of this chapter shall be construed to permit any advertising display that is otherwise restricted or prohibited by law. Nor shall it be construed to permit an otherwise

restricted or prohibited advertising display because it is combined with a permitted public service message.

C. No part of this chapter shall be construed to regulate messages that do not propose a commercial transaction.

**7.90.040 Exceptions.**

The provisions of section 7.90.030 shall not apply to any advertising display:

A. That is located on a parcel that has one of the following zoning designations, provided that said parcel is more than 1,000 feet in any direction (measured in a straight line from parcel boundary to parcel boundary) from any area which minors frequent:

- 1. "VA" Visitor Accommodation District;
- 2. "CT" Tourist Commercial District;
- 3. "C- 1" Neighborhood Commercial District;
- 4. "C-2" Community Commercial District;
- 5. "C-4" Commercial Service District; or

B. That is located on the premises of a commercial establishment if the advertising display provides notice that the establishment sells tobacco products, as long as the display does not promote any brand of tobacco product or otherwise constitute a "promotion" as defined by this Chapter, and provided that any such premises shall have no more than one such sign; or

C. That is located on a commercial vehicle used for transporting tobacco products, or

D. That is located on tobacco product packaging; or

E. That is worn as clothing by an individual

**7.90.050 Enforcement; penalties; civil actions.**

A. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation. After notification, it shall be a separate offense for each day such violation shall continue.

B. Violations of this Chapter shall be prosecuted as infractions and shall be punishable as provided by Chapter 1.12 of this Code.

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C. This chapter shall be administered and enforced by the Planning Department.

D. Violations of this chapter are hereby declared to be public nuisances.

E. In addition to other remedies provided by this Chapter, any violation of this Chapter may be enforced by a civil action brought by the County Counsel, including but not limited to administrative or judicial nuisance abatement proceedings, civil enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

**7.90.060 Hardship extension of compliance deadline.**

A. Owners of advertising displays in place on the date the ordinance adopting this Chapter was first introduced may, within sixty (60) days after the date that the Board of Supervisors takes final action to adopt this ordinance, submit an application for an extension of time for compliance. The application shall include written documentation that demonstrates that timely compliance would cause unreasonable financial hardship and that granting the extension of time would not constitute a grant of special privileges inconsistent with other owners of such advertising who are required to comply. On timely receipt of a completed application, the Zoning Administrator shall conduct a hearing to determine whether, and on what conditions, the extension of time ought to be granted. All regulations and procedures regarding application, review, approval, appeal, enforcement, etc., for an extension of time shall be in accordance with the provisions for a Level V approval under Chapter 18.10 of this Code.

C. Whether or not an extension of time to remove a preexisting advertising display is granted pursuant to subdivision B. of this section, advertising displays that are prohibited by this chapter shall not be deemed legal nonconforming uses.

**7.90.070 Restrictions on self-service sale of tobacco products.**

It is unlawful to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than a vendor-assisted sale. This prohibition shall not apply to a retail tobacco store, or a vending machine authorized by Chapter 7.114 of this Code.

**7.90.080 Severability.**

If any provision of this chapter or its application to any person or circumstance is declared invalid or unenforceable by a court of competent jurisdiction, this chapter, to the extent it can be given effect, or the application of this chapter to persons other than the person to whom it is held invalid, shall not be affected thereby, and to this end, the provisions of this chapter are severable.



7.90.090 **Operative date.**

The provisions of this chapter shall become operative on May 10, 1999.

**SECTION II**

Section 5.50.180 of the Santa Cruz County Code is hereby amended by adding Subdivision I. to read as follows:

I. Tobacco Advertising Prohibited. On and after May 10, 1999, no person shall place or maintain, or cause or allow to be placed or maintained, any advertising or promotion of tobacco products on any advertising display on a taxicab. This provision shall be interpreted in a manner consistent with Chapter 7.90 of this code.

**SECTION III**

The following Findings and annotations are hereby incorporated into and made a part of this Ordinance as follows:

A. Youth Tobacco Use. The Board of Supervisors makes the following findings regarding youth tobacco use:

- 1. 88% of adults who have ever smoked tried their first cigarette by the age of 18;’ and
- 2. The average age at which smokers try their first cigarette is 14 ½;<sup>2</sup> and
- 3. 70% of smokers ages 12 to 17 years already regret their decision to smoke and 66% say that they want to quit;<sup>3</sup> and
- 4. A survey in the spring of 1996 found that the percentage of teenagers age 17 or younger who reported smoking during the month before taking the survey was 34.8%, up from 27.5% in 1991;<sup>4</sup> and
- 5. California state health officials reported in early 1997 that in California there has been a 22% increase since 1993 in the number of fifteen- to seventeen-year-olds who are addicted to smoking;<sup>5</sup> and
- 6. 19.2% of ninth to twelfth-grade boys use smokeless tobacco (snuff, plug, dipping tobacco or chewing tobacco);<sup>6</sup> and 73% of high school seniors who had ever tried smokeless tobacco, did so by the ninth grade;’ and
- 7. The Surgeon General has concluded that “tobacco is often the first drug used by those young people who use alcohol, marijuana, and other drugs”;<sup>8</sup> and

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8. Despite laws in every state making it illegal to sell tobacco to minors, each year over 947 million packs of cigarettes and 26 million containers of smokeless tobacco products are consumed by minors eight to seventeen years of age, yielding the tobacco industry \$1.26 billion in annual revenues from tobacco sales to children;<sup>9</sup> and

9. In 1991, in California, minors twelve to eighteen years of age purchased over 29 million packs of cigarettes;” and

10. It is estimated that 10.9% of children in California smoke;” and

11. The County of Santa Cruz has a substantial interest in reducing youth tobacco use and the illegal sales of tobacco products to persons under 18 years of age.

B. Tobacco Industry Advertising. The Board of Supervisors makes the following findings regarding tobacco industry advertising:

1. In 1996, the tobacco industry spent \$5.1 billion on cigarette advertising and promotion, an increase of 4.3% from the amount spent in 1995. Of that amount, the tobacco industry spent \$292.3 million on outdoor advertising in 1996, an increase of \$18.6 million from the \$273.7 million spent in 1995;<sup>12</sup> and

2. Advertising and promotional expenditures for smokeless tobacco increased yearly from \$68 million in 1988 to \$104 million in 1991;<sup>13</sup> and

3. In California alone, the tobacco industry spent over \$1.3 million on advertising and promotion per day in 1995<sup>14</sup> and approximately \$32.7 million on billboard advertising in 1996;<sup>15</sup> and

4. In a 1973 memorandum, an official of tobacco manufacturer R.J. Reynolds Tobacco Co. (“RJR”) stated, “if our Company is to survive and prosper. . . we must get our share of the youth market”.<sup>16</sup> Internal documents recently produced by RJR provide new evidence of the extent to which the company for decades targeted teenage smokers, some as young as 13 according to a 1987 “RJR secret” memorandum, regarding them as the future of its business. “ ‘To ensure increased and longer-term growth for Camel filter,’ one internal 1975 [RJR] memorandum stated, ‘the brand must increase its share penetration among the 14-24 age group, which have a new set of more liberal values and which represent tomorrow’s cigarette business’ ”;<sup>17</sup> and

5. Another RJR memorandum, in 1976, recommended the company develop a cigarette brand for fourteen to eighteen year olds.<sup>18</sup> “Evidence is now available to indicate that the 14-to-18 year old group is an increasing segment of the smoking population. [RJR] must soon establish a successful new brand in this market if our position in the Industry is to be maintained

over the long term”;<sup>19</sup> and

6. In an internal study, an RJR research director found that “the fragile, developing self-image of the young person needs all the support and enhancement it can get. Smoking may appear to enhance that self-image in a variety of ways. If one values, for example, an adventurous, sophisticated adult image, smoking may enhance one’s self-image. . The self-image enhancement effect has traditionally been a strong promotional theme for cigarette brands and should continue to be emphasized”.<sup>20</sup> Recently revealed documents represent strong proof “that the cigarette industry targeted minors after studying them in depth”,<sup>21</sup> and

7. Marketing researchers consider children to be “consumers in training.” RJR’s Old Joe Camel cartoon figure became as well recognized by children as Mickey Mouse. According to a 1991 study, although tobacco advertising does not appear on television and six-year-olds are not significant consumers of magazines, enough exposure to the Old Joe Camel campaign occurred in their environment to give that artwork recognition by six-year-old children equal to Mickey Mouse and McDonald’s golden arches, both of which appear on television;<sup>22</sup> and

8. On March 20, 1997, as part of a settlement agreement signed by the Attorneys General of seventeen states and cigarette manufacturers Liggett & Myers, Inc. (“Liggett”) and the Brooke Group, LTD., the following statement was among those made by and on behalf of Liggett: “Liggett acknowledges that the tobacco industry markets to ‘youth’, which means those under 18 years of age. . . .”;<sup>23</sup> and

9. The vice-president of marketing at U.S. Tobacco, the leading smokeless tobacco company, in a 1968 marketing meeting said, “We must sell the use of tobacco in the mouth and appeal to young people . . we hope to start a fad”;<sup>24</sup> and

10. Outdoor advertisements within 1,000 feet of schools, playgrounds and other areas which minors frequent subject children to an involuntary and unavoidable form of solicitation to engage in an unlawful activity; and

11. Tobacco product advertising and promotion, that appeal to minors, undermine state and local laws prohibiting the sale or distribution of tobacco products to minors; and

12. Tobacco industry spending on transit advertising rose 28%, from \$22.5 million in 1995 to \$28.9 million in 1996;<sup>25</sup> and

C. Tobacco Industry Advertising, Marketing and Promotion Induces Youth Tobacco Experimentation and Use. The Board of Supervisors makes the following findings regarding the effect that tobacco industry advertising, marketing and promotion has on inducing youth tobacco experimentation and use:

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1. There is specific and convincing evidence that tobacco advertising plays a significant role in stimulating illegal consumption of cigarettes by minors;<sup>26</sup> and
2. Multiple studies have shown that cigarette advertising results in increased demand;<sup>27</sup> and
3. Tobacco marketing influences adolescents' decision to begin smoking more than peer pressure or parental smoking;<sup>28</sup> and
4. Between 1993 and 1996, 34% of all adolescent experimentation with tobacco products in California was attributable to tobacco promotional activities: "Nationally, this would be over 700,000 adolescents each year";<sup>29</sup> and
5. A recent longitudinal study of adolescents in California "provides clear evidence that tobacco industry advertising and promotional activities can influence nonsusceptible never smokers to start the process of becoming addicted to cigarettes." Nonsusceptible never smokers are defined as youth who would not consider experimenting with smoking at the beginning of the study. The study has shown that "tobacco promotional activities are causally related to the onset of smoking";<sup>30</sup> and
6. The Centers for Disease Control and Prevention found that cigarette marketing expenditures and practices appeared most likely to account for the increase in adolescent smoking initiation rates;<sup>31</sup> and
7. The U.S. Food and Drug Administration ("FDA"), in issuing its final regulations on tobacco advertising, concluded that advertising plays a material role in the decision by minors to use tobacco products;<sup>32</sup> and
8. The FDA also concluded that studies show that "children are exposed to substantial and unavoidable advertising, that exposure to tobacco advertising leads to favorable beliefs about tobacco use, that advertising plays a role in leading young people to overestimate the prevalence of tobacco use, and that these factors are related to young people's tobacco initiation and use";<sup>33</sup> and
9. A number of studies show a causal relationship between cigarette advertising and teen choice of cigarettes, including one study that shows the three most heavily advertised brands-Marlboro, Camel, and Newport-garner 86% of the teenage market, but only 35% of the overall market share;<sup>34</sup> and
10. RJR initiated the Old Joe Camel advertising campaign in 1988 and in just three years, Camel-brand cigarette's share of the under 18 years of age market rose from 0.5% to 33%. One-quarter of all Camel sales in 1991 were to minors;<sup>35</sup> and

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11. The U.S. Surgeon General concludes that the increase in smokeless tobacco use “from the 1970s to the mid-1980s can be attributed to more aggressive marketing by the smokeless tobacco industry.” Attracting people to try smokeless tobacco was one of the primary aims of advertising and promotional activities. This strategy was a success; by 1985, the usage rate was two times higher among males aged sixteen through nineteen than among older men.<sup>36</sup>

D. Current Laws and Policies and the Need for Additional Narrowly Tailored Regulation. The Board of Supervisors makes the following findings regarding current laws and policies and the need for additional narrowly tailored regulation:

1. California Penal Code section 308 prohibits the sale or furnishing of tobacco products or paraphernalia to minors and the purchase, receipt or possession of tobacco products and paraphernalia by minors; and

2. California Business and Professions Code section 22961 prohibits tobacco advertising on any billboard within 1,000 feet of a public or private school or public playground; and

3. California Business and Professions Code section 2296 1 “sets forth minimum state restrictions” and “does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising”; and

4. The County already has in place Chapter 7.114 of the Santa Cruz County Code that regulates cigarette and/or tobacco vending machines; and

5. In spite of these ongoing efforts the problem of youth tobacco use continues to grow and the County of Santa Cruz finds that additional regulation of tobacco advertising is necessary to supplement local policies previously enacted; and

6. By adopting a local ordinance as permitted by Business & Professions Code section 22961, the County of Santa Cruz can ensure local enforcement against the full range of advertising problems in a way that suits local needs; and

7. This ordinance is a proper subject of zoning regulation under California Government Code section 65850; and

8. It is illegal for minors to consume tobacco; therefore, tobacco should not be advertised in a place or manner where children are likely to be influenced by such advertising; and

9. An ordinance restricting the placement of advertisements for tobacco products in publicly visible locations within the County of Santa Cruz is reasonable and necessary for the promotion of the safety and welfare of minors exposed to such advertisements; and

10. Tobacco advertising in areas where minors frequent constitutes a public nuisance;  
and

11. This ordinance does not ban all outdoor advertising of tobacco products; and

12. This ordinance is not directed toward or intended to affect adults who may legally purchase tobacco products; and

13. This ordinance only restricts the “time, place and manner” of certain advertisements and will not unduly burden legitimate business activities of persons authorized to sell tobacco products on a retail basis; and

14. This ordinance limits only the locations where tobacco product advertisements may be placed and not the content thereof; and

15. That six months is a reasonable period of time for owners to remove tobacco advertising from prohibited areas; and

16. That in the event this ordinance leads to unreasonable financial hardship, a procedure for individualized extensions of time is provided; and

17. The County additionally believes that sufficient alternative mediums of communication (including without limitation, newspapers, magazines, direct mail, catalogs, radio, Internet) are available to promote tobacco products; and

18. The requirements of the California Environmental Quality Act (“CEQA”) of 1970, the CEQA Guidelines as prescribed by the California State Secretary for Resources, and the Santa Cruz County Environmental Review regulations have been satisfied, and that pursuant to Section 15061(b)(3) or Section 15301 of Title 14 of the California Code of Regulations, substantial evidence in the record supports the conclusion that this project is exempt from the provisions of the CEQA.

E. Exceptions. The Board of Supervisors makes the following findings regarding the exceptions authorized by this Chapter:

1. Ads in Commercial Zones and Outside Areas Which Minors Frequent. In order to protect legitimate business activities, to allow adult consumers access to truthful information about a lawful product, and to narrowly focus its efforts on those advertisements which most directly affect minors where they live, attend school, and engage in recreational activities, the County has determined specifically not to restrict publicly visible advertising and promotions of tobacco products in commercial areas that are more than 1,000 feet from certain designated locales which minors frequent.

2. Signs Identifying the Business.

a. Local businesses have invested in signs which display both the name of the business and tobacco advertising that would otherwise be restricted by this Chapter; and

b. For the present, it would be burdensome to local business to require removal of such signs which exist at the time that this ordinance is first introduced; and

c. The law permits the County to address social problems one step at a time and to adjust the benefits and burdens of social regulation.

3. Regulating Size and the Use of Color and Images:

a. County finds that this exception serves the ordinance’s goal of avoiding interference with the provision of truthful information about a lawful product to adult consumers.

b. Studies show that color and image-based advertising, such as that used by the cigarette and smokeless tobacco industry, is particularly effective with young people. “[C]hildren generally have less information-processing ability than adults, and they are less able or less willing to pay attention to the factual information in the advertisements”<sup>37</sup>.

4. Commercial Vehicles, Taxis, Public Transit, and Other Vehicles:

a. Commercial vehicles used to transport tobacco products tend to enter Santa Cruz County from other jurisdictions, are typically only temporarily in places where children congregate, and enforcement against such vehicles may be cumbersome; and

b. Exempting delivery vehicles clearly permits owners to identify what sort of vehicle it is; and

c. Taxis traveling through Santa Cruz County often come into the jurisdiction from other places, are usually only temporarily in places where children congregate, and enforcement against taxis may be cumbersome; and

d. Advertising on public transit vehicles is under the jurisdiction of the Santa Cruz Metropolitan Transit District, and is already prohibited by the District.

5. Tobacco Product Packaging. Information on tobacco product packaging or the location of tobacco product packaging is not restricted by this ordinance in any way.

6. Worn as Clothing. The County does not intend to regulate items worn as clothing through this ordinance

F. Publicly Visible Advertising. The Board of Supervisors makes the following findings regarding publicly visible advertising:

1. Outdoor advertisements are a unique and distinguishable medium of advertising which subjects the general public to involuntary and unavoidable forms of solicitation, as the Supreme Court recognized in *Packer Corporation v. Utah*, 285 U.S. 105 (1932) by citing with approval the following excerpt from the opinion of the Utah Supreme Court:

Advertisements of this sort are constantly before the eyes of observers on the streets . . . to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer. The young people as well as the adults have the message of the billboard thrust upon them by all the arts and devices that skill can produce. In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard[; and]

2. The Supreme Court and other courts have recognized the positive relationship between advertising and consumption (that advertising increases sales) as regards a variety of goods and services, such as electricity, see *Central Hudson Gas & Elec. Co. v. Pub. Serv. Comm'n*, 447 U.S. 557, 569 (1980) (“There is an immediate connection between advertising and demand for electricity. Central Hudson would not contest the advertising ban unless it believed that promotion would increase its sales.”); gambling, see *Posadas de Puerto Rico Assoc. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 341-42 (1986) (“The Puerto Rico Legislature obviously believed, when it enacted the advertising restrictions at issue here, that advertising of casino gambling aimed at the residents of Puerto Rico would serve to increase the demand for the product advertised. We think the legislature’s belief is a reasonable one . . .”); cigarettes, see *Capital Broadcasting Co. v. Mitchell*, 33 F. Supp. 582, 586 (D.D.C. 1971) (three-judge court) (noting “close relationships between cigarette commercials broadcast on the electronic media and their potential influence on young people.”), *aff’d per curiam*, 405 U.S. 1000 (1972); and alcohol, see *Dunagin v. City of Oxford*, 718 F.2d 738, 747-51 (5<sup>th</sup> Cir. 1983) (extensively reviewing evidence on connection between liquor advertising and consumption and rejecting inter-brand competition argument), *cert. den.*, 467 U.S. 1259 (1984); and

3. A Baltimore restriction on alcohol and tobacco outdoor advertising was upheld by the Fourth Circuit Court of Appeals. The court held in part that the Baltimore ordinance “limits *only* the *location* of signs that advertise cigarettes” but not “the *content* of such advertisements” and that the ordinance left available “numerous other means of advertising to adults that did not subject the children to the ‘involuntary and unavoidable solicitation [while] . . . walking to school or playing’.” *Penn Advertising, Inc. v. Schmoke*, 101 F.3d 332 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 1569 (1997); *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied*, 117 S.Ct. 1569 (1997).

G. Tobacco Use and Marketing by Ethnicity and/or Gender. The Board of



Supervisors makes the following findings regarding tobacco use and marketing by ethnicity and/or gender:

1. A 1997 study found that since 1993 smoking rates increased among all types of youths, including minorities, females, and adolescents under the age of 12,<sup>38</sup> and
2. The California Tobacco Survey, which is conducted every three years throughout California, found that the greatest percentage increase in adolescents (fifteen to seventeen years old) who have smoked more than 100 cigarettes was among African Americans (percentage doubled), and Hispanics (33% increase),<sup>39</sup> and
3. Among African American high school seniors, cigarette smoking prevalence rates increased 14.3% from 1992 to 1997. African American youth smoking rates increased between 1992 and 1997 by 94% for 10<sup>th</sup>-grade students and 106% for 8<sup>th</sup>-grade students;<sup>40</sup> and
4. From 1991 to 1997, the smoking prevalence among Hispanic high school students increased 34%, from 25.3% to 34%;<sup>41</sup> and
5. Studies have found a higher density of tobacco billboards in minority neighborhoods.<sup>42</sup> Also, studies and articles document that tobacco products are advertised and promoted disproportionately to women and ethnic communities,<sup>43</sup> and
6. Major tobacco marketing campaigns that targeted adult females resulted in increased smoking initiation by girls below the legal age for purchasing cigarettes.<sup>44</sup>

#### ANNOTATIONS SUPPORTING FINDINGS

1. U.S. DEP'T OF HEALTH & HUMAN SERVS. ET AL, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* 67 (1994) [hereinafter cited as "Surgeon General (1994)"] (also reporting that 35% of adult smokers become daily smokers by age 18). See also U.S. DEP'T OF HEALTH & HUMAN SERVS. ET AL, *Smoking and Health: A National Status Report*, Pub. L. No. (CDC) 87-8396 (1986) (88.4% of male and 83.9% of female smokers begin before the age of 20).
2. Surgeon General (1994), *supra* note 1, at 67.  
See also Laura Kann, PhD et al, *Results from the National School-Based 1991 Youth Risk Behavior Survey and Progress Toward Achieving Related Health Objectives for the Nation*, 108 (supp. 1) PUBLIC HEALTH REPORTS 47, 5 1 (1993) (finding: "[a]mong students who had smoked a whole cigarette, the average age at first use was 12.6 years").
3. Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents; Final Rule, 61 Fed. Reg. 44398 (1996) (codified at 21 C.F.R. pts. 801, 803, 804, 807, 820, 897) ('proposed Aug. 28, 1996) [hereinafter cited as "FDA Regulations"] (*citing Teen-Age Attitudes and Behavior Concerning Tobacco: Report of the Findings*, GEORGE H. GALLUP INT'L INST. 54 (Sept. 1992).
4. Barnaby J. Feder, *Increase in Teen-Age Smoking Sharpest Among Black Males*, N.Y. TIMES, May 24, 1996, at A20.

5. Preliminary data from the draft 1996 CALIFORNIA TOBACCO SURVEY, U.C.S.D. CANCER PREVENTION PROGRAM (1998) [hereinafter cited as "California Tobacco Survey"].
6. Kann, *supra* note 2.
7. Surgeon General (1994), *supra* note 1, at 101.
8. Surgeon General (1994), *supra* note 1, at 5.
9. FINDINGS AND RECOMMENDATIONS OF A WORKING GROUP OF STATE ATTORNEYS GENERAL, NO SALE: YOUTH, TOBACCO AND RESPONSIBLE RETAILING 4, 10 (1994); and Joseph R. DiFranza, M.D. & Joe B. Tye, M.B.A., *Who Profits From Tobacco Sales to Children?* 263(20) J.A.M.A. 2784 (1988).
10. K.M. Cummings et al, *The Illegal Sale of Cigarettes to U.S. Minors: Estimates by State*, 84(2) AM. J. PUB. HEALTH 300 (Feb. 1994).  
See also California Tobacco Survey, *supra* note 5.
11. CALIFORNIA DEP'T OF HEALTH SERVICES, TOBACCO CONTROL SEC., ADULT AND YOUTH SMOKING PREVALENCE 1990-1997 (May 1998).
12. FED. TRADE COMM'N REP. TO CONGRESS FOR 1996, PURSUANT TO THE FED. CIGARETTE LABELING AND ADVER. ACT 2 (1998) (visited March 31, 1998) <<http://www.ftc.gov/os/9803/96cigrpt.htm>> [hereinafter cited as "Federal Trade Commission"].
13. Surgeon General (1994), *supra* note 1, at 163, 166.
14. CAL. DEP'T HEALTH SERVS, TOBACCO CONTROL SEC., TOBACCO INDUSTRY MARKETING IN CALIFORNIA (Nov. 1997).
15. Independent Evaluation Consortium, *Final Report of the Independent Evaluation of the California Tobacco Control Prevention and Education Program: Wave I Data, 1996-1997*, GALLUP ORGANIZATION (1998).
16. John Schwartz, *1973 Cigarette Company Memo Proposed New Brands for Teens: RJR Official Cited Need for 'Share of the Youth Market,'* WASH. POST, Oct. 4, 1995, at A2.
17. Henry Weinstein, *R.J. Reynolds Targeted Kids, Records Show*, L.A. TIMES, Jan. 15, 1998, at A1, A18; and Barry Meier, *Files of Reynolds Tobacco Show Effort on the Young*, N.Y. TIMES, Jan. 15, 1998, at A12.
18. Doug Levy, *RJR Memo Targeted Teen Market*, USA TODAY, Oct. 6, 1995, at 1D.
19. R. J. Reynolds Tobacco Co. Research Department, *Planning Assumptions and Forecast for the Period 1977-1986+ for R.J. Reynolds Tobacco Co.*, R.J. REYNOLDS TOBACCO Co., Apr. 15, 1976.
20. C.E. Teagne, Jr., *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market* R.J. REYNOLDS TOBACCO Co., Feb. 2, 1973.  
See also Weinstein, *supra* note 17.
21. Weinstein, *supra* note 17.

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22. Paul M. Fischer, MD *et al*, *Brand Logo Recognition By Children Aged 3 to 6 Years: Mickey Mouse and Old Joe the Camel*, 266(22) J.A.M.A. 3 145 (Dec. 11, 1991) (“R.J. Reynolds Tobacco Company is as effective as The Disney Channel in reaching 6-year-old children”).

See also Joseph R. DiFranza *et al*, *R.J.R. Nabisco’s Cartoon Camel Promotes Camel Cigarettes to Children*, 266(22) J.A.M.A. 3 149 (Dec. 11, 1991) (Old Joe Camel cartoon figure more effective at marketing cigarettes to children than to adults).

23. ATT’YS GEN. SETTLEMENT AGREEMENT (March 20, 1997) (visited June 15, 1998) <<http://www.stic.neu.edu/settlement/LIGGETTSETTLE.htm>> (March 20, 1997 settlement agreement between Liggett & Myers, Inc. and Brooke Group, LTD. and the Attorneys General of seventeen states).

24. FDA Regulations, *supra* note 3, at 44484.

25. Federal Trade Commission, *supra* note 12.

26. John P. Pierce, PhD *et al*, *Tobacco Industry Promotion of Cigarette and Adolescent Smoking*, 279(7) J.A.M.A. 5 11 (1998) [hereinafter cited as “Pierce (1998)”) (finding “tobacco promotional activities are causally related to the onset of smoking”).

John P. Pierce, PhD & Elizabeth A. Gilpin, *A Historical Analysis of Tobacco Marketing and the Uptake of Smoking by Youth in the United States: 1890–1977*, 14(6) HEALTH PSYCHOL. 500 (1996) [hereinafter cited as “Pierce (1996)”) (demonstrating the impact of major cigarette advertising campaigns on American youth smoking rates).

John P. Pierce, PhD *et al*, *Smoking Initiation by Adolescent Girls, 1944 Through 1988: An Association With Targeted Advertising*, 271(8) J.A.M.A. 608 (1994) [hereinafter cited as “Pierce (1994)”) (finding that a major increase in initiation rates of smoking among female minors coincided with the introduction of advertising campaigns targeting adult female smokers).

John P. Pierce, PhD *et al*, *Does Tobacco Advertising Target Young People To Start Smoking? Evidence from California*, 266(22) J.A.M.A. 3 154 (1991) (finding: “[c]igarette advertising encourages youth to smoke and should be banned.”).

Nicola Evans *et al*, *Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking*, 87(20) J. NAT’L CANCER INST. 1538 (Oct. 19, 1995) (finding that adolescents are receptive to tobacco marketing at an early age and that those more receptive to cigarette advertising are significantly more susceptible to smoking).

Gilbert J. Botvin *et al*, *Smoking Behavior of Adolescents Exposed to Cigarette Advertising*, 108(2) PUB. HEALTH REPS. 2 17 (March-April 1993) (finding that adolescents with high exposure to cigarette advertising are significantly more likely to become smokers).

Michael Klirzner *et al*, *Cigarette Advertising and Adolescent Experimentation With Smoking*, 86 BRIT. J. ADDICTION 287 (199 1) (finding that exposure to smoking advertisements affects the likelihood that young people will smoke and that adolescents who retain more brand-related information from cigarette advertisements are most susceptible to cigarette experimentation).

U.S. DEP’T OF HEALTH & HUMAN SERVS. ET AL, *Reducing the Health Consequences of Tobacco: 2.5 Years of Progress—a Report of the Surgeon General, 1989, Executive Summary* (1989).

Joe B. Tye et al, *Tobacco Advertising and Consumption: Evidence of a Causal Relationship*, 8 J. PUB. HEALTH POL'Y, 492 (Winter 1987).

Clive Smee, *Effect of Tobacco Advertising on Tobacco Consumption-A Discussion Document Reviewing the Evidence*, DEP'T HEALTH ECON., AND OPERATIONAL RES. DIVISION, LONDON (1993) (finding significant reductions in youth smoking followed advertising bans in Norway, Finland, Canada and New Zealand).

Simon Chapman & Bill Fitzgerald, *Brand Preference and Advertising Recall in Adolescent Smokers: Some Implications for Health Promotion*, 72(5) AM. J. PUB. HEALTH 491 (May 1982).

Adam O. Goldstein et al, *Relationship Between High School Student Smoking and Recognition of Cigarette Advertisements*, 110(3) J. PEDIATRICS 488 (Mar. 1987).

P.P. Aitken et al, *Predisposing Effects of Cigarette Advertising on Children's Intentions to Smoke When Older*, 86 BRIT. J. ADDICTION 383 (1991).

P.P. Aitken and D.R. Eadie, *Reinforcing Effects Of Cigarette Advertising on Under-Age Smoking*, 85 BRIT. J. ADDICTION 399 (1990).

27. Lester G. Tesler, *Advertising and Cigarettes*, 70 J. POL. ECON. 471 (1962); and Yoram Peles, *Rate of Amortization of Advertising Expenditures*, 76 J. POL. ECON. 1032 (1971).

28. Evans, *supra* note 26.

29. Pierce (1998), *supra* note 26,

30. *Id.*

31. CTR. FOR DISEASE CONTROL & PREVENTION, *Trends in Smoking Initiation Among Adolescents and Young Adults-United States, 1980-1989*, 44(28) MORBIDITY & MORTALITY WKLY. REP. 521-25 (July 21, 1995).

32. FDA Regulations, *supra* note 3, at 44466.

33. *Id.* at 44488.

34. Cm. FOR DISEASE CONTROL & PREVENTION, *Changes in the Cigarette Brand Preferences of Adolescent Smokers-United States, 1989-1993*, 43(32) MORBIDITY & MORTALITY WKLY. REP. 577-79 (Aug. 19, 1994).

35. DiFranza, *supra* note 22.

36. Surgeon General (1994), *supra* note 1, at 163.

37. FDA Regulations, *supra* note 3, at 44468.  
See also, Philip P. Huang et al, *Black-white differences in appeal of cigarette advertisements among adolescents*, 1 TOBACCO CONTROL 249 (1992).

38. California Tobacco Survey, *supra* note 5.

39. *Id.*

40. U.S. DEP'T OF HEALTH & HUMAN SERVS. ET AL, *Tobacco Use Among U.S. Racial/Ethnic Minority Groups-African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, Hispanics: A Report of the Surgeon General* (1998), Fact Sheet, African Americans and Tobacco (visited May 6, 1998) <<http://www.cdc.gov/ncccdphp/osh/sgr-min-fs-afr.htm>> [hereinafter cited as "Tobacco Use Among U.S. Racial/Ethnic Minority Groups"].

41. CTR. FOR DISEASE CONTROL & PREVENTION, *Tobacco Use Among High School Students-United States, 1997*, 47(12) **MORBIDITY & MORTALITY WKLY. REP.** 229 (Apr. 3, 1998).

42. Jacqueline L. Stoddard et al, *Targeted Tobacco Markets: Outdoor Advertising in Los Angeles Minority Neighborhoods*, 87(7) **AM. J. PUB. HEALTH** 1232 (July 1997) (a study conducted in Los Angeles, California found the highest density of tobacco billboards in African American communities).

See also *Tobacco Use Among U.S. Racial/Ethnic Minority Groups*, *supra* note 44; and *Tobacco Use Among U.S. Racial/Ethnic Minority Groups*, *supra* note 47, Fact Sheet, Asian Americans and Pacific Islanders and Tobacco, at <<http://www.cdc.gov/ncccdphp/osh/sgr-min-fs-asi.htm>> (a 1993 study in San Diego, California found the highest proportion of tobacco billboards were posted in Asian American communities).

43. William F. Gloede, *RJR puts on the Ritz; PM Goes to Rio*, 56 **ADVERTISING AGE** 1, 78 (Jan. 21, 1985); Peter Leviten, *Cigarettes: Manufacturers Send Changing Smoking Signals*, 40 **SUPERMARKET BUSINESS** 39 (Dec. 1985); and Donna K.H. Walters, *Cigarettes: Makers Aim at Special Niches to Boost Sales*, L.A. **TIMES**, Sept. 15, 1985, at Business Section:1.

See also *Tobacco Use Among U.S. Racial/Ethnic Minority Groups*, *supra* note 44, Fact Sheet, Hispanics and Tobacco, at <<http://www.cdc.gov/ncccdphp/osh/sgr-min-fs-hsp.htm>>.

44. Pierce (1994), *supra* note 26.

See also Pierce (1996), *supra* note 30 (demonstrating the impact of major cigarette advertising campaigns on American youth smoking rates); and David M. Burns et al, *Rates of smoking initiation among adolescents and young adults, 1907-81*, 4 (supp. 1) **TOBACCO CONTROL** S2 (1995).

**SECTION III**

This ordinance shall take effect on the 3 1st day after the date of final passage, but its provisions shall not become operative and enforceable until May 10, 1999.

PASSED AND ADOPTED this day of, 1998, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS  
NOES: SUPERVISORS  
ABSENT: SUPERVISORS  
ABSTAIN: SUPERVISORS

Attest: \_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Chairperson of the Board of Supervisors

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Counsel