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**Statement of Bernadette Davison Bantly
Before the San Diego City Council**

October 26, 1992

**A BAN ON SMOKING IN ALL PLACES OF EMPLOYMENT
WILL NOT SERVE THE PUBLIC GOOD**

This statement was prepared by Bernadette Davison Bantly, an attorney in the San Francisco based law firm of Pettit & Martin. Ms. Bantly represents employers in the full range of labor and employment law matters, including workers' compensation, OSHA and issues concerning smoking in the workplace. Ms. Bantly submits this statement at the request of the Tobacco Institute, a Washington, D.C. based trade association.

The Institute opposes the proposed San Diego smoking ordinance and its total ban on smoking in all places of employment. Recognizing that this is a highly emotional issue, we request that the City Council members consider the following three facts when reviewing the proposed smoking ordinance:

1. Fact No. 1: The vast majority of employers in this state and country already address workplace smoking.

Surveys indicate that most employers have already addressed the workplace smoking issue by adopting policies designed to accommodate the interests of both smoking and non-smoking employees. The majority of these employer policies allow workplace smoking to some extent. Those few employers which do not permit any workplace smoking typically restrict smoking in order to protect sensitive equipment, reduce fire hazards, or to limit food contamination risks.

The proposed smoking ordinance would upset these reasonably tailored smoking policies and require radical changes in the workplace. Likewise, by completely banning smoking in restaurants and bars, the bill would also eliminate business owners' discretion to accommodate the interests of their smoking and non-smoking patrons.

Neither employers nor business leaders in this state have deemed it necessary to implement such radical measures. Indeed, with or without the proposed smoking ordinance, employers and business owners concerned about environmental tobacco smoke (ETS) could enact the same smoking ban proposed by the ordinance. However, the vast majority have not done so because such action is so ill-advised from both a business and human relations perspective.

2. Fact No. 2: No California court has ruled that ETS caused an industrial injury to a healthy, non-smoking employee.

Reports of exorbitant workers' compensation awards based on alleged exposure to ETS are grossly exaggerated. There are only a few cases -- in California and elsewhere -- where workers' compensation benefits have been awarded to an employee based on exposure to ETS. In each case, however, the employee was found to be medically hypersensitive. The proposed smoking ordinance is not necessary to protect these hypersensitive employees because they are covered under existing state and federal disability laws. Most importantly, there is apparently no California case where workers' compensation benefits were awarded to a normal, healthy employee based solely on exposure to ETS on the job.

3. Fact No. 3: Unions oppose legislative restrictions on workplace smoking.

Workplace smoking is generally considered to be a mandatory subject of bargaining between employers and unions, and issues relating thereto have traditionally been resolved through negotiation. However, the proposed smoking ordinance would completely remove this issue from the collective bargaining process and impose a total ban on smoking. This type of legislation is generally, and often vigorously, opposed by labor unions. For example, in 1986 the AFL-CIO issued a National Resolution stating: "The AFL-CIO believes that issues related to smoking on the job can best be worked out voluntarily in individual workplaces between labor and management in a

manner that protects the interests and rights of all workers and not by legislative mandate." Moreover, the National Labor Relations Board has recently unanimously affirmed this position.

Conclusion

In conclusion, we respectfully request that the City Council members carefully consider the foregoing facts. In addition, we would like to point out another obvious problem with the proposed smoking ban. That is, the bill makes smoking in places of employment a crime, but sets forth no realistic enforcement procedures. Therefore, it will force employers to act as "smoking police" and subject them to stiff penalties if they do not comply. This puts too onerous a burden on employers who often do not have the ability or resources to monitor every aspect of their employees' behavior.

For all of the foregoing reasons, we urge the Committee members to vote against the proposed smoking ban. It is unrealistic, unnecessary, and fails to balance the competing interests of your nonsmoking and smoking constituents, as well as employers, labor unions and the business community.

Respectfully submitted,


Bernadette Davison Bantly