



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: February 10, 2009 REPORT NO. 09-

ATTENTION: Public Safety and Neighborhood Services Committee  
Agenda of March 4, 2009

SUBJECT: Tobacco Retailer Ordinance Annual Report (December 15, 2007 to  
December 15, 2008) and Cleanup Revision to the Tobacco Retailer  
Ordinance by Amending Section 33.4515 of the San Diego Municipal  
Code

REQUESTED ACTION:

Sub-Item A. The Annual Report is an information item only. No action is required on the part of the Committee or the City Council.

Sub-Item B. Vote on and approve a cleanup revision to the Tobacco Retailer Ordinance by amending Section 33.4515 of the San Diego Municipal Code, related to Additional Penalties, and move forward to City Council for adoption.

RECOMMENDATION:

Sub-Item A. Accept the annual report.

Sub-Item B. Vote on and approve a cleanup revision amending Section 33.4515 of the Tobacco Retailer Ordinance (O-2009-90-DRAFT) and forward to City Council for consideration and adoption.

SUMMARY

This report addresses two items.

Sub-Item A. First, annual reporting, required by San Diego Municipal Code section 33.4519, summarizing activity related to the administration and enforcement of the Tobacco Retailer Ordinance.

Sub-Item B. Second, a request to vote on and approve a cleanup revision to the Tobacco Retailer Ordinance amending Section 33.4515 of the San Diego Municipal Code, related to Additional Penalties.

## BACKGROUND

On October 30, 2007, the San Diego City Council unanimously passed Ordinance O-19674 adding Sections 33.4501 through 33.4519 to the San Diego Municipal Code. The Ordinance requires retailers to have a police permit for Tobacco Products sales. The purpose was to regulate and license retail businesses that sell tobacco products in an effort to discourage the sales of tobacco products to minors. The Ordinance was approved on November 15, 2007, and was implemented during 2008. The intent was to have all costs associated with administration and enforcement of the Ordinance to be borne by the retailer applicants and permit holders.

### Sub-Item A. Annual Reporting Required by SDMC § 33.4519

Section 33.4519(a) requires annual reporting to this Committee summarizing activity related to the administration and enforcement of the Ordinance, including:

- (1) Number of violations,
- (2) Number and amount of fines,
- (3) Number and type of penalties,
- (4) How the fine revenues are being used, and
- (5) Detailing the program budget.

Section 33.4519(b) requires an accounting of all funds received and used for the administration and enforcement of the Ordinance. Section 33.4519(c) requires reporting of the estimated rate of illegal sales of tobacco products to minors within the City of San Diego.

### Sub-Item B. SDMC § 33.4515, Additional Penalties

As currently written, Section 33.4515 incorporates by reference language of Health and Safety Code section 11364.7 [H&S § 11364.7] authorizing revocation of a business license if a person furnishes drug paraphernalia. However, the City of San Diego does not issue nor does it recognize a business license for the purpose of conducting business in the City. Instead, the City issues a business tax certificate upon the payment of business taxes. The business tax certificate is not capable of being revoked in the same manner in which a business license may be revoked. The intent of H&S § 11364.7 is to regulate businesses that violate the law by furnishing drug paraphernalia.

The City has an interest in regulating business activity to discourage violations of the law, including furnishing drug paraphernalia. Therefore, the cleanup revision to the Tobacco Retailer Ordinance amends Section 33.4515 authorizing revocation of a Tobacco Retailer Permit if a person operating as a tobacco retailer is convicted of furnishing drug paraphernalia in violation of H&S § 11364.7, or a lesser-included or lesser-related offense, or another charge in satisfaction of H&S § 11364.7.

A copy of the cleanup revision to the Tobacco Retailer Ordinance (O-2009-09-DRAFT) is attached.

## DISCUSSION

**ADMINISTRATION INFORMATION:**

The San Diego Police Department identified 1,280 businesses that sold or distributed tobacco products in the City of San Diego (using California State Board of Equalization statistics).

On or about December 19, 2007, the Vice Permits and Licensing Unit sent letters to these businesses along with a copy of the city’s tobacco permit application. The Unit met with different business groups to discuss the permit process, and to obtain compliance with the new Ordinance.

As of December 15, 2008, there were 501 businesses in compliance with the Ordinance that had obtained permits. Three (3) businesses were denied a permit due to the background checks. Twelve (12) businesses canceled their requests during the application process.

In February 2009, a second letter was sent to the businesses that were still not in compliance with the tobacco Ordinance.

**INSPECTIONS AND ENFORCEMENT:**

The Permits and Licensing Police Code Compliance officer conducted 60 field inspections from December 15, 2007, to December 15, 2008. In addition, the PCCO made several telephone calls and issued a verbal warning with each call to businesses that were not in compliance with the Ordinance. Approximately 90% of the businesses contacted by telephone came in and completed the tobacco application.

The San Diego Police Department Vice detective and the Vice Permits and Licensing Police Code Compliance officers conducted six (6) undercover juvenile decoy operations in the City of San Diego. A total of 64 inspections were completed, with the following results:

TABLE 1

Date	Number of Inspections	Results	Council Districts
04/27/08	5	No arrest	2
05/18/08	15	4 arrest	3
06/08/08	8	No arrest	6
08/23/08	11	No arrest	5
11/23/08	15	No arrest	3
12/05/08	10	1 arrest	7 & 3

The random target list for each date was selected by Zip Codes. In the future, the random target list will be selected by Council Districts to ensure enforcement in each part of the City.

The position budget is one (1) PCCO assigned to the Tobacco Ordinance, one (1) Public Information Officer, one (1) Clerical Assistant II and enforcement.

The overtime cost for the six (6) undercover operations was \$3, 223.00 (64 total hours at POIID and PCCO pay rate).

**FEES AND FINES:**

The Police Department Permit and Licensing Unit collected \$52,704.00 in regulatory fees and \$25,300.00 in application fees for a total of \$78,004.00 from 488 businesses. In addition, a total of \$1,644.00 in fines was collected.

The total of fees and fines are \$79,648.00.

All monies were sent to the City's general fund.

**ESTIMATED ILLEGAL SALES RATE:**

Based on the 64 undercover inspections that resulted in 5 arrests, the estimated rate of illegal sales to minors is 12.8%.

Respectfully submitted,

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William M. Lansdowne  
Chief of Police

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ATTACHMENT: Cleanup Revision to Tobacco Retailer Ordinance (O-2009-90-DRAFT)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 3, ARTICLE 3, DIVISION 45 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 33.4515, RELATING TO ADDITIONAL PENALTIES FOR TOBACCO RETAILERS

WHEREAS, State Assembly Bill 71, Business and Professions Code section 22971.3, creates a state licensing program for the sale of tobacco products and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law; and

WHEREAS, on October 30, 2007, the Council of the City of San Diego unanimously passed the Tobacco Retailer Ordinance, Ordinance No. O-19674; and

WHEREAS, Health and Safety Code section 11364.7 authorizes revocation of a business license if a person possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; and

WHEREAS, Section 33.4515 of the Tobacco Retailer Ordinance incorporates by reference Health and Safety Code section 11364.7, authorizing the revocation of a business license if a business furnishes drug paraphernalia; and

WHEREAS, the City of San Diego [City] does not issue nor does it recognize a business license for the purpose of conducting business in the City of San Diego; and

WHEREAS, the intent of Health and Safety Code section 11364.7 is to regulate businesses that violate the law by furnishing drug paraphernalia; and

WHEREAS, the City has an interest in regulating business activity to discourage violations of the law, including furnishing drug paraphernalia; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, Division 45, of the San Diego Municipal Code is amended by amending Section 33.4515 to read as follows:

**§33.4515 Additional Penalties**

*A police permit* issued under this Division may be revoked if a *person* operating as a *tobacco retailer* is convicted of a violation of Health and Safety Code section 11364.7, or a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of Health and Safety Code section 11364.7.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Linda L. Peter  
Deputy City Attorney

LLP:ar  
02/23/09  
Or.Dept:Police  
O-2009-90-DRAFT

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor