

1 **ORDINANCE NO. 838**

2 **(AS AMENDED THROUGH 838.1)**

3 **AN ORDINANCE OF THE COUNTY OF RIVERSIDE AMENDING ORDINANCE**

4 **NO. 838 REGARDING THE PERMITTING OF TOBACCO RETAILERS**

5
6 The Board of Supervisors of the County of Riverside ordains as follows:

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

16 **Section 2. DEFINITIONS.** For the purposes of this Ordinance, the following words and
17 terms shall have the following meanings:

- 18 a. "Arm's Length Transaction" shall mean: a sale in good faith and for valuable
19 consideration that reflects the fair market value in the open market between two
20 informed and willing parties, neither under any compulsion to participate in the
21 transaction. A sale between relatives, related companies or partners, or a sale for
22 the primary purpose of avoiding the effect of the violations of this Ordinance is
23 presumed not to be an arm's length transaction.
- 24 b. "Department" shall mean: the County of Riverside Department of Environmental
25 Health, including the Director of the Department of Environmental Health or his
26 or her designee."

27 ///

28 ///

- 1 c. "Enforcement officer" shall mean the Director of Environmental Health or his or
2 her designee.
- 3 d. "Person" shall mean: any natural person, partnership, cooperative association,
4 corporation, personal representative, receiver, trustee, assignee, or any other legal
5 entity.
- 6 e. "Proprietor" shall mean: a person with an ownership or managerial interest in a
7 business. An ownership interest shall be deemed to exist when a person has a ten
8 percent (10%) or greater interest in the stock, assets, or income of a business other
9 than the sole interest of security for debt. A managerial interest shall be deemed to
10 exist when a person can or does have, or can or does share ultimate control over
11 the day-to-day operations of a business.
- 12 f. "Self-Service Display" shall mean: the open display of tobacco products or
13 tobacco paraphernalia in a manner that is accessible to the general public without
14 the assistance of the retailer or employee of the retailer. A vending machine is a
15 form of self-service display.
- 16 g. "Tobacco Paraphernalia" shall mean: cigarette papers or wrappers, pipes, holders
17 of smoking materials of all types, cigarette rolling machines, and any other item
18 designed for the smoking, preparation, storing, or consumption of tobacco
19 products.
- 20 h. "Tobacco Product" shall mean: (1) any substance containing tobacco leaf,
21 including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing
22 tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any
23 product or formulation of matter containing biologically active amounts of
24 nicotine that is manufactured, sold, offered for sale, or otherwise distributed with
25 the expectation that the product or matter will be introduced into the human body
26 but does not include any product specifically approved by the Federal Food and
27 Drug Administration for use in treating nicotine or tobacco product dependence.

28 ///

1 i. "Tobacco Retailer" shall mean: any person who sells, offers for sale, or does or
2 offers to exchange for any form of consideration, tobacco, tobacco products, or
3 tobacco paraphernalia; "Tobacco Retailing" shall mean the performance of any of
4 these things. This definition is without regard to the quantity of tobacco, tobacco
5 products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered
6 for exchange.

7 j. "Tobacco Retailer's Permit" or "Permit" means the certificate issued by the
8 Director of the Department of Environmental Health which allows a facility to
9 sell tobacco, tobacco products, and tobacco paraphernalia. The issuance of this
10 permit does not indicate or imply that the facility is in compliance with all State
11 and County regulations related to its operation; and may be suspended or revoked
12 by the Department.

13 **Section 3. TOBACCO RETAILER'S PERMIT REQUIREMENTS AND**
14 **APPLICATION PROCESS**

15 a. Application for a tobacco retailer's permit shall be submitted in the name of each
16 proprietor proposing to conduct retail tobacco sales and shall be signed by each
17 proprietor or an authorized agent thereof. It is the responsibility of each proprietor
18 to be informed of the laws affecting the issuance of a tobacco retailer's permit. A
19 permit that is issued in error or on the basis of false or misleading information
20 supplied by a proprietor shall be revoked pursuant to Section 8.c. of this
21 Ordinance.

22 b. All applications shall be submitted on a form supplied by the Department and
23 shall 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 permit is sought.

27 ///

28 ///

1 3. The name and mailing address authorized by each proprietor to receive all
2 permit-related communications and notices (the "Authorized Address"). If
3 an authorized address is not supplied, each proprietor shall be understood
4 to consent to the provision of notice at the business address specified in
5 subparagraph 2 above.

6 4. Proof that the location for which a tobacco retailer's permit is sought has
7 been issued a valid state tobacco retailer's license by the California Board
8 of Equalization.

9 5. Whether or not any proprietor is a person who has been determined to
10 have violated this Ordinance or has been a proprietor at a location that has
11 been determined to have violated this Ordinance and, if so, the dates and
12 locations of all such violations.

13 6. Such other information as the Department deems necessary for the
14 administration or enforcement of this Ordinance.

15 c. It shall be unlawful for any person to act as a tobacco retailer without first
16 obtaining and maintaining a valid tobacco retailer's permit pursuant to this
17 Ordinance for each location at which tobacco retailing is to occur. Tobacco
18 retailing without a valid tobacco retailer's permit shall constitute a public
19 nuisance.

20 d. Nothing in this Ordinance shall be construed to grant any person obtaining and
21 maintaining a tobacco retailer's permit any status or right other than the right to
22 act as a tobacco retailer at the location in the County identified on the face of the
23 permit. For example, nothing in this Ordinance shall be construed to render
24 inapplicable, supersede, or apply in lieu of any other provision of applicable law,
25 including, without limitation, any condition or limitation on smoking in enclosed
26 places of employment made applicable to business establishments by California
27 Labor Code section 6404.5.

28 ///

1 **Section 4. PERMIT ISSUANCE; STANDARDS.**

- 2 a. Upon the receipt of an application for a tobacco retailer's permit and the permit
3 fee, the Department shall issue a permit unless substantial record evidence
4 demonstrates that one of the following bases for denial exists:
- 5 1. The application is incomplete or inaccurate.
 - 6 2. The application seeks authorization for tobacco retailing at a location for
7 which a prohibition on issuing permits is in effect pursuant to Section 8.b.
8 of this Ordinance. However, this subparagraph shall not constitute a basis
9 for denial of a permit if the applicant provides the County with
10 documentation demonstrating by clear and convincing evidence that the
11 applicant has acquired or is acquiring the location or business in an arm's
12 length transaction.
 - 13 3. The application seeks authorization for tobacco retailing for a proprietor
14 for which a prohibition on issuing permits is in effect pursuant to Section
15 8.b. of this Ordinance.
 - 16 4. The application seeks authorization for tobacco retailing that is prohibited
17 pursuant to this Section of this Ordinance; that is unlawful pursuant to any
18 other County ordinance; or that is unlawful pursuant to any other local,
19 state, or federal law.

20 **Section 5. PERMITS ARE NONTRANSFERABLE**

- 21 a. A tobacco retailer's permit is nontransferable. If the information provided in the
22 permit application pursuant to Section 3.b changes, a new tobacco retailer's
23 permit is required before the proprietor may continue to act as a tobacco retailer.
24 For example, if a proprietor to whom a permit has been issued changes business
25 location, that proprietor must apply for a new permit prior to acting as a tobacco
26 retailer at the new location. Or if the business is sold, the new owner must apply
27 for a new permit for that location before acting as a tobacco retailer.

28 ///

1 b. Notwithstanding any other provision of this Ordinance, violations against a
2 location or business shall continue to be counted against the location or business
3 unless the location or business has been transferred to a new proprietor and the
4 new proprietor provides the County with documentation demonstrating by clear
5 and convincing evidence that the new proprietor has acquired or is acquiring the
6 location or business in an arm's length transaction.

7 **Section 6. FEES FOR PERMIT**

8 a. A tobacco retailer permit is invalid unless the appropriate fee has been paid in full
9 as required by Ordinance No. 640 and the term of the permit has not expired. All
10 applicable late payment penalties indicated by Ordinance No. 640 shall apply.
11 The term of a tobacco retailer permit is one (1) year. Each tobacco retailer shall
12 apply for annual renewal of his or her tobacco retailer's permit no later than the
13 expiration of the term.

14 **Section 7. PERMIT VIOLATIONS**

15 a. **VIOLATION OF TOBACCO-RELATED LAWS.** It shall be a violation of a
16 tobacco retailer's permit for a proprietor, including his or her agent or employee,
17 to violate any local, state, or federal tobacco-related law including, but not limited
18 to:

19 1. **MINIMUM AGE FOR PERSONS BUYING TOBACCO.** It is unlawful
20 for any person, firm, tobacco retailer, or corporation to sell, give, or in any
21 way furnish to a person any tobacco product or tobacco paraphernalia if
22 that person, firm, or corporation knows or should have grounds to know
23 that the recipient is a person who is not at least the minimum age required
24 by state law to purchase or possess any tobacco product. Proof that a
25 retailer, or his or her employee or agent, demanded, was shown, and
26 reasonably relied upon evidence of legal age (such as identification) shall
27 be a defense to any action.

28 ///

- 1 2. **POSITIVE IDENTIFICATION REQUIRED.** No tobacco retailer shall
2 engage in tobacco retailing without first examining the identification of
3 the purchaser, if the purchaser reasonably appears underage, and
4 confirming that the proposed sale is to a purchaser who is at least the
5 minimum age in state law for being sold the tobacco product or tobacco
6 paraphernalia.
- 7 3. **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No tobacco
8 retailer shall engage in tobacco retailing if the person is younger than the
9 minimum age in state law for being sold or for possessing any tobacco
10 product.
- 11 4. **DISPLAY OF TOBACCO RELATED LICENSES/PERMITS.** Each
12 tobacco retailer must maintain a license from the California State Board of
13 Equalization as well as a tobacco retailer's permit allowing the sale of
14 tobacco products for each tobacco retail location. Both permits shall be
15 prominently displayed in a publicly and readily visible location at the
16 permitted location.
- 17 5. **SELF-SERVICE DISPLAYS PROHIBITED.** No tobacco retailer shall
18 display tobacco products or tobacco paraphernalia by means of a self-
19 service display or to engage in tobacco retailing by means of a self-service
20 display. A tobacco retailer who chooses to display tobacco products or
21 tobacco paraphernalia in a locked cabinet, case or similar structure must
22 post a clear and conspicuous sign on or within five feet of the display
23 stating that the cabinet, case or structure is locked at all times.
- 24 6. **TOBACCO SALES PUBLIC NOTIFICATION SIGNS POSTED.** Every
25 store that sells tobacco must post a boldly-printed, contrasting color sign
26 in a conspicuous place at each point of purchase saying that tobacco
27 products may not be sold to minors. The sign must contain the following
28 words: "The Sale of Tobacco Products to Persons Under 18 Years of Age

1 Is Prohibited by Law and Subject to Penalties. Valid Identification May
2 Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5 ASK-4-
3 ID. Business and Professions Code Section 22952." The sign must be
4 square (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5
5 inches), and the required notice must meet specified font sizes.

6 7. TOBACCO SALES AND ADVERTISING LOCATION.

7 i. It is unlawful for a tobacco retailer engaged in the retail
8 sale of tobacco or tobacco paraphernalia to place or
9 maintain, or to cause to be placed or maintained, any
10 tobacco or tobacco paraphernalia or its advertising within
11 two (2) feet of candy, snacks, or nonalcoholic beverages or
12 less than four (4) feet above the floor inside any store or
13 business.

14 ii. Tobacco product advertising which faces outdoors cannot
15 occupy an area larger than fourteen (14) square feet.

16 8. SALE OF BIDIS. No tobacco retailer shall sell, offer for sale, distribute,
17 or import any tobacco product commonly referred to as "bidis" or
18 "beedies," unless that tobacco product is sold, offered for sale, or intended
19 to be sold in a business establishment that prohibits the presence of
20 persons under eighteen (18) years of age on its premises.

21 9. TOBACCO SALES AT NON-FIXED SITES. It is unlawful for any
22 person, agent, tobacco retailer, or employee of a person in the business of
23 selling or distributing tobacco products to engage in tobacco retailing at
24 other than a fixed, permitted location. For example, tobacco retailing by
25 persons on foot and tobacco retailing from vehicles are prohibited.

26 10. TOBACCO COUPONS AND SAMPLES. It is unlawful for any person,
27 agent, tobacco retailer, or employee of a person in the business of selling
28 or distributing tobacco products, including but not limited to smokeless

1 tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale
2 distribution of any tobacco products to any person on any private property
3 that is open to the general public. "Non-sale distribution" means to give
4 tobacco products or tobacco paraphernalia to the general public at no cost,
5 or at nominal cost, or to give coupons, coupon offers, gift certificates, gift
6 cards, or other similar offers, or rebate offers for tobacco products to the
7 general public at no cost or at nominal cost.

8 11. SINGLE SALE OF CIGARETTES. No tobacco retailer may sell one or
9 more cigarettes, other than in a sealed and properly labeled package. A
10 sealed and properly labeled package means the original packaging of the
11 manufacturer or importer which meets federal labeling requirements,
12 including the federal warning label. Cigarettes may not be manufactured,
13 distributed, sold, or offered for sale except in a package containing at least
14 twenty (20) cigarettes. Roll-your-own tobacco may not be manufactured,
15 distributed, sold, or offered for sale except in a package containing at least
16 0.60 ounces of tobacco.

17 b. PERMIT COMPLIANCE MONITORING

- 18 1. Compliance with this Ordinance shall be monitored by the Department.
19 Any peace officer or enforcement officer may enforce the penal provisions
20 of this Ordinance.
- 21 2. The Department shall check the compliance of each tobacco retailer as
22 necessary to carry out the purpose and intent of this Ordinance. Subject to
23 the discretion of the Department, the Department may check the
24 compliance of tobacco retailers previously found to be in compliance a
25 fewer number of times so that the Department may check the compliance
26 of tobacco retailers previously found in violation a greater number of
27 times.

28 ///

1 3. Compliance checks shall determine, at a minimum, check compliance with
2 the requirements of this Ordinance and specifically if the tobacco retailer
3 is conducting business in a manner that complies with tobacco laws
4 regulating youth access to tobacco. When appropriate, the Department
5 may also determine compliance with other tobacco-related laws.

6 4. The County shall not enforce any tobacco-related minimum age law
7 against a person who otherwise might be in violation of such law because
8 of the person's age (hereinafter "Youth Decoy") if the potential violation
9 occurs when:

10 i. the Youth Decoy is participating in a compliance check supervised
11 by a peace officer or an enforcement officer; or

12 ii. the Youth Decoy is participating in a compliance check funded in
13 part, either directly or indirectly through sub-contracting, by the
14 Department.

15 c. NO CONTEST PLEA. A plea of "no contest" or its equivalent by a tobacco
16 retailer for a violation of any law designated in Section 7.a. above shall operate as
17 an admission that this Ordinance has been violated for the purposes of permit
18 revocation.

19 **Section 8. REVOCATION OF PERMIT**

20 a. **REVOCATION OF PERMIT FOR VIOLATION.**

21 1. In addition to any other penalty authorized by law, a tobacco retailer's
22 permit may be revoked if the Department finds that the proprietor,
23 including his or her agents or employees, has violated any of the
24 requirements, conditions, or prohibitions of this Ordinance (hereinafter
25 "Permit Violation").

26 ///

27 ///

28 ///

- 1 2. A tobacco retail proprietor may appeal the Department's determination to
2 revoke its tobacco retail permit in the same manner and in conjunction
3 with an appeal of an administrative citation as provided by Section 9.h. of
4 this Ordinance.
- 5 3. A proprietor or tobacco retailer without a valid tobacco retail permit,
6 including, for example, a revoked permit:
- 7 i. Shall keep all tobacco products and tobacco paraphernalia from
8 public view. The public display of tobacco products or tobacco
9 paraphernalia in violation of this provision shall constitute an
10 "offer for sale."
- 11 ii. Shall not display any advertisement relating to tobacco products or
12 tobacco paraphernalia that promotes the sale or distribution of such
13 products from the tobacco retailer's location or that would lead a
14 reasonable consumer to believe that such products can be obtained
15 at the tobacco retailer's location.
- 16 iii. Tobacco products and tobacco paraphernalia offered for sale or
17 exchange in violation of this Ordinance may be destroyed.

18 b. **NEW TOBACCO RETAILER'S PERMIT AFTER REVOCATION FOR**
19 **VIOLATION.**

- 20 1. After a first permit violation at a location no new tobacco retailer's permit
21 may be issued for the location until a minimum of one (1) day has passed
22 from the date of the last revocation or violation, whichever is later.
- 23 2. After a second permit violation at a location within any sixty-month (60)
24 period, no new tobacco retailer's permit may be issued for the location
25 until a minimum of thirty (30) days have passed from the date of the last
26 revocation or violation, whichever is later.
- 27 3. After a third permit violation at a location within any sixty-month (60)
28 period, no new tobacco retailer's permit may be issued for the location

1 until a minimum of ninety (90) days have passed from the date of the last
2 revocation or violation, whichever is later.

3 4. After four or more permit violations at a location within any sixty-month
4 (60) period, no new tobacco retailer's permit may be issued for the
5 location until five (5) years have passed from the date of the last
6 revocation or violation, whichever is later.

7 c. **REVOCATION OF PERMIT ISSUED IN ERROR.** A tobacco retailer's permit
8 may be revoked if the Department finds, after notice and opportunity to be heard,
9 that one or more of the bases for denial of a permit under Section 4.a existed at
10 the time application was made or at any time before the permit issued. The
11 revocation shall be without prejudice to the filing of a new application for a
12 permit.

13 **Section 9. ENFORCEMENT.** The remedies provided by this Ordinance are cumulative
14 and in addition to any other remedies available at law or in equity.

- 15 a. Violators who operate without the necessary tobacco retailer's permit shall be
16 subject to closure of the tobacco retail facility.
- 17 b. Whenever evidence of a violation of this Ordinance is obtained in part through the
18 participation of a person under the age of eighteen (18) years old, such a person
19 shall not be required to appear or give testimony in any civil or administrative
20 process brought to enforce this Ordinance and the alleged violation shall be
21 adjudicated based upon the sufficiency and persuasiveness of the evidence
22 presented.
- 23 c. Violations of this Ordinance are subject to a civil action brought by the District
24 Attorney or County Counsel, punishable by:
- 25 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding
26 one thousand dollars (\$1,000) for a first violation in any sixty-month (60)
27 period; or

28 ///

- 1 2. A fine not less than one thousand five hundred dollars (\$1,500) and not
2 exceeding two thousand five hundred dollars (\$2,500) for a second
3 violation in any sixty-month (60) period; or
4 3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten
5 thousand dollars (\$10,000) for a third or subsequent violation in any sixty
6 month (60) period.

- 7 d. Violations of this Ordinance may, in the discretion of the District Attorney or
8 County Counsel, be prosecuted as infractions or misdemeanors.
9 e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of
10 this Ordinance shall constitute a violation.
11 f. Violations of this Ordinance are hereby declared to be public nuisances.
12 g. In addition to other remedies provided by this Ordinance or by other law, any
13 violation of this Ordinance may be remedied by a civil action brought by the
14 County Counsel, including, but not limited to, administrative or judicial nuisance
15 abatement proceedings, civil or criminal code enforcement proceedings, and suits
16 for injunctive relief.
17 h. ADMINISTRATIVE CITATIONS AND PENALTIES. In addition to the
18 remedies and penalties contained in this Ordinance, and in accordance with
19 Government Code Section 53069.4, an enforcement officer may issue an
20 administrative citation for any violation of this Ordinance. The following
21 procedures shall govern the imposition, enforcement, collection and
22 administrative review of administrative citations and penalties.

- 23 1. Content of Citation. The administrative citation shall be issued on a form
24 approved by County Counsel and shall at a minimum contain the
25 following information:
26 i. Date, location and approximate time the violation was observed.
27 ii. The ordinance violated and a brief description of the violation.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- iii. The amount of the administrative penalty imposed for the violation.
- iv. Instructions for the payment of the penalty, and the time period by which it shall be paid and the consequences of failure to pay the penalty within this time period.
- v. Instructions on how to appeal the citation.
- vi. The signature of the enforcement officer.

The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.

2. Service of Citation.

- i. If the proprietor, owner, employee, agent, occupant or other person who has violated the Ordinance is present at the scene of the violation, the enforcement officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.
- ii. If the proprietor, owner, employee, agent, occupant or other person who has violated the Ordinance is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to them. If the enforcement officer is unable to serve the business owner on the premises, the administrative citation may be left with the manager or employee of the business. If left with the manager or employee of the business, a copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested.
- iii. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the owner, occupant or other person who has violated

1 the Ordinance. The citation shall be mailed to the property address
2 and/or the address listed for the owner on the last County
3 Equalized Assessment Roll.

4 iv. The failure of any interested person to receive the citation shall not
5 affect the validity of the proceedings.

6 3. Administrative Penalties.

7 i. The penalties assessed for each violation shall not exceed the
8 following amounts:

9 a) \$100.00 for a first violation;

10 b) \$200.00 for a second violation of this Ordinance within one
11 (1) year; and

12 c) \$500.00 for each additional violation of this Ordinance
13 within one (1) year.

14 ii. If the violation is not corrected, additional administrative citations
15 may be issued for the same violation. The amount of the penalty
16 shall increase at the rate specified above.

17 iii. Payment of the penalty shall not excuse the failure to correct the
18 violation nor shall it bar further enforcement action.

19 iv. The penalties assessed shall be payable to the County of Riverside.

20 4. Administrative Appeal

21 i. Notice of Appeal. The recipient of an administrative citation may
22 appeal the citation by filing a written notice of appeal with the
23 Department. The written notice of appeal must be filed within
24 twenty (20) days of the service of the administrative citation as set
25 forth in Section 9.h.2. Failure to file a written notice of appeal
26 within this time period shall constitute a waiver of the right to
27 appeal the administrative citation. The notice of appeal shall be
28 submitted on the Administrative Citation Appeal forms and shall

1 be accompanied by payment of the full penalty assessment, and
2 shall contain the following information:

- 3 a) A brief statement setting forth the appellants interest in the
4 proceedings;
- 5 b) A brief statement of the material facts which the appellant
6 claims supports their contention that no administrative
7 penalty should be imposed or that an administrative penalty
8 of a different amount is warranted;
- 9 c) An address at which the appellant agrees notice of any
10 additional proceeding or an order relating to the imposition
11 of the administrative penalty may be received by mail.
- 12 d) The notice of appeal must be signed by the appellant.

13 ii. Administrative Hearing. Upon a timely written request by the
14 recipient of the administrative citation, an administrative hearing
15 shall be held as follows:

- 16 a) Notice of Hearing. Notice of the administrative hearing
17 shall be given at least ten (10) days before the hearing to
18 the person requesting the hearing. The notice may be
19 delivered to the person or may be mailed to the address
20 listed in the notice of appeal.
- 21 b) Hearing Officer. The administrative hearing shall be held
22 before the Director of Department of Environmental Health
23 or their designee. The hearing officer shall not be the
24 enforcement officer who issued the administrative citation
25 or said enforcement officer's immediate supervisor. The
26 Director may contract with a qualified provider to conduct
27 administrative hearings or to process administrative
28 citations.

1 c) Conduct of the Hearing. The Enforcement Officer who
2 issued the administrative citation shall not be required to,
3 but may, participate in the administrative hearing. The
4 contents of the enforcement officer's file in the case shall
5 be admitted as prima facie evidence of the facts stated
6 therein. The hearing officer shall not be limited by the
7 technical rules of evidence. If the person requesting the
8 appeal fails to appear at the administrative hearing, the
9 hearing officer shall make his or her determination based
10 on the information contained in the notice of appeal.

11 d) Hearing Officer's Decision. The hearing officer, based
12 upon the evidence submitted, shall either dismiss or uphold
13 the citation. The citation recipient shall receive a refund of
14 the full penalty assessment if the citation is dismissed. The
15 hearing officer's decision following the administrative
16 hearing shall be personally delivered to the person
17 requesting the hearing or sent by first class mail. The
18 hearing officer may allow payment of the administrative
19 penalty in installments, if the person provides evidence
20 satisfactory to the hearing officer of an inability to pay the
21 penalty in full. The hearing officer's decision shall contain
22 instructions for obtaining review of the decision by the
23 superior court.

24 5. Review of Administrative Hearing Officer's Decision.

25 i. Notice of Appeal. Within twenty (20) days of the date of the
26 delivery or mailing of the hearing officer's decision, a person may
27 contest that decision by filing an appeal to be heard by the Superior
28 Court. The failure to file the written appeal and to pay the court

1 filing fee within this period shall constitute a waiver of the right to
2 an appeal and the decision shall be deemed confirmed. A copy of
3 the notice of appeal shall be served in person or by first class mail
4 upon the issuing agency by the contestant.

5 ii. Conduct of Hearing. The conduct of the appeal is a subordinate
6 judicial duty and may be performed by traffic trial commissioners
7 and other subordinate judicial officials at the direction of the
8 presiding judge of the court. The appeal shall be heard de novo,
9 except that the contents of the issuing agency's file in the case
10 shall be received in evidence. A copy of the document or
11 instrument of the issuing agency providing notice of the violation
12 and imposition of the administrative penalty shall be admitted into
13 evidence as prima facie evidence of the facts stated therein. The
14 court shall request that the issuing agency's file on the case be
15 forwarded to the court, to be received within fifteen (15) days of
16 the request.

17 iii. Judgment. The court shall retain the court's filing fee regardless of
18 the outcome of the appeal. If the court finds in favor of the
19 contestant, the amount of the fine or penalty shall be reimbursed to
20 the contestant by the local agency. Any deposit of the fine or
21 penalty shall be refunded by the issuing agency in accordance with
22 the judgment of the court. If the fine or penalty has not been
23 deposited and the decision of the court is against the contestant, the
24 issuing agency may proceed to collect the penalty pursuant to the
25 procedures set forth in this Ordinance, or in any other manner
26 provided by law.

27 **Section 10. SEVERABILITY.** If any section, subsection, subdivision, paragraph,
28 sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any

1 reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the
2 validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences,
3 clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Board
4 of Supervisors of the County of Riverside hereby declares that it would have adopted each section,
5 subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any
6 one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof
7 be declared invalid or unenforceable.

8
9
10 BOARD OF SUPERVISORS OF THE COUNTY
OF RIVERSIDE, STATE OF CALIFORNIA

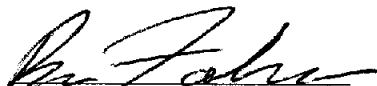
11 By: _____
12 Chairman, Board of Supervisors

13
14 ATTEST:
15 CLERK OF THE BOARD

16 By: _____
17 Deputy

18 (SEAL)

19
20 APPROVED AS TO FORM
December 22 2009

21
22
23 By: 
BRUCE G. FORDON
24 Deputy County Counsel

25
26
27 BGF/hms
12-22-09
28 G:\Property\06-ORDINANCE\838\838 12-17-09.docx