

527



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

**FROM:** Community Health Agency/ Environmental Health

**SUBMITTAL DATE:**  
12-23-09

**SUBJECT:** Amending Ordinance No. 838, "An Ordinance of the County of Riverside  
Regulating Tobacco Retailers"

**RECOMMENDED MOTION:**

1. That the Board introduce and set for Public Hearing the adoption of Ordinance No. 838.1 amending Ordinance No. 838 which establishes regulation of tobacco retailers.
2. That the Board authorize the Clerk to place an advertisement for the Public Hearing in the appropriate local publications;
3. That, upon the close of the Public Hearing, the Board adopts Ordinance 838.1.

**BACKGROUND:** This amendment to Ordinance No. 838 is necessary due to the transition of enforcement from the Department of Public Health to the Department of Environmental Health. The annual permit fee is to remain at \$350 at this time, but will be referenced by Riverside County Ordinance 640. Some changes have also been made to enforcement and penalty proceedings. Formatting corrections were also made to the entire document.

*Steve Van Stockum*  
Steve Van Stockum, Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	no
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
BY: *Debra Cournoyer*  
Debra Cournoyer

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above ordinance is approved as introduced and is set for public hearing on Tuesday, January 26, 2010 at 9:30 a.m.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley  
Nays: None  
Absent: None  
Date: January 5, 2010  
xc: CHA/Env. Health, COB

Kecia Harper-Ihem  
Clerk of the Board  
By: *[Signature]*  
Deputy

**Prev. Agn. Ref.:** | **District:** | **Agenda Number:** **3.10**  
ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL  
BY: *[Signature]*  
BRUCE G. FORDON  
DATE: 12-23-09  
Departmental Concurrence

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

MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



**3.10**

(1)

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the recommendation from the Community Health Agency/Environmental Health Department regarding Introduction of Ordinance 838.1, amending Ordinance 838, an Ordinance of the County of Riverside Regulating Tobacco Retailers is approved as introduced and set for public hearing on Tuesday, January 26, 2010 at 9:30 a.m.

(2)

On Motion of Supervisor Ashley, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter be reconsidered for the reading.

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on January 5, 2010 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors

Dated: January 5, 2010

Kecia Harper-Ihem, Clerk of the Board of Supervisors, in  
and for the County of Riverside, State of California.

(seal)

By: *[Signature]* Deputy

AGENDA NO.  
3.10

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."

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- 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.

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- 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.

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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.

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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.

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- 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.

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- 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.

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").

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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.     **REVOCAION 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

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

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

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

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

8                   The failure of the citation to set forth all required contents shall not affect

9                   the validity of the proceedings.

10                   2.    Service of Citation.

- 11                   i.    If the proprietor, owner, employee, agent, occupant or other person
- 12   who has violated the Ordinance is present at the scene of the
- 13   violation, the enforcement officer shall attempt to obtain their
- 14   signature on the administrative citation and shall deliver a copy of
- 15   the administrative citation to them.
- 16                   ii.    If the proprietor, owner, employee, agent, occupant or other person
- 17   who has violated the Ordinance is a business, and the business
- 18   owner is on the premises, the enforcement officer shall attempt to
- 19   deliver the administrative citation to them. If the enforcement
- 20   officer is unable to serve the business owner on the premises, the
- 21   administrative citation may be left with the manager or employee
- 22   of the business. If left with the manager or employee of the
- 23   business, a copy of the administrative citation shall also be mailed
- 24   to the business owner by certified mail, return receipt requested.
- 25                   iii.    If no one can be located at the property, then the administrative
- 26   citation shall be posted in a conspicuous place on or near the
- 27   property and a copy mailed by certified mail, return receipt
- 28   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

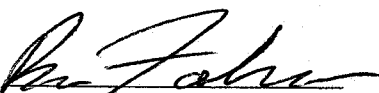
11 By: \_\_\_\_\_  
12 Chairman, Board of Supervisors

13  
14 ATTEST:  
15 CLERK OF THE BOARD

16 By: \_\_\_\_\_  
17 Deputy

18 (SEAL)

19  
20 APPROVED AS TO FORM  
21 December 22 2009

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

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