

ORDINANCE NO. 38-09 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND ADDING SECTION 7.107 TO THE RICHMOND MUNICIPAL CODE TO PROHIBIT DRUG STORES CONTAINING PHARMACIES FROM SELLING TOBACCO PRODUCTS.

The City Council of the City of Richmond do ordain as follows:

SECTION 1. Findings.

The City Council hereby finds and declares as follows:

1. Tobacco is the leading cause of preventable death in the United States and the leading risk factor contributing to the burden of disease in the world's high-income countries;
2. In addition to its health impact, tobacco related death and disease has an economic impact. In 1999, the economic costs of smoking in California were estimated to be \$475 per resident or \$3,331 per smoker, for a total of nearly \$15.8 billion in smoking-related costs (1999 dollars). Those same costs in 2008 dollars would be \$614 per resident or \$4,310 per smoker for a total of nearly \$20.4 billion dollars;
3. The American Diabetes Association's standards of medical care in diabetes call for smoking cessation as well as prescription drug therapy;
4. Through the sale of tobacco products, drug stores convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services;
5. In 1970, the American Pharmaceutical Association stated that mass display of cigarettes in pharmacies is in direct contradiction to the role of a pharmacy as a public health facility;
6. The Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores containing pharmacies;
7. A majority (78%) of independently owned pharmacies in California have become tobacco free; however, tobacco products are still sold by 94% of chain drug stores;
8. Of the independently owned pharmacies that are tobacco-free, 88% report they have experienced either no loss or an increase in business since removing tobacco from their shelves;
9. An overwhelming percentage of California consumers (96.8%) indicate that they would continue to patronize their pharmacy or drug store as often or more often if it stopped selling tobacco products;
13. A large majority (72.3%) of California consumers are opposed to the sale of tobacco products in drug stores and nearly one-half of California smokers (49.7%) disagree or strongly disagree that tobacco products should be sold through drug stores;
14. Only 13.2% of chain drug store pharmacists are in favor of the sale of tobacco products in drug stores;
15. In a 2003-2004 national survey of pharmacy students, nearly three-quarters (71%) of those surveyed were against tobacco sales in pharmacies. These findings were aligned with the 2003 resolution of the American Association of Colleges of Pharmacy that encourages pharmacy schools to use only training sites that do not sell tobacco products;
16. Drugstores are among the most accessible and trusted sources of health information

among the public;

17. Clinicians can have a significant effect on smokers' probability of quitting smoking;

18. Most health care institutions have adopted policies that have banned tobacco sales and created smoke-free environments. In spite of numerous resolutions and recommendations by state and national pharmacy organizations calling for pharmacies to stop selling tobacco, some community pharmacies in the United States continue to sell tobacco products.

19. Prescription drug sales for chain drug stores represent a significantly higher percentage of total sales than for grocery stores and big box stores that contain pharmacies. According to the 2007 Rite Aide Annual Report, prescription drugs sales represented 63.7% of total sales in fiscal 2007. Walgreen's 2007 Annual Report documented prescription sales as approximately 65% of net sales that year. Pharmacy sales at Safeway have been estimated at 7.5% of annual volume. Costco's prescription sales generated 1.5% of total revenue in 2002. (Findings 1-19 are based primarily on the article "Tobacco sales in pharmacies: time to quit," Hudmon et al. *Tob Control*, 2006; 15: 35-38.)

SECTION 2. The Richmond Municipal Code is hereby amended by adding Section 7.107 to the Richmond Municipal Code as follows:

7.107.10 Definitions

For purposes of this chapter, the following words, terms and phrases shall have the meanings given below:

"City Manager" shall mean the Richmond City Manager or his or her designee.

"Drug Store" shall mean any business or other commercial enterprise that is (1) licensed as a pharmacy by the State of California pursuant to the California Business and Professions Code, and (2) identified as a Drug Store with the California Board of Equalization, or with the Richmond Finance Department, or is otherwise commonly known as a drugstore.

"Tobacco Product" as used in this Chapter shall mean: (1) any substance containing tobacco leaf, including, but not limited, to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

7.107.020 Prohibition Against Tobacco Product Sales at Drug Stores

No Drug Store shall sell, or otherwise distribute, tobacco products.

7.107.030 Penalties and Enforcement

The City may seek compliance with this Chapter by any remedy allowed under the Richmond Municipal Code, including, but not limited to, revocation of Tobacco License pursuant to section 7.106.120, administrative fines (Richmond Municipal Code Chapter 2.62), or the penalties set forth in section 1.04.100 of the Richmond Municipal Code.

7.107.040 Expiration of License to Sell Tobacco

Any license to sell tobacco issued to a pharmacy, as defined by California Business and Professions Code Section 4037, pursuant to Chapter 7.106 shall expire on January 1, 2010, and shall not be renewed if sales of tobacco by that pharmacy are prohibited under this Chapter.

7.107.050 Authority to Adopt Rules and Regulations

The City Manager may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Article.

7.107.060 Preemption

In adopting this Chapter, the Richmond City Council does not intend to regulate or affect the rights or authority of the State to do those things that are required, directed, or expressly authorized by federal or state law. Further, in adopting this Article, Richmond City Council does not intend to prohibit that which is prohibited by federal or state law.

7.107.070 City Undertaking Limited to Promotion of General Welfare

In undertaking the adoption and enforcement of this Article, the Richmond City Council is assuming an undertaking only to promote the general welfare. The City does not intend to impose the type of obligation that would allow a person to sue for money damages for an injury that the person claims to arise as a result of a City officer or employee taking or failing to take an action with respect to any matter covered by this Chapter.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such division shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

SECTION 4. Effective date. This ordinance shall become effective 60 days after the date of its adoption.

First read at a regular meeting of the Council of the City of Richmond held, October 20, 2009, and finally passed and adopted at a regular meeting thereof held November 17, 2009, by the following vote:

AYES: Councilmembers Butt, Ritterman, Rogers, and Viramontes

NOES: Vice Mayor Lopez

ABSTENTIONS: Councilmember Bates

ABSENT: Mayor McLaughlin

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

I certify that the foregoing is a true copy of **Ordinance No. 38-09**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on November 17, 2009.