

Addendum to August 23, 2005 Riverside County Board of Supervisors Agenda No. 3.19 regarding INTRODUCTION OF ORDINANCE 838, an Ordinance of the County of Riverside Requiring Merchants to have a License to Retail Tobacco.

At the August 23, 2005 Board of Supervisors meeting, Supervisor Jeff Stone raised a question regarding the potential revenue generated by fines stemming from the proposed Tobacco Retail Licensing Ordinance, and the possibility that some of that revenue could be used to offset the annual license fee.

Currently, fine revenue from California Penal Code Section 308 (PC 308) citations (prohibits the sale of tobacco to anyone under the age of 18) is by statute specifically earmarked for the courts in Riverside County. This state law carries a fine of up to \$250 per count, and the Department of Public Health estimates that there were fewer than 6 citations for PC 308 countywide in 2004.

The proposed Ordinance does not create a new fine structure, but does give the Department of Public Health the administrative authority to suspend or revoke the license of merchants who violate existing tobacco laws especially PC 308. Under the proposed Ordinance, PC 308 will continue to be used as a criminal penalty and the administrative authority of license suspension will be the real deterrent. Based on the experience of other counties and cities in the state who have adopted retail licensing ordinances, we can expect 10 to 15 PC 308 citations in the first year of licensing due to an increase in our decoy "sting" operations. After the first year the violations are expected to decline.

In addition to fines generated by PC 308 citations, the proposed ordinance does mention in Section 10 the option of a plea bargain. In lieu of a long suspension, first time offenders may be offered a shorter license suspension and a larger fine. This would be at the discretion of the District Attorney. Any funds coming to the Department of Public Health expected to be minimal and will decline over time.

In summary, the fines stemming from PC 308 citations will continue to be earmarked for the courts. Any funds coming to the Department of Public Health from plea bargaining is expected to be minimal, and will decline over time.

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

570



FROM: Community Health Agency/Department of Public Health

SUBMITTAL DATE:

July 19, 2005

SUBJECT: Riverside County Ordinance to License Tobacco Retailers and amend Ordinance No. 440 pursuant to Resolution No. 440-8610.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Introduce and set for Public Hearing (Clerk to advertise) the adoption of Ordinance 838, an Ordinance requiring merchants to have a license to retail tobacco, and at the close of the Public Hearing adopt the ordinance and approve the license fee;
2. Amend Ordinance No. 440 pursuant to Resolution No. 440-8610 submitted herewith; and
3. Direct the Auditor-Controller to make the budget adjustments on the Schedule A (attached).

BACKGROUND: According to California State Department of Health Services, Riverside County has one of the highest tobacco sales to minor's rates in the state at 44%, compared to a statewide average of 12%. A tobacco retailer license would improve public health by putting tobacco retailer business at risk if they illegally sell to minors.

(continued)
SH:ar

FORM APPROVED
COUNTY COUNSEL

JUL 29 2005

BY *[Signature]*

Susan D. Harrington
Susan Harrington, Director
Department of Public Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 875,000	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2005/06

SOURCE OF FUNDS: Annual license fees from tobacco retailers	Positions To Be Deleted Per A-30	<input checked="" type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**

County Executive Office Signature *Dan Martin*

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above ordinance is approved as introduced with waiver of the reading, and is set for public hearing on Tuesday, September 13, 2005 at 9:30 a.m.

Ayes: Buster, Tavaglione, Stone and Ashley
Nays: None
Absent: Wilson
Date: August 23, 2005
xc: CHA/Public Health, COB(2)

Nancy Romero
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: | **District:** | **Agenda Number:** 9.2

FISCAL PROCEDURES APPROVED
ROBERT E. BYRD, Auditor-Controller
BY *[Signature]* 8/10/05 Deputy

Approved by Ronald W. Komers/
Asst. County Executive Officer/
Human Resources Director

Policy
 Policy
 Consent
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

(Background continued)

Tobacco continues to be a public health concern and a chronic economic burden to Riverside County taxpayers. Nearly \$250 million is spent annually on treating sick and dying smokers by taxpayers in Riverside County. Tobacco related expenditures are 100% preventable. Ten thousand 12 to 17 year olds, (average age 14) light up for the first time each year, and 5 million packs of cigarettes are sold illegally every year in Riverside County according to statistics published in the American Journal of Public Health in 1999.

According to the Surgeon General of the United States, one third of all teens who begin smoking will die prematurely of tobacco related diseases.

Over the past 5 years the Department of Public Health has targeted tobacco retailers in an education campaign to end the sale of tobacco to minors. In that time period, sales to minor's rates have nearly tripled, from 16% to over 44%. These figures are based on "sting" operations conducted by the State Department of Health Services.

Licensing of tobacco products has been shown to dramatically reduce the rate of illegal sales to minors. In one example, Contra Costa County, one of the most recent California Counties to adopt a licensing ordinance, has experienced an 80% decline in sales to minor's in the first six months following licensing in 2004. The average tobacco retailer rings up \$10,000 per month in legal tobacco sales, and merchants will not want to jeopardize their license by selling to minors and breaking the law. Licensing provides a serious financial deterrent to illegal sales. Forty- four cities and counties in the State of California have already adopted tobacco licensing as a means of combating sales to minors.

Additionally the Riverside County Youth Commission has gone on record with a unanimous vote dated March 31, 2005, recommending the Board of Supervisors adopt a tobacco retail licensing ordinance (Attachment 1). The proposed ordinance also has the backing of virtually every public health, education, medical, and youth organization in Riverside County. A list of letters of support is attached (Attachment 2).

The cost of administering a licensing program would be covered completely by the annual license fee with no net County cost. The average tobacco merchant could recover the cost of the annual fee (\$350) by adding one penny to each pack of cigarettes.

Licensing will reduce youth access to tobacco. In the long run it will save lives, and save hundreds of millions of dollars now being spent to treat smokers in Riverside County. It will also be a big factor in creating a healthy, non-addicted workforce necessary in a growing, dynamic economy such as Riverside County's.

A Riverside County Tobacco Retail License Program will include issuance of licenses, oversight, regulation and enforcement of existing tobacco laws. The Tobacco Retail License Program will be administered by the Department of Public Health. It is the goal of this licensing effort to have all 24 cities in Riverside County adopt an identical ordinance, and defer to the County for enforcement, oversight and regulation, using the existing model of food service regulation by the Riverside County Department of Environmental Health. The Director of the Department of Public Health will report annually to the Board of Supervisors on sales to minors' rates in Riverside County.

PERSONNEL:

Classification	Class Code	Number of Positions	Salary Range
Public Health Prog. Coord.II	37566	1	\$46,788-\$61,019
Staff Analyst II	74106	1	\$40,147-\$52,317
Office Assistant III	13866	1	\$22,852-\$29,729
Office Assistant II	13865	2	\$20,579-\$26,780
Health Education Asst. II	73458	3	\$31,828-\$41,438
Sr. Health Educator (Desert)	73487	1	\$40,566-\$52,861
Health Services Asst.	57793	1	\$23,205-\$30,226

Staffing needs will vary depending on the number of tobacco retailers under license. Current budget is based on 2500 retailers.

JOB FUNCTION:

Public Health Program Coordinator II

This individual has overall responsibility for development and implementation of the county wide tobacco retail licensing program. The Program Coordinator hires staff to implement the licensing program, works with the 24 Riverside County cities to adopt an identical ordinance to ensure the uniformity in the county, develops partnerships with law enforcement and the District Attorney's office in the decoy and "attempts to buy" operations, reports to the Director of Public Health on a quarterly basis documenting the number and location of tobacco retailers and the current sales to minors rate in the County, and ensures that all tobacco laws are evenly and fairly enforced in Riverside County.

Staff Analyst

The Staff Analyst assists the Public Health Program Coordinator II in budget preparation, monitors expenses and revenue, develops policies and procedures related to fiscal issues and accountability, and conducts staff training on program reporting responsibilities.

Office Assistant III

The Office Assistant III has the lead role in clerical support for the program. In addition to performance of tasks assigned to an Office Assistant III, this individual monitors the daily clerical operations such as phones, office activity related to program, and customer service.

Office Assistant II

The Office Assistant II positions will handle daily clerical assignments critical to the effective functioning of the program. These individuals process license applications, respond to information requests via mail and phone, and maintain files on all licensees. One position will be based in Riverside and one in Indio.

Senior Health Educator

The Senior Health Educator will be the lead in the Indio office and will train staff and interact with the tobacco retailers. The Senior Health Educator will also train youth volunteers for the decoy program.

Health Education Assistant

The Health Education Assistants will handle the day to day interactions with tobacco retailers including the inspections to ensure compliance with tobacco laws and to verify the possession of a current and valid tobacco retail license. The Health Education Assistants will also partner with law enforcement to conduct "sting operations" using underage decoys to determine who is selling tobacco to minors. The three Health Education Assistants will be based in the Western, Mid- and East-County areas.

Health Services Assistant

The Health Service Assistant will train the youth volunteers. The Health Services Assistant will be supervised by the Senior Health Educator and will conduct training Countywide. If required, they will be trained to assist with or conduct routine inspection of licensees under the direction of the Senior Health Educator.

Contracts

The Department of Public Health will contract with local law enforcement to assist with the "sting" operations using undercover youth decoys.

FEE SCHEDULE:

An annual fee of \$350 will be established for each fixed address tobacco retailer. The estimated number of tobacco retailers countywide is 2,500 (Attachment 3).

FINANCIAL DATA:

The proposed fee has been reviewed and approved by the County Auditor Controller. If approved, the fee will result in an increase in revenue to the Department of Public Health of approximately \$875,000 annually.

1 **ORDINANCE NO. 838**

2 **AN ORDINANCE OF THE COUNTY OF RIVERSIDE**
3 **REGARDING THE LICENSURE OF TOBACCO RETAILERS**
4

5 The Board of Supervisors of the County of Riverside Ordains as Follows:

6 **Section 1. PREAMBLE.**

7 Prior to the adoption of this ordinance, the Board of Supervisors reviewed the following
8 Statistics:

- 9 a. Minors obtain cigarettes and other tobacco products at alarming rates. Each year, an
10 estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of
11 age, yielding the tobacco industry \$480 million in profits from underage smokers
12 nationwide. In Riverside County, 10,000 teens light up for the first time and
13 purchase 5 million packs of cigarettes a year.
- 14 b. In a 2004 California youth-buying survey, 12% of retailers surveyed unlawfully
15 sold tobacco product to minors.
- 16 c. The rate of tobacco sales to minors in Riverside County is one of the highest in the
17 State at 44%.
- 18 d. 88% of adults who have ever smoked tried their first cigarette by the age of 18, and
19 the average age at which smokers try their first cigarette is 14½.
- 20 e. A requirement for a tobacco retailer license will not unduly burden legitimate
21 business activities of retailers who sell or distribute cigarettes or other tobacco
22 products to adults. It will, however, allow the County to regulate the operation of
23 lawful businesses to discourage violations of federal, state, and local tobacco-related
24 laws.
- 25 f. 65% of California's key opinion leaders surveyed support implementation of
26 tobacco-licensing requirements.
27
28

1 **Section 2. PURPOSE AND INTENT.** Riverside County has a substantial interest in
2 promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in
3 discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws
4 prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in
5 protecting children from being lured into illegal activity through the misconduct of adults. It is the intent
6 of this ordinance to encourage responsible tobacco retailing and to discourage violations of tobacco-
7 related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to
8 minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are
9 criminally proscribed or to alter the penalty provided therefore.

10 **Section 3. DEFINITIONS.** For the purposes of this ordinance, the following words and
11 terms shall have the following meanings:

- 12 a. “Arm’s Length Transaction” shall mean: a sale in good faith and for valuable
13 consideration that reflects the fair market value in the open market between two
14 informed and willing parties, neither under any compulsion to participate in the
15 transaction. A sale between relatives, related companies or partners, or a sale for
16 the primary purpose of avoiding the effect of the violations of this Ordinance is
17 presumed not to be an Arm’s Length Transaction.
- 18 b. “Department” shall mean: County Health Officer or his or her designee.
- 19 c. “Person” shall mean: any natural person, partnership, cooperative association,
20 corporation, personal representative, receiver, trustee, assignee, or any other legal
21 entity.
- 22 d. “Proprietor” shall mean: a Person with an ownership or managerial interest in a
23 business. An ownership interest shall be deemed to exist when a Person has a ten
24 percent (10%) or greater interest in the stock, assets, or income of a business other
25 than the sole interest of security for debt. A managerial interest shall be deemed to
26 exist when a Person can or does have, or can or does share, ultimate control over
27 the day-to-day operations of a business.
- 28 e. “Self-Service Display” shall mean: the open display of Tobacco Products or

1 Tobacco Paraphernalia in a manner that is accessible to the general public without
2 the assistance of the retailer or employee of the retailer. A Vending Machine is a
3 form of Self-Service Display.

- 4 f. "Smoking" shall mean: possessing a lighted Tobacco Product, Tobacco
5 Paraphernalia, or any other weed or plant (including a lighted pipe, lighted cigar, or
6 lighted cigarette of any kind), the lighting of a Tobacco Product, Tobacco
7 Paraphernalia, or any other weed or plant (including a pipe, cigar, or cigarette of
8 any kind).
- 9 g. "Tobacco Paraphernalia" shall mean: cigarette papers or wrappers, pipes, holders of
10 smoking materials of all types, cigarette rolling machines, and any other item
11 designed for the smoking, preparation, storing, or consumption of Tobacco
12 Products.
- 13 h. "Tobacco Product" shall mean: (1) any substance containing tobacco leaf,
14 including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco,
15 dipping tobacco, bid is, or any other preparation of tobacco; and (2) any product or
16 formulation of matter containing biologically active amounts of nicotine that is
17 manufactured, sold, offered for sale, or otherwise distributed with the expectation
18 that the product or matter will be introduced into the human body but does not
19 include any product specifically approved by the Federal Food and Drug
20 Administration for use in treating nicotine or tobacco product dependence.
- 21 i. "Tobacco Retailer" shall mean: any Person who sells, offers for sale, or does or
22 offers to exchange for any form of consideration, tobacco, Tobacco Products, or
23 Tobacco Paraphernalia; "Tobacco Retailing" shall mean the doing of any of these
24 things. This definition is without regard to the quantity of tobacco, Tobacco
25 Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for
26 exchange.

1 **Section 4. **TOBACCO LICENSE PREREQUISITE; APPLICATION PROCESS.****

- 2 a. It shall be unlawful for any Person to act as a Tobacco Retailer without first
3 obtaining and maintaining a valid Tobacco Retailer's license pursuant to this
4 Ordinance for each location at which that activity is to occur. Tobacco Retailing
5 without a valid Tobacco Retailer's license shall constitute a public nuisance.
- 6 b. A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license,
7 including, for example, a revoked license:
- 8 1. Shall keep all Tobacco Products and Tobacco Paraphernalia from public
9 view. The public display of Tobacco Products or Tobacco Paraphernalia in
10 violation of this provision shall constitute an "offer for sale" for the
11 purposes of Section 5.c.
- 12 2. Shall not display any advertisement relating to Tobacco Products or
13 Tobacco Paraphernalia that promotes the sale or distribution of such
14 products from the Tobacco Retailer's location or that would lead a
15 reasonable consumer to believe that such products can be obtained at the
16 Tobacco Retailer's location.
- 17 c. Nothing in this ordinance shall be construed to grant any Person obtaining and
18 maintaining a Tobacco Retailer's license any status or right other than the right to
19 act as a Tobacco Retailer at the location in the County identified on the face of the
20 license. For example, nothing in this ordinance shall be construed to render
21 inapplicable, supercede, or apply in lieu of any other provision of applicable law,
22 including, without limitation, any condition or limitation on smoking in enclosed
23 places of employment made applicable to business establishments by California
24 Labor Code section 6404.5.
- 25 d. Application for a Tobacco Retailer's license shall be submitted in the name of each
26 Proprietor proposing to conduct retail tobacco sales and shall be signed by each
27 Proprietor or an authorized agent thereof. It is the responsibility of each Proprietor
28 to be informed of the laws affecting the issuance of a Tobacco Retailer's license. A

1 license that is issued in error or on the basis of false or misleading information
2 supplied by a Proprietor shall be revoked pursuant to Section 10.d. of this
3 ordinance.

4 e. In addition to any other penalty under this ordinance a Person found to have
5 engaged in Tobacco Retailing without a valid Tobacco Retailers license shall be
6 ineligible to apply for or be issued a Tobacco Retailing license according to the
7 following:

8 1. After a first violation for a Person within any sixty-month (60) period, no
9 new license may issue for the Person as a Proprietor until thirty (30) days
10 have passed from the date of last violation.

11 2. After a second violation for a Person within any sixty-month (60) period, no
12 new license may issue for the Person as a Proprietor until ninety (90) days
13 have passed from the date of last violation.

14 3. After three or more violations for a Person within any sixty-month (60)
15 period, no new license may issue for the Person as a Proprietor until five (5)
16 years have passed from the date of last violation.

17 4. Each day that a Person engages in Tobacco Retailing without a valid
18 Tobacco Retailers license shall constitute a separate violation.

19 f. Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in
20 violation of this ordinance are subject to seizure and forfeiture. Forfeited Tobacco
21 Products and Tobacco Paraphernalia shall be destroyed.

22 g. All applications shall be submitted on a form supplied by the Department and shall
23 contain the following information:

24 1. The name, address, and telephone number of each Proprietor.

25 2. The business name, address, and telephone number of the single fixed
26 location for which a Tobacco Retailer's license is sought.

27 3. The name and mailing address authorized by each Proprietor to receive all
28 license-related communications and notices (the "Authorized Address"). If

1 an Authorized Address is not supplied, each Proprietor shall be understood
2 to consent to the provision of notice at the business address specified in
3 subparagraph 2. above.

- 4 4. Proof that the location for which a Tobacco Retailer's license is sought has
5 been issued a valid state tobacco retailer's license by the California Board
6 of Equalization.
- 7 5. Whether or not any Proprietor is a Person who has been determined to have
8 violated this ordinance or has been a Proprietor at a location that has been
9 determined to have violated this ordinance and, if so, the dates and locations
10 of all such violations.
- 11 6. Such other information as the Department deems necessary for the
12 administration or enforcement of this ordinance.

13 **Section 5. LICENSE ISSUANCE; STANDARDS.**

- 14 a. No license may issue to authorize Tobacco Retailing at other than a fixed location.
15 For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from
16 vehicles are prohibited.
- 17 b. Upon the receipt of an application for a Tobacco Retailer's license and the license
18 fee, the Department shall issue a license unless substantial record evidence
19 demonstrates that one of the following bases for denial exists:
- 20 1. The application is incomplete or inaccurate.
- 21 2. The application seeks authorization for Tobacco Retailing at a location for
22 which a prohibition on issuing licenses is in effect pursuant to Section 10.b.
23 of this ordinance. However, this subparagraph shall not constitute a basis
24 for denial of a license if the applicant provides the County with
25 documentation demonstrating by clear and convincing evidence that the
26 applicant has acquired or is acquiring the location or business in an Arm's
27 Length Transaction.
- 28

- 1 3. The application seeks authorization for Tobacco Retailing for a Proprietor
2 for which a prohibition on issuing licenses is in effect pursuant to Section
3 10.b. of this ordinance.
- 4 4. The application seeks authorization for Tobacco Retailing that is prohibited
5 pursuant to Section 5.a. of this ordinance, that is unlawful pursuant to any
6 other County ordinance, or that is unlawful pursuant to any other local,
7 state, or federal law.

8 **Section 6.** **LICENSES NONTRANSFERABLE.**

- 9 a. A Tobacco Retailer's license is nontransferable. If the information required in the
10 license application pursuant to Section 4.g. 1., 2., or 3. changes, a new Tobacco
11 Retailer's license is required before the business may continue to act as a Tobacco
12 Retailer. For example, if a Proprietor to whom a license has been issued changes
13 business location, that Proprietor must apply for a new license prior to acting as a
14 Tobacco Retailer at the new location. Or if the business is sold, the new owner
15 must apply for a license for that location before acting as a Tobacco Retailer.
- 16 b. Notwithstanding any other provision of this ordinance violations accumulated
17 against a location or business shall continue to be counted against the location or
18 business unless the location or business has been transferred to a new Proprietor
19 and the new Proprietor provides the County with documentation demonstrating by
20 clear and convincing evidence that the new Proprietor has acquired or is acquiring
21 the location or business in an Arm's Length Transaction.

22 **Section 7.** **FEES FOR LICENSE.**

- 23 a. A Tobacco Retailer license is invalid unless the appropriate fee has been paid in
24 full and the term of the license has not expired. The term of a Tobacco Retailer
25 license is one (1) year. Each Tobacco Retailer shall apply for the renewal of his or
26 her Tobacco Retailer's license no later than thirty (30) days prior to expiration of
27 the term.

1 **Section 8. OTHER REQUIREMENTS AND PROHIBITIONS.**

- 2 a. DISPLAY OF LICENSE. Each license shall be prominently displayed in a publicly
3 and readily visible location at the licensed location.
- 4 b. POSITIVE IDENTIFICATION REQUIRED. No Person shall engage in Tobacco
5 Retailing without first examining the identification of the purchaser, if the
6 purchaser reasonably appears under the age of twenty-seven (27) years old, and
7 confirming that the proposed sale is to a purchaser who is at least the minimum age
8 in state law for being sold the Tobacco Product or Tobacco Paraphernalia.
- 9 c. MINIMUM AGE FOR PERSONS SELLING TOBACCO. No Person shall engage
10 in Tobacco Retailing if the Person is younger than the minimum age in state law
11 for being sold or for possessing any Tobacco Product.
- 12 d. SELF-SERVICE DISPLAYS PROHIBITED. No Person shall display Tobacco
13 Products or Tobacco Paraphernalia by means of a Self-Service Display or to engage
14 in Tobacco Retailing by means of a Self-Service Display. A Tobacco Retailer who
15 chooses to display Tobacco Products or Tobacco Paraphernalia in a locked cabinet,
16 case or similar structure must post a clear and conspicuous sign on or within five
17 feet of the display stating that the cabinet, case or structure is locked at all times.

18 **Section 9. LICENSE VIOLATION.**

- 19 a. VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a
20 Tobacco Retailer's license for a licensee, including his or her agent or employee, to
21 violate any of the following laws:
- 22 1. Any local, state, or federal tobacco-related law.
- 23 2. Local, state, or federal sign laws.
- 24 3. Local, state, or federal laws restricting the age of purchase for any product.
- 25 b. LICENSE COMPLIANCE MONITORING.
- 26 1. Compliance with this ordinance shall be monitored by the Department.
27 Any peace officer may enforce the penal provisions of this ordinance.
- 28 2. The Department shall check the compliance of each Tobacco Retailer at

1 least three (3) times per twelve (12) month period. The Department may
2 check the compliance of Tobacco Retailers previously found to be in
3 compliance a fewer number of times so that the Department may check the
4 compliance of Tobacco Retailers previously found in violation a greater
5 number of times.

- 6 3. Compliance checks shall determine, at a minimum, if the Tobacco Retailer
7 is conducting business in a manner that complies with tobacco laws
8 regulating youth access to tobacco. When appropriate, the compliance
9 checks shall determine compliance with other tobacco-related laws.
- 10 4. The County shall not enforce any tobacco-related minimum-age law against
11 a Person who otherwise might be in violation of such law because of the
12 Person's age (hereinafter "Youth Decoy") if the potential violation occurs
13 when:
- 14 i. the Youth Decoy is participating in a compliance check supervised
15 by a peace officer or a code enforcement official; or
 - 16 ii. the Youth Decoy is participating in a compliance check funded in
17 part, either directly or indirectly through sub-contracting, by the
18 county Department of Health and Human Services or funded in part,
19 either directly or indirectly through sub-contracting, by the
20 California Department of Health Services.

- 21 c. NO CONTEST PLEA. A plea of "no contest" or its equivalent by a Tobacco
22 Retailer for a violation of any law designated in subsection (a) above shall operate
23 as an admission that this ordinance has been violated for the purposes of license
24 revocation.

25 **Section 10. REVOCATION OF LICENSE.**

- 26 a. REVOCATION OF LICENSE FOR VIOLATION.

- 27 1. In addition to any other penalty authorized by law, a Tobacco Retailer's
28 license shall be revoked if the County Hearing Officer finds, after notice to

1 the licensee and opportunity to be heard, that the licensee, including his or
2 her agents or employees, has violated any of the requirements, conditions, or
3 prohibitions of this ordinance (hereinafter "License Violation").

4 2. No attorney may take part in the defense of a license revocation proceeding
5 unless the attorney's participation meets any exception for attorneys
6 appearing in small claims court under California Code of Civil Procedure
7 section 116.530. This prohibition shall not apply if the County elects to be
8 represented by an attorney in the proceeding and notice of the election is
9 include in the notice given pursuant to subsection (1) above.

10 3. For a first or second alleged License Violation within any sixty-month (60)
11 period, the County Counsel may engage in settlement negotiations and may
12 enter into a settlement agreement with a Tobacco Retailer alleged to have
13 violated this ordinance without approval from the Board of Supervisors.
14 Settlements shall not be confidential and shall contain the following
15 minimum terms:

16 i. After an alleged first License Violation at a location within any sixty-month
17 (60) period:

- 18 a. An agreement to stop acting as a Tobacco Retailer for at least one
19 (1) day;
- 20 b. A settlement payment to the County of at least one thousand dollars
21 (\$1000); and
- 22 c. An admission that the violation occurred and a stipulation that the
23 violation will be counted when considering what penalty will be
24 assessed for any future violations.

25 ii. After an alleged second License Violation at a location within any sixty-
26 month (60) period:

- 27 a. an agreement to stop acting as a Tobacco Retailer for at least ten
28 (10) days;

- b. a settlement payment to the County of at least five thousand dollars (\$5000); and
- c. an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

b. NEW LICENSE AFTER REVOCATION FOR VIOLATION.

- 1. After a first License Violation at a location within any sixty-month (60) period, no new license may issue for the location until ten (10) days have passed from the date of the last revocation or violation, whichever is later.
- 2. After a second License Violation at a location within any sixty-month (60) period, no new license may issue for the location until thirty (30) days have passed from the date of the last revocation or violation, whichever is later.
- 3. After of a third License Violation at a location within any sixty-month (60) period, no new license may issue for the location until ninety (90) days have passed from the date of the last revocation or violation, whichever is later.
- 4. After four or more License Violations at a location within any sixty-month (60) period, no new license may issue for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.

c. EXPIRATION OF LICENSE. A Tobacco Retailer's license that is not timely renewed pursuant to Section 7.a. shall expire at the end of its term. To reinstate a license that has expired due to the failure to timely pay the renewal fee, the proprietor must:

- 1. Submit the renewal fee plus a reinstatement fee of ten percent (10%) of the renewal fee.
- 2. Submit a signed affidavit affirming that the Proprietor has not sold any Tobacco Product or Tobacco Paraphernalia during any period that the license was expired.

1 d. REVOCATION OF LICENSE ISSUED IN ERROR. A Tobacco Retailer's
2 license shall be revoked if the Department finds, after notice and opportunity to be
3 heard, that one or more of the bases for denial of a license under Section 5.b.
4 existed at the time application was made or at anytime before the license issued.
5 The revocation shall be without prejudice to the filing of a new application for a
6 license.

7 **Section 11. ENFORCEMENT.** The remedies provided by this ordinance are
8 cumulative and in addition to any other remedies available at law or in equity.

9 a. Whenever evidence of a violation of this ordinance is obtained in part through the
10 participation of a Person under the age of eighteen (18) years old, such a Person
11 shall not be required to appear or give testimony in any civil or administrative
12 process brought to enforce this ordinance and the alleged violation shall be
13 adjudicated based upon the sufficiency and persuasiveness of the evidence
14 presented.

15 b. Violations of this ordinance are subject to a civil action brought by the District
16 Attorney or County Counsel, punishable by:

- 17 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one
18 thousand dollars (\$1000) for a first violation in any sixty-month (60) period;
19 or
- 20 2. A fine not less than one thousand five hundred dollars (\$1500) and not
21 exceeding two thousand five hundred dollars (\$2,500) for a second violation
22 in any sixty-month (60) period; or
- 23 3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten
24 thousand dollars (\$10,000) for a third or subsequent violation in any sixty-
25 month (60) period.

26 c. Violations of this ordinance may, in the discretion of the District Attorney or
27 County Counsel, be prosecuted as infractions or misdemeanors.
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- 1 d. Causing, permitting, aiding, abetting, or concealing a violation of any provision of
2 this ordinance shall constitute a violation.
- 3 e. Violations of this ordinance are hereby declared to be public nuisances.
- 4 f. In addition to other remedies provided by this ordinance or by other law, any
5 violation of this ordinance may be remedied by a civil action brought by the
6 County Counsel, including, but not limited to, administrative or judicial nuisance
7 abatement proceedings, civil or criminal code enforcement proceedings, and suits
8 for injunctive relief.

9 **Section 12. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence,
10 clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held
11 to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or
12 enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or
13 phrases of this Ordinance, or its application to any other person or circumstance. The Board of
14 Supervisors of the County of Riverside hereby declares that it would have adopted each section,
15 subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one
16 or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be
17 declared invalid or unenforceable.

18 G:\Property\MDKing\Tobacco Ord.041305.doc

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1 RESOLUTION NO. 440-8610

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3 BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in
4 regular session assembled on September 13, 2005, that pursuant to Section 5.A. of
5 Ordinance No. 440, the Director of Public Health of Ordinance No. 440, is authorized to make the
6 following listed change(s), operative on the date of approval, as follows:

7

<u>Job Code</u>	<u>+/-</u>	<u>Department ID</u>	<u>Class Title</u>
8 73458	+ 3	4200101100	Health Education Assistant II
9 57793	+ 1	4200101100	Health Services Assistant
10 13865	+ 2	4200101100	Office Assistant II
11 13866	+ 1	4200101100	Office Assistant III
12 37566	+ 1	4200101100	Public Health Program Coordinator II
13 73487	+ 1	4200101100	Senior Health Educator
14 74106	+ 1	4200101100	Staff Analyst II

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SCHEDULE A
Community Health Agency
Department of Public Health
Budget Adjustment
Fiscal Year 2005/06

INCREASE IN APPROPRIATIONS:

10000-4200101100 – 510040	Regular Salaries	\$358,024
10000-4200101100 – 518100	Budgeted Benefits	\$161,404
10000-4200101100 – 523700	Office Supplies	\$ 10,204
10000-4200101100 – 523780	Printing	\$ 10,000
10000-4200101100 – 523760	Postage	\$ 2,220
10000-4200101100 – 523640	Desktop Computers	\$ 14,400
10000-4200101100 – 523640	Laptop Computers	\$ 2,600
10000-4200101100 – 520330	Communications-Telephones	\$ 6,480
10000-4200101100 – 520330	Cell Phones	\$ 4,320
10000-4200101100 – 526700	Space Rent	\$ 39,798
10000-4200101100 – 525440	Contracts	\$ 82,000
10000-4200101100 – 527880	Training	\$ 6,000
10000-4200101100 – 528960	Travel/Lodging	\$ 3,000
10000-4200101100 – 529040	Private Mileage	\$ 11,664
10000-4200101100 – 523230	Health Education Materials	\$ 3,539
10000-4200101100 – 523230	Incentives	\$ 2,000
10000-4200101100 – 526420	Advertisement	\$ 11,000
10000-4200101100 – 529000	Miscellaneous Travel Expense	\$ 500
10000-4200101100 – 527780	Special Program Expense	\$ 5,000
10000-4200101100 – 523840	Computer Software	\$ 10,000
10000-4200101100 – 526520	Copier	\$ 16,000
10000-4200101100 – 521380	Copier-Maintenance	\$ 3,000
10000-4200101100 – 524740	Indirect Cost	\$111,847

TOTAL INCREASE IN APPROPRIATIONS **\$875,000**

INCREASED IN REVENUE-LICENSE FEES

10000-4200101100-6610-721000 **\$875,000**

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Jesse Melgar, Chair, Youth Commission **SUBMITTAL DATE:** March 31, 2005

SUBJECT: Tobacco Retailer Licensing Ordinance

RECOMMENDED MOTION: That the Riverside County Board of Supervisors support the Youth Commission's unanimous recommendation to adopt a County Ordinance that would require all tobacco retailers to have a specific license to sell tobacco.

BACKGROUND: At the regularly scheduled meeting of the Youth Commission September 23, 2004, Mr. Robert Peterson from the Riverside County Department of Public Health gave a presentation on the illegal sale of tobacco to minors. We will not win the war on tobacco by developing better treatments for lung cancer. We will win the war by keeping a generation of youth from becoming addicted. Each year in Riverside County, 5 million packs of cigarettes are sold to youth 12-17 years of age. Nearly half of all tobacco retailers in Riverside County, and two thirds of retailers in the City of Riverside sell tobacco to minors. Currently there is virtually no deterrent not to sell to minors, and county merchants are making thousands of dollars each year on illegal sales. Ten thousand underage kids in Riverside County start smoking each year. An effective way to reduce illegal tobacco sales to minors is through licensing. A license that can be suspended or revoked for illegally selling to minors is a good deterrent for merchants. The average tobacco merchant does \$120,000 per year in legal tobacco sales and wouldn't want to risk losing the tobacco license by selling to a minor. Even though it is against the law to sell to minors, merchants know the chances of being caught are very slim, and if caught the penalty is a slap on the wrist.

On the 25th of October 2004, Mr. Peterson from the Health Department returned to the regularly scheduled meeting of the Youth Commission and presented some additional information on how licensing has reduced sales to minors by 90 % in some cities and counties that have already adopted it. The Commission then asked questions and voted unanimously to recommend to the Board of Supervisors that they adopt a new County ordinance that would require a license to sell tobacco.


Jesse Melgar, Chair


Martha Arciniega, Co-Chair


Amy Bataon, Secretary


Patrick McCradie


Alyson Spenser

Dist. All

**Letters of Support for the Proposed Tobacco
Retail
Licensing Ordinance.**

1. Riverside County Tobacco Coalition. (15 members including health, education and law enforcement agencies in Riverside County)
2. American Lung Association
3. American Heart Association
4. Riverside County Medical Association (Representing over 1,000 physicians)
5. California Dental Society
6. University of California, Riverside
7. Riverside Youth Service Center
8. YMCA
9. YWCA
10. California Baptist University
11. First Five Commission
12. Riverside Community Health Foundation
13. In the Zone Tobacco Free Project
14. Corona/Norco Unified School District
15. La Sierra University

FEE SCHEDULE

Riverside County Retail Tobacco Licensing Ordinance Ordinance 838 (Proposed)

Annual Fee: \$350 per fixed address tobacco retailer

Estimated number of tobacco retailers Countywide: 2500

Annual income from license fees: \$875,000

Annual budget for oversight and regulation: \$875,000
(See attachment for full budget)

Productivity Standards:

1. Five inspection staff- responsible for 500 retailers each.
2. Each retailer will have at least one full inspection annually
3. In addition, each inspection staff shall conduct random sting operations in their assigned territory coordinated with local law enforcement. Targets will be selected on a random basis as well as on complaints and on past history of selling to minors by specific merchants. A minimum of 10% of all tobacco retailers Countywide will be subject to decoy sting operations each year.