

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



9.10

9:30 a.m. being the time set for public hearing on the adoption of Ordinance 838.1, amending Ordinance 838, an Ordinance of the County of Riverside Regulating Tobacco Retailers, the Chairman called the matter for hearing.

Keith Jones, Deputy Director, presented the matter.

Appearing nobody wished to speak the Chairman closed the hearing.

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED the reading being waived, that an ordinance bearing the following title, is adopted:

ORDINANCE NO. 838.1

**AN ORDINANCE OF THE COUNTY OF RIVERSIDE, AMENDING
ORDINANCE NO. 838 REGARDING THE PERMITTING OF TOBACCO RETAILERS**

Roll Call:

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on January 26, 2010 of Supervisors Minutes.

(seal) WITNESS my hand and the seal of the Board of Supervisors
Dated: January 26, 2010
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

By: [Signature] Deputy

AGENDA NO.
9.10

xc: CHA/Env. Health, Co.Co., MC, COB(2)

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

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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. **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

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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.

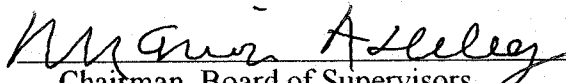
5 ii. Conduct of Hearing. The conduct of the appeal is a subordinate
6 judicial duty and may be performed by traffic trial commissioners
7 and other subordinate judicial officials at the direction of the
8 presiding judge of the court. The appeal shall be heard de novo,
9 except that the contents of 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.

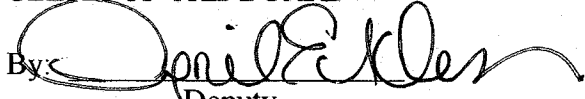
27 **Section 10. SEVERABILITY.** If any section, subsection, subdivision, paragraph,
28 sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any

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: 
Deputy

17 (SEAL)
18

19
20 APPROVED AS TO FORM
December 22 2009

21
22 By: 
23 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

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

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13 STATE OF CALIFORNIA
14 COUNTY OF RIVERSIDE

)
)
) ss

15
16 I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said county
17 held on January 26, 2010, the foregoing ordinance consisting of 10 Sections was adopted
18 by the following vote:

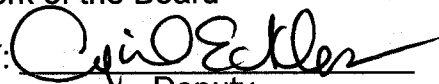
19 AYES: Buster, Stone, Benoit and Ashley

20 NAYS: None

21 ABSENT: Tavaglione

22
23 DATE: January 26, 2010

KECIA HARPER-IHEM
Clerk of the Board

24 BY: 
25 Deputy

26 SEAL

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

527



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

FINANCIAL DATA	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

SOURCE OF FUNDS:

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:

ATTACHMENTS FILED WITH
THE CLERK OF THE BOARD

3.10

FORM APPROVED COUNTY COUNSEL

BY: *Bruce G. Fordon* 12-23-09
DATE

Departmental Concurrence

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



OFFICE OF
CLERK OF THE BOARD OF SUPERVISORS
1st FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

January 7, 2010

THE PRESS ENTERPRISE
ATTN: LEGALS
P.O. BOX 792
RIVERSIDE, CA 92501

VIA E-MAIL: legals@pe.com
VIA FAX: (951) 955-368-9018

RE: INTRODUCTION OF ORDINANCE NO. 838.1 AMENDING ORD. NO. 838

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **ONE (1) TIME** on **Tuesday, January 12, 2010**.

We require your affidavit of publication immediately upon completion of the last publication.

Your invoice must be submitted to this office in duplicate, **WITH TWO CLIPPINGS OF THE PUBLICATION**.

NOTE: PLEASE COMPOSE THIS PUBLICATION INTO A SINGLE COLUMN FORMAT.

Thank you in advance for your assistance and expertise.

Sincerely,

Mcgil

Cecilia Gil, Board Assistant to
KECIA HARPER-IHEM, CLERK OF THE BOARD

Gil, Cecilia

From: PE Legals [legals@pe.com]
Sent: Thursday, January 07, 2010 8:36 AM
To: Gil, Cecilia
Subject: RE: FOR PUBLICATION: INTRO of ORD. NO. 838.1

Received for publication on Jan. 12

Thank You! ~Maria G. Tinajero • The Press Enterprise Legal Adv. • 1.800.880.0345 (Phone) • 951.368.9018 (fax) • Please Note: Deadline is 10:30 AM two (2) business days prior to the date you would like to publish.

From: Gil, Cecilia [mailto:CCGIL@rcbos.org]
Sent: Thursday, January 07, 2010 7:59 AM
To: PE Legals
Subject: FOR PUBLICATION: INTRO of ORD. NO. 838.1

Good Morning! Attached is an Introduction of Ordinance, for publication on Tuesday, January 12, 2010. Please confirm.
THANK YOU!

Cecilia Gil

Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

***THE COUNTY ADMINISTRATIVE CENTER IS CLOSED EVERY FRIDAY UNTIL FURTHER NOTICE.
PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING.***

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY

NOTICE IS HEREBY GIVEN that a public hearing at which all interested persons will be heard, will be held before the Board of Supervisors of Riverside County, California, on the 1st Floor Board Chambers, County Administrative Center, 4080 Lemon Street, Riverside, on **Tuesday, January 26, 2010 at 9:30 a.m.** to consider adoption of the following ordinance:

ORDINANCE NO. 838
(AS AMENDED THROUGH 838.1)
AN ORDINANCE OF THE COUNTY OF RIVERSIDE
REGARDING THE PERMITTING OF TOBACCO RETAILERS

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

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

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

- a. "Arm's Length Transaction" shall mean: a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Ordinance is presumed not to be an arm's length transaction.
- b. "Department" shall mean: the County of Riverside Department of Environmental Health, including the Director of the Department of Environmental Health or his or her designee."
- c. "Enforcement officer" shall mean the Director of Environmental Health or his or her designee.
- d. "Person" shall mean: any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- e. "Proprietor" shall mean: a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share ultimate control over the day-to-day operations of a business.
- f. "Self-Service Display" shall mean: the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- g. "Tobacco Paraphernalia" shall mean: cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
- h. "Tobacco Product" shall mean: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

- i. "Tobacco Retailer" shall mean: any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia; "Tobacco Retailing" shall mean the performance of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.
- j. "Tobacco Retailer's Permit" or "Permit" means the certificate issued by the Director of the Department of Environmental Health which allows a facility to sell tobacco, tobacco products, and tobacco paraphernalia. The issuance of this permit does not indicate or imply that the facility is in compliance with all State and County regulations related to its operation; and may be suspended or revoked by the Department.

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

- a. Application for a tobacco retailer's permit shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed of the laws affecting the issuance of a tobacco retailer's permit. A permit that is issued in error or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 8.c. of this Ordinance.
- b. All applications shall be submitted on a form supplied by the Department and shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor.
 - 2. The business name, address, and telephone number of the single fixed location for which a tobacco retailer's permit is sought.
 - 3. The name and mailing address authorized by each proprietor to receive all permit-related communications and notices (the "Authorized Address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph 2 above.
 - 4. Proof that the location for which a tobacco retailer's permit is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 - 5. Whether or not any proprietor is a person who has been determined to have violated this Ordinance or has been a proprietor at a location that has been determined to have violated this Ordinance and, if so, the dates and locations of all such violations.
 - 6. Such other information as the Department deems necessary for the administration or enforcement of this Ordinance.
- c. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit pursuant to this Ordinance for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's permit shall constitute a public nuisance.
- d. Nothing in this Ordinance shall be construed to grant any person obtaining and maintaining a tobacco retailer's permit any status or right other than the right to act as a tobacco retailer at the location in the County identified on the face of the permit. For example, nothing in this Ordinance shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code section 6404.5.

Section 4. PERMIT ISSUANCE; STANDARDS.

- a. Upon the receipt of an application for a tobacco retailer's permit and the permit fee, the Department shall issue a permit unless substantial record evidence demonstrates that one of the following bases for denial exists:
 - 1. The application is incomplete or inaccurate.
 - 2. The application seeks authorization for tobacco retailing at a location for which a prohibition on issuing permits is in effect pursuant to Section 8.b. of this Ordinance. However, this subparagraph shall not constitute a basis for denial of a permit if the applicant provides the County with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

3. The application seeks authorization for tobacco retailing for a proprietor for which a prohibition on issuing permits is in effect pursuant to Section 8.b. of this Ordinance.
4. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Section of this Ordinance; that is unlawful pursuant to any other County ordinance; or that is unlawful pursuant to any other local, state, or federal law.

Section 5. PERMITS ARE NONTRANSFERABLE

- a. A tobacco retailer's permit is nontransferable. If the information provided in the permit application pursuant to Section 3.b changes, a new tobacco retailer's permit is required before the proprietor may continue to act as a tobacco retailer. For example, if a proprietor to whom a permit has been issued changes business location, that proprietor must apply for a new permit prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a new permit for that location before acting as a tobacco retailer.
- b. Notwithstanding any other provision of this Ordinance, violations against a location or business shall continue to be counted against the location or business unless the location or business has been transferred to a new proprietor and the new proprietor provides the County with documentation demonstrating by clear and convincing evidence that the new proprietor has acquired or is acquiring the location or business in an arm's length transaction.

Section 6. FEES FOR PERMIT

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

Section 7. PERMIT VIOLATIONS

- a. VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a tobacco retailer's permit for a proprietor, including his or her agent or employee, to violate any local, state, or federal tobacco-related law including, but not limited to:
 1. MINIMUM AGE FOR PERSONS BUYING TOBACCO. It is unlawful for any person, firm, tobacco retailer, or corporation to sell, give, or in any way furnish to a person any tobacco product or tobacco paraphernalia if that person, firm, or corporation knows or should have grounds to know that the recipient is a person who is not at least the minimum age required by state law to purchase or possess any tobacco product. Proof that a retailer, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of legal age (such as identification) shall be a defense to any action.
 2. POSITIVE IDENTIFICATION REQUIRED. No tobacco retailer shall engage in tobacco retailing without first examining the identification of the purchaser, if the purchaser reasonably appears underage, and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product or tobacco paraphernalia.
 3. MINIMUM AGE FOR PERSONS SELLING TOBACCO. No tobacco retailer shall engage in tobacco retailing if the person is younger than the minimum age in state law for being sold or for possessing any tobacco product.
 4. DISPLAY OF TOBACCO RELATED LICENSES/PERMITS. Each tobacco retailer must maintain a license from the California State Board of Equalization as well as a tobacco retailer's permit allowing the sale of tobacco products for each tobacco retail location. Both permits shall be prominently displayed in a publicly and readily visible location at the permitted location.
 5. SELF-SERVICE DISPLAYS PROHIBITED. No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.

6. **TOBACCO SALES PUBLIC NOTIFICATION SIGNS POSTED.** Every store that sells tobacco must post a boldly-printed, contrasting color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors. The sign must contain the following words: "The Sale of Tobacco Products to Persons Under 18 Years of Age Is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5 ASK-4-ID. Business and Professions Code Section 22952." The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5 inches), and the required notice must meet specified font sizes.
 7. **TOBACCO SALES AND ADVERTISING LOCATION.**
 - i. It is unlawful for a tobacco retailer engaged in the retail sale of tobacco or tobacco paraphernalia to place or maintain, or to cause to be placed or maintained, any tobacco or tobacco paraphernalia or its advertising within two (2) feet of candy, snacks, or nonalcoholic beverages or less than four (4) feet above the floor inside any store or business.
 - ii. Tobacco product advertising which faces outdoors cannot occupy an area larger than fourteen (14) square feet.
 8. **SALE OF BIDIS.** No tobacco retailer shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as "bidis" or "beedies," unless that tobacco product is sold, offered for sale, or intended to be sold in a business establishment that prohibits the presence of persons under eighteen (18) years of age on its premises.
 9. **TOBACCO SALES AT NON-FIXED SITES.** It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products to engage in tobacco retailing at other than a fixed, permitted location. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
 10. **TOBACCO COUPONS AND SAMPLES.** It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products, including but not limited to smokeless tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale distribution of any tobacco products to any person on any private property that is open to the general public. "Non-sale distribution" means to give tobacco products or tobacco paraphernalia to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for tobacco products to the general public at no cost or at nominal cost.
 11. **SINGLE SALE OF CIGARETTES.** No tobacco retailer may sell one or more cigarettes, other than in a sealed and properly labeled package. A sealed and properly labeled package means the original packaging of the manufacturer or importer which meets federal labeling requirements, including the federal warning label. Cigarettes may not be manufactured, distributed, sold, or offered for sale except in a package containing at least twenty (20) cigarettes. Roll-your-own tobacco may not be manufactured, distributed, sold, or offered for sale except in a package containing at least 0.60 ounces of tobacco.
- b. **PERMIT COMPLIANCE MONITORING**
1. Compliance with this Ordinance shall be monitored by the Department. Any peace officer or enforcement officer may enforce the penal provisions of this Ordinance.
 2. The Department shall check the compliance of each tobacco retailer as necessary to carry out the purpose and intent of this Ordinance. Subject to the discretion of the Department, the Department may check the compliance of tobacco retailers previously found to be in compliance a fewer number of times so that the Department may check the compliance of tobacco retailers previously found in violation a greater number of times.
 3. Compliance checks shall determine, at a minimum, check compliance with the requirements of this Ordinance and specifically if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the Department may also determine compliance with other tobacco-related laws.

4. The County shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
 - i. the Youth Decoy is participating in a compliance check supervised by a peace officer or an enforcement officer; or
 - ii. the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through sub-contracting, by the Department.
- c. **NO CONTEST PLEA.** A plea of "no contest" or its equivalent by a tobacco retailer for a violation of any law designated in Section 7.a. above shall operate as an admission that this Ordinance has been violated for the purposes of permit revocation.

Section 8. REVOCATION OF PERMIT

a. REVOCATION OF PERMIT FOR VIOLATION.

1. In addition to any other penalty authorized by law, a tobacco retailer's permit may be revoked if the Department finds that the proprietor, including his or her agents or employees, has violated any of the requirements, conditions, or prohibitions of this Ordinance (hereinafter "Permit Violation").
2. A tobacco retail proprietor may appeal the Department's determination to revoke its tobacco retail permit in the same manner and in conjunction with an appeal of an administrative citation as provided by Section 9.h. of this Ordinance.
3. A proprietor or tobacco retailer without a valid tobacco retail permit, including, for example, a revoked permit:
 - i. Shall keep all tobacco products and tobacco paraphernalia from public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute an "offer for sale."
 - ii. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location.
 - iii. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this Ordinance may be destroyed.

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

1. After a first permit violation at a location no new tobacco retailer's permit may be issued for the location until a minimum of one (1) day has passed from the date of the last revocation or violation, whichever is later.
2. After a second permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of thirty (30) days have passed from the date of the last revocation or violation, whichever is later.
3. After a third permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of ninety (90) days have passed from the date of the last revocation or violation, whichever is later.
4. After four or more permit violations at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.

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

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

- a. Violators who operate without the necessary tobacco retailer's permit shall be subject to closure of the tobacco retail facility.
- b. Whenever evidence of a violation of this Ordinance is obtained in part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to

enforce this Ordinance and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

- c. Violations of this Ordinance are subject to a civil action brought by the District Attorney or County Counsel, punishable by:
 - 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty-month (60) period; or
 - 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.
 - 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 the Ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last County Equalized Assessment Roll.

- iv. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.
- 3. Administrative Penalties.
 - i. The penalties assessed for each violation shall not exceed the following amounts:
 - a) \$100.00 for a first violation;
 - b) \$200.00 for a second violation of this Ordinance within one (1) year; and
 - c) \$500.00 for each additional violation of this Ordinance within one (1) year.
 - ii. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
 - iii. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
 - iv. The penalties assessed shall be payable to the County of Riverside.
- 4. Administrative Appeal
 - i. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation as set forth in Section 9.h.2. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on the Administrative Citation Appeal forms and shall be accompanied by payment of the full penalty assessment, and shall contain the following information:
 - a) A brief statement setting forth the appellants interest in the proceedings;
 - b) A brief statement of the material facts which the appellant claims supports their contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
 - c) An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
 - d) The notice of appeal must be signed by the appellant.
 - ii. Administrative Hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:
 - a) Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
 - b) Hearing Officer. The administrative hearing shall be held before the Director of Department of Environmental Health or their designee. The hearing officer shall not be the enforcement officer who issued the administrative citation or said enforcement officer's immediate supervisor. The Director may contract with a qualified provider to conduct administrative hearings or to process administrative citations.
 - c) Conduct of the Hearing. The Enforcement Officer who issued the administrative citation shall not be required to, but may, participate in the administrative hearing. The contents of the enforcement officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the hearing officer shall make his or her determination

- based on the information contained in the notice of appeal.
- d) Hearing Officer's Decision. The hearing officer, based upon the evidence submitted, shall either dismiss or uphold the citation. The citation recipient shall receive a refund of the full penalty assessment if the citation is dismissed. The hearing officer's decision following the administrative hearing shall be personally delivered to the person requesting the hearing or sent by first class mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.
5. Review of Administrative Hearing Officer's Decision.
- i. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the Superior Court. The failure to file the written appeal and to pay the court filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.
- ii. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.
- iii. Judgment. The court shall retain the court's filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fine or penalty shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to the procedures set forth in this Ordinance, or in any other manner provided by law.

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

Any person affected by the above matter(s) may submit written comments to the Clerk of the Board before the hearing or may appear and be heard in support or opposition to the project at the time of the hearing. If you challenge the above item(s) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence, to the Board of Supervisors at, or prior to, the public hearing.

Please send all written correspondence to: Clerk of the Board, 4080 Lemon Street, 1st Floor, Post Office Box 1147, Riverside, CA 92502-1147

Dated: January 7, 2010

Kecia Harper-Ihem, Clerk of the Board
By: Cecilia Gil, Board Assistant

⑨ REMITTANCE ADDRESS
 POST OFFICE BOX 12009
 RIVERSIDE, CA 92502-2209
 FAX (951) 368-9026

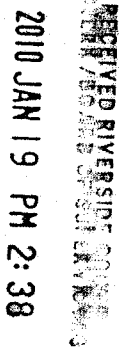
① BILLING PERIOD 01/12/10 - 01/12/10 ② ADVERTISING/CLIENT NAME BOARD OF SUPERVISORS
 ⑤ BILLING DATE 01/12/10 ⑥ FOR BILLING INFORMATION CALL (951) 368-9713 ⑦ PAGE NO 1
 ⑧ TOTAL AMOUNT DUE 2,349.10 ⑨ UNAPPLIED AMOUNT ⑩ TERMS OF PAYMENT Due Upon Receipt

⑪ BILLED ACCOUNT NAME AND ADDRESS
 BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE
 P.O. BOX 1147
 RIVERSIDE CA 92502


⑫ BILLED ACCOUNT NUMBER 045202 ⑬ REP NO LE04

Statement #: 56519225 Amount Paid \$ _____ Your Check # _____

PLEASE DETACH AND RETURN UPPER PORTION WITH YOUR REMITTANCE

⑭ DATE	⑮ REFERENCE	⑯ ⑰ ⑱ DESCRIPTION-OTHER COMMENTS/CHARGES	⑲ SAU SIZE ⑳ BILLED UNITS	㉑ RATE	㉒ GROSS AMOUNT	㉓ NET AMOUNT
01/12	4144224 CO	INTRO. ORD. 838.1 AMEND. ORD. Class : 10 Ctext. Ad# 10123292 Placed By : Cecilia Gil	1,807 L	1.30		2,349.10
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<div style="text-align: right;"> <i>Environ. Health</i> <i>3.10 of 01/05/10</i> <i>1 hr</i> </div>						
COMING SOON! Electronic Tearsheet Delivery Service It's easy! Search, view, save, email notification & more						

㉔ CURRENT NET AMOUNT DUE	㉕ 30 DAYS	㉖ 60 DAYS	㉗ OVER 90 DAYS	㉘ UNAPPLIED AMOUNT	㉙ PLEASE PAY THIS AMOUNT
					2,349.10

THE PRESS-ENTERPRISE  P.O. BOX 12009
 RIVERSIDE, CA 92502-2209
 TELEPHONE (951) 368-9711
 (951) 368-9720 □ (951) 368-9713

**ADVERTISING
 STATEMENT/INVOICE**

* UNAPPLIED AMOUNTS ARE INCLUDED IN TOTAL AMOUNT DUE

SBI™

㉚ STATEMENT NUMBER	㉛ BILLING PERIOD	㉜ BILLED ACCOUNT NUMBER	㉝ ADVERTISER/CLIENT NUMBER	㉞ ADVERTISER/CLIENT NAME
56519225	01/12/10 - 01/12/10	045202		BOARD OF SUPERVISORS

THE PRESS-ENTERPRISE

3450 Fourteenth Street
Riverside CA 92501-3878
951-684-1200
951-368-9018 FAX

PROOF OF PUBLICATION
(2010, 2015.5 C.C.P.)

Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.: Intro. Ord. 838.1 Amend. Ord. 838

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673 and under date of August 25, 1995, Case Number 267864; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

01-12-10

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: Jan. 12, 2010
At: Riverside, California



BOARD OF SUPERVISORS

P.O. BOX 1147
COUNTY OF RIVERSIDE
RIVERSIDE CA 92502

Ad #: 10123292

PO #:

Agency #: _____

Ad Copy:

NOTICE OF PUBLIC HEARING BEFORE THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY

NOTICE IS HEREBY GIVEN that a public hearing at which all interested persons will be heard, will be held before the Board of Supervisors of Riverside County, California, on the 1st Floor Board Chambers, County Administrative Center, 4080 Lemon Street, Riverside, on Tuesday, January 26, 2010 at 9:30 a.m. to consider adoption of the following ordinance:

ORDINANCE NO. 838 (AS AMENDED THROUGH 838.1) AN ORDINANCE OF THE COUNTY OF RIVERSIDE REGARDING THE PERMITTING OF TOBACCO RETAILERS

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

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

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

- a. "Arm's Length Transaction" shall mean: a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Ordinance is presumed not to be an arm's length transaction.
- b. "Department" shall mean: the County of Riverside Department of Environmental Health, including the Director of the Department of Environmental Health or his or her designee.
- c. "Enforcement officer" shall mean the Director of Environmental Health or his or her designee.
- d. "Person" shall mean: any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- e. "Proprietor" shall mean: a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share ultimate control over the day-to-day operations of a business.
- f. "Self-Service Display" shall mean: the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- g. "Tobacco Paraphernalia" shall mean: cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
- h. "Tobacco Product" shall mean: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.
- i. "Tobacco Retailer" shall mean: any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia; "Tobacco Retailing" shall mean the performance of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.
- j. "Tobacco Retailer's Permit" or "Permit" means the certificate issued by the Director of the Department of Environmental Health which allows a facility to sell tobacco, tobacco products, and tobacco paraphernalia. The issuance of this permit does not indicate or imply that the facility is in compliance with all State and County regulations related to its operation; and may be suspended or revoked by the Department.

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

- a. Application for a tobacco retailer's permit shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed of the laws affecting the issuance of a tobacco retailer's permit. A permit that is issued in error or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 8.C. of this Ordinance.
- b. All applications shall be submitted on a form supplied by the Department and shall contain the following information:
 1. The name, address, and telephone number of each proprietor.
 2. The business name, address, and telephone number of the single fixed location for which a tobacco retailer's permit is sought.
 3. The name and mailing address authorized by each proprietor to receive all permit-related communications and notices (the "Authorized Address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph 2 above.
 4. Proof that the location for which a tobacco retailer's permit is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 5. Whether or not any proprietor is a person who has been determined to have violated this Ordinance or has been a proprietor at a location that has been determined to have violated this Ordinance and, if so, the dates and locations of all such violations.
 6. Such other information as the Department deems necessary for the administration or enforcement of this Ordinance.
- c. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit pursuant to this Ordinance for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's permit shall constitute a public nuisance.
- d. Nothing in this Ordinance shall be construed to grant any person obtaining and maintaining a tobacco retailer's permit any status or right other than the right to act as a tobacco retailer at the location in the County identified on the face of the permit. For example, nothing in this Ordinance shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code section 6404.5.

Section 4. PERMIT ISSUANCE; STANDARDS.

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

Section 5. PERMITS ARE NONTRANSFERABLE

- a. A tobacco retailer's permit is nontransferable. If the information provided in the permit application pursuant to Section 3.b changes, a new tobacco retailer's permit is required before the proprietor may continue to act as a tobacco retailer. For example, if a proprietor to whom a permit has been issued changes business location, that proprietor must apply for a new permit prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a new permit for that location before acting as a tobacco retailer.
- b. Notwithstanding any other provision of this Ordinance, violations against a location or business shall continue to be counted against the location or business unless the location or business has been transferred to a new proprietor and the new proprietor provides the County with documentation demonstrating by clear and convincing evidence that the new proprietor has acquired or is acquiring the location or business in an arm's length transaction.

Section 6. FEES FOR PERMIT

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

Section 7. PERMIT VIOLATIONS

- a. VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a tobacco retailer's permit for a proprietor, including his or her agent or employee, to violate any local, state, or federal tobacco-related law including, but not limited to:
 1. MINIMUM AGE FOR PERSONS BUYING TOBACCO. It is unlawful for any person, firm, tobacco retailer, or corporation to sell, give, or in any way furnish to a person any tobacco product or tobacco paraphernalia if that person, firm, or corporation knows or should have grounds to know that the recipient is a person who is not at least the minimum age required by state law to purchase or possess any tobacco product. Proof that a retailer, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of legal age (such as identification) shall be a defense to any action.
 2. POSITIVE IDENTIFICATION REQUIRED. No tobacco retailer shall engage in tobacco retailing without first examining the identification of the purchaser, if the purchaser reasonably appears underage, and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product or tobacco paraphernalia.
 3. MINIMUM AGE FOR PERSONS SELLING TOBACCO. No tobacco retailer shall engage in tobacco retailing if the person is younger than the minimum age in state law for being sold or for possessing any tobacco product.
 4. DISPLAY OF TOBACCO RELATED LICENSES/PERMITS. Each tobacco retailer must maintain a license from the California State Board of Equalization as well as a tobacco retailer's permit allowing the sale of tobacco products for each tobacco retail location. Both permits shall be prominently displayed in a publicly and readily visible location at the permitted location.
 5. SELF-SERVICE DISPLAYS PROHIBITED. No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.
 6. TOBACCO SALES PUBLIC NOTIFICATION SIGNS POSTED. Every store that sells tobacco must post a boldly-printed, contrasting color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors. The sign must contain the following words: "The Sale of Tobacco Products to Persons Under 18 Years of Age is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5 ASK-4-ID. Business and Professions Code Section 22952." The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (3.6 inches by 8.5 inches), and the required notice must meet specified font sizes.
 7. TOBACCO SALES AND ADVERTISING LOCATION.
 - i. It is unlawful for a tobacco retailer engaged in the retail sale of tobacco or tobacco paraphernalia to place or maintain, or to cause to be placed or maintained, any tobacco or tobacco paraphernalia or its advertising within two (2) feet of candy, snacks, or nonalcoholic beverages or less than four (4) feet above the floor inside any store or business.
 - ii. Tobacco product advertising which faces outdoors cannot occupy an area larger than fourteen (14) square feet.
 8. SALE OF BIDS. No tobacco retailer shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as "bids" or "beedles," unless that tobacco product is sold, offered for sale, or intended to be sold in a business establishment that prohibits the presence of persons under eighteen (18) years of age on its premises.
 9. TOBACCO SALES AT NON-FIXED SITES. It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products to engage in tobacco retailing at other than a fixed, permitted location. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
 10. TOBACCO COUPONS AND SAMPLES. It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products, including but not limited to smokeless tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale distribution of any tobacco products to any person on any private property that is open to the general public. "Non-sale distribution" means to give tobacco products or tobacco paraphernalia to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for tobacco products to the general public at no cost or at nominal cost.
 11. SINGLE SALE OF CIGARETTES. No tobacco retailer may sell one or more cigarettes, other than in a sealed and properly labeled package. A sealed and properly labeled package means the original packaging of

the manufacturer or importer which meets federal labeling requirements, including the federal warning label. Cigarettes may not be manufactured, distributed, sold, or offered for sale except in a package containing at least twenty (20) cigarettes. Roll-your-own tobacco may not be manufactured, distributed, sold, or offered for sale except in a package containing at least 0.60 ounces of tobacco.

b. PERMIT COMPLIANCE MONITORING

1. Compliance with this Ordinance shall be monitored by the Department. Any peace officer or enforcement officer may enforce the penal provisions of this Ordinance.
2. The Department shall check the compliance of each tobacco retailer as necessary to carry out the purpose and intent of this Ordinance. Subject to the discretion of the Department, the Department may check the compliance of tobacco retailers previously found to be in compliance a fewer number of times so that the Department may check the compliance of tobacco retailers previously found in violation a greater number of times.
3. Compliance checks shall determine, at a minimum, check compliance with the requirements of this Ordinance and specifically if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the Department may also determine compliance with other tobacco-related laws.
4. The County shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
 - i. the Youth Decoy is participating in a compliance check supervised by a peace officer or an enforcement officer; or
 - ii. the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through sub-contracting, by the Department.
- c. **NO CONTEST PLEA.** A plea of "no contest" or its equivalent by a tobacco retailer for a violation of any law designated in Section 7.a. above shall operate as an admission that this Ordinance has been violated for the purposes of permit revocation.

Section 8. REVOCATION OF PERMIT

a. REVOCATION OF PERMIT FOR VIOLATION.

1. In addition to any other penalty authorized by law, a tobacco retailer's permit may be revoked if the Department finds that the proprietor, including his or her agents or employees, has violated any of the requirements, conditions, or prohibitions of this Ordinance (hereinafter "Permit Violation").
2. A tobacco retail proprietor may appeal the Department's determination to revoke its tobacco retail permit in the same manner and in conjunction with an appeal of an administrative citation as provided by Section 9.h. of this Ordinance.
3. A proprietor or tobacco retailer without a valid tobacco retail permit, including, for example, a revoked permit:
 - i. Shall keep all tobacco products and tobacco paraphernalia from public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute an "offer for sale."
 - ii. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location.
 - iii. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this Ordinance may be destroyed.

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

1. After a first permit violation at a location no new tobacco retailer's permit may be issued for the location until a minimum of one (1) day has passed from the date of the last revocation or violation, whichever is later.
2. After a second permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of thirty (30) days have passed from the date of the last revocation or violation, whichever is later.
3. After a third permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of ninety (90) days have passed from the date of the last revocation or violation, whichever is later.
4. After four or more permit violations at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.
- c. **REVOCATION OF PERMIT ISSUED IN ERROR.** A tobacco retailer's permit may be revoked if the Department finds, after notice and opportunity to be heard, that one or more of the bases for denial of a permit under Section 4.a existed at the time application was made or at any time before the permit is issued. The revocation shall be without prejudice to the filing of a new application for a permit.

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

- a. Violators who operate without the necessary tobacco retailer's permit shall be subject to closure of the tobacco retail facility.
- b. Whenever evidence of a violation of this Ordinance is obtained in part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Ordinance and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- c. Violations of this Ordinance are subject to a civil action brought by the District Attorney or County Counsel, punishable by:
 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty-month (60) period; or
 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.
 - 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 the Ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last County Equalized Assessment Roll.
 - iv. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.
3. Administrative Penalties.
 - i. The penalties assessed for each violation shall not exceed the following amounts:
 - a) \$100.00 for a first violation;
 - b) \$200.00 for a second violation of this Ordinance within one (1) year; and
 - c) \$500.00 for each additional violation of this Ordinance within one (1) year.
 - ii. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
 - iii. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
 - iv. The penalties assessed shall be payable to the County of Riverside.
4. Administrative Appeal
 - i. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation as set forth in Section 9.h.2. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on the Administrative Citation Appeal forms and shall be accompanied by payment of the full penalty assessment, and shall contain the following information:
 - a) A brief statement setting forth the appellants interest in the proceedings;
 - b) A brief statement of the material facts which the appellant claims supports their contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
 - c) An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
 - d) The notice of appeal must be signed by the appellant.
 - ii. Administrative Hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:
 - a) Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
 - b) Hearing Officer. The administrative hearing shall be held before the Director of Department of Environmental Health or their designee. The hearing officer shall not be the enforcement officer who issued the administrative citation or said enforcement officer's immediate supervisor. The Director may contract with a qualified provider to conduct administrative hearings or to process administrative citations.
 - c) Conduct of the Hearing. The Enforcement Officer who issued the administrative citation shall not be required to, but may, participate in the administrative hearing. The contents of the enforcement officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the hearing officer shall make his or her determination based on the information contained in the notice of appeal.
 - d) Hearing Officer's Decision. The hearing officer, based upon the evidence submitted, shall either dismiss or uphold the citation. The citation recipient shall receive a refund of the full penalty assessment if the citation is dismissed. The hearing officer's decision following the administrative hearing shall be personally delivered to the person requesting the hearing or sent by first class mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.
5. Review of Administrative Hearing Officer's Decision.
 - i. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the Superior Court. The failure to file the written appeal and to pay the court filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.
 - ii. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or instrument of the issuing

agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.

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

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

Any person affected by the above matter(s) may submit written comments to the Clerk of the Board before the hearing or may appear and be heard in support or opposition to the project at the time of the hearing. If you challenge the above item(s) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence, to the Board of Supervisors at, or prior to, the public hearing.

Please send all written correspondence to: Clerk of the Board, 4080 Lemon Street, 1st Floor, Post Office Box 1147, Riverside, CA 92502-1147

Dated: January 7, 2010

Kecia Harper-Ihem, Clerk of the Board

By: Cecilia Gil, Board Assistant

1/12



OFFICE OF
CLERK OF THE BOARD OF SUPERVISORS
1st FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

February 4, 2010

THE PRESS ENTERPRISE
ATTN: LEGALS
P.O. BOX 792
RIVERSIDE, CA 92501

FAX: (951) 368-9018
E-MAIL: legals@pe.com

RE: ADOPTION OF ORDINANCE NO. 838.1

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **ONE (1) TIME** on **Sunday, February 7, 2010.**

We require your affidavit of publication immediately upon completion of the last publication.

Your invoice must be submitted to this office in duplicate, **WITH TWO CLIPPINGS OF THE PUBLICATION.**

NOTE: PLEASE COMPOSE THIS PUBLICATION INTO A SINGLE COLUMN FORMAT.

Thank you in advance for your assistance and expertise.

Sincerely,

Mcgil

Cecilia Gil, Board Assistant to
KECIA HARPER-IHEM, CLERK OF THE BOARD

Gil, Cecilia

From: [REDACTED]
Sent: Thursday, February 04, 2010 8:21 AM
To: Gil, Cecilia
Subject: [REDACTED]

[REDACTED]

Thank You! ~Maria G. Tinajero - The Press Enterprise Legal Adv. - 1.800.880.0345 (Phone) - 951.368.9018 (fax) - Please Note: Deadline is 10:30 AM two (2) business days prior to the date you would like to publish.

From: Gil, Cecilia [mailto:CCGIL@rcbos.org]
Sent: Thursday, February 04, 2010 8:08 AM
To: PE Legals
Subject: FOR PUBLICATION: ADOPTION OF ORD. NO. 838.1

Good Morning! Attached is an adoption of Ordinance, for publication on Sunday, Feb. 7, 2010. Please confirm. THANK YOU!

Cecilia Gil

Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

***THE COUNTY ADMINISTRATIVE CENTER IS CLOSED EVERY FRIDAY UNTIL FURTHER NOTICE.
PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING.***



OFFICE OF
CLERK OF THE BOARD OF SUPERVISORS
1st FLOOR, COUNTY ADMINISTRATIVE CENTER
P.O. BOX 1147, 4080 LEMON STREET
RIVERSIDE, CA 92502-1147
PHONE: (951) 955-1060
FAX: (951) 955-1071

KECIA HARPER-IHEM
Clerk of the Board of Supervisors

KIMBERLY A. RECTOR
Assistant Clerk of the Board

February 4, 2010

THE DESERT SUN
ATTN: LEGALS
P.O. BOX 2734
PALM SPRINGS, CA 92263

FAX: (760) 778-4731
E-MAIL: legals@thedesertsun.com

RE: ADOPTION OF ORDINANCE NO. 838.1

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **ONE (1) TIME** on **Sunday, February 7, 2010.**

We require your affidavit of publication immediately upon completion of the last publication.

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Thank you in advance for your assistance and expertise.

Sincerely,

Mcgil

Cecilia Gil, Board Assistant to
KECIA HARPER-IHEM, CLERK OF THE BOARD

Gil, Cecilia

From: Charlene Moeller [mailto:CMOELLER@palm SpringsCA.gov]
Sent: Thursday, February 04, 2010 8:35 AM
To: Gil, Cecilia
Subject: [REDACTED]

[REDACTED] and will publish the ordinance(s) requested.

Charlene Moeller
Public Notice Customer Service Rep.
The Desert Sun Newspaper
750 N. Gene Autry Trail, Palm Springs, CA 92262
(760) 778-4578, Fax (760) 778-4731
Desert Sun legals@thedesertsun.com
& Desert Post Weekly dpwlegals@thedesertsun.com
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From: Gil, Cecilia [mailto:CCGIL@rcbos.org]
Sent: Thursday, February 04, 2010 8:09 AM
To: tds-legals
Subject: FOR PUBLICATION: ADOPTION OF ORD. NO. 838.1

Good Morning! Attached is an Adoption of above-mentioned Ordinance, for publication on Sunday, Feb. 7, 2010. Please confirm. THANK YOU!

Cecilia Gil
Board Assistant to the
Clerk of the Board of Supervisors
951-955-8464

THE COUNTY ADMINISTRATIVE CENTER IS CLOSED EVERY FRIDAY UNTIL FURTHER NOTICE.
PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING.

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

ORDINANCE NO. 838

(AS AMENDED THROUGH 838.1)

**AN ORDINANCE OF THE COUNTY OF RIVERSIDE
REGARDING THE PERMITTING OF TOBACCO RETAILERS**

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

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

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

- a. "Arm's Length Transaction" shall mean: a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Ordinance is presumed not to be an arm's length transaction.
- b. "Department" shall mean: the County of Riverside Department of Environmental Health, including the Director of the Department of Environmental Health or his or her designee."
- c. "Enforcement officer" shall mean the Director of Environmental Health or his or her designee.
- d. "Person" shall mean: any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- e. "Proprietor" shall mean: a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share ultimate control over the day-to-day operations of a business.
- f. "Self-Service Display" shall mean: the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- g. "Tobacco Paraphernalia" shall mean: cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
- h. "Tobacco Product" shall mean: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.
- i. "Tobacco Retailer" shall mean: any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia; "Tobacco Retailing" shall mean the performance of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.
- j. "Tobacco Retailer's Permit" or "Permit" means the certificate issued by the Director of the Department of Environmental Health which allows a facility to sell tobacco, tobacco products, and tobacco paraphernalia. The issuance of this permit does not indicate or imply that the facility is in compliance with all State and County regulations related to its operation; and may be suspended or revoked by the Department.

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

- a. Application for a tobacco retailer's permit shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed of the laws affecting the issuance of a tobacco retailer's permit. A permit that is issued in error or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 8.c. of this Ordinance.
- b. All applications shall be submitted on a form supplied by the Department and shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor.
 - 2. The business name, address, and telephone number of the single fixed location for which a tobacco retailer's permit is sought.
 - 3. The name and mailing address authorized by each proprietor to receive all permit-related communications and notices (the "Authorized Address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph 2 above.
 - 4. Proof that the location for which a tobacco retailer's permit is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 - 5. Whether or not any proprietor is a person who has been determined to have violated this Ordinance or has been a proprietor at a location that has been determined to have violated this Ordinance and, if so, the dates and locations of all such violations.
 - 6. Such other information as the Department deems necessary for the administration or enforcement of this Ordinance.
- c. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit pursuant to this Ordinance for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's permit shall constitute a public nuisance.
- d. Nothing in this Ordinance shall be construed to grant any person obtaining and maintaining a tobacco retailer's permit any status or right other than the right to act as a tobacco retailer at the location in the County identified on the face of the permit. For example, nothing in this Ordinance shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code section 6404.5.

Section 4. PERMIT ISSUANCE; STANDARDS.

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

Section 5. PERMITS ARE NONTRANSFERABLE

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

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

Section 6. FEES FOR PERMIT

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

Section 7. PERMIT VIOLATIONS

- a. VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a tobacco retailer's permit for a proprietor, including his or her agent or employee, to violate any local, state, or federal tobacco-related law including, but not limited to:
1. **MINIMUM AGE FOR PERSONS BUYING TOBACCO.** It is unlawful for any person, firm, tobacco retailer, or corporation to sell, give, or in any way furnish to a person any tobacco product or tobacco paraphernalia if that person, firm, or corporation knows or should have grounds to know that the recipient is a person who is not at least the minimum age required by state law to purchase or possess any tobacco product. Proof that a retailer, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of legal age (such as identification) shall be a defense to any action.
 2. **POSITIVE IDENTIFICATION REQUIRED.** No tobacco retailer shall engage in tobacco retailing without first examining the identification of the purchaser, if the purchaser reasonably appears underage, and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product or tobacco paraphernalia.
 3. **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No tobacco retailer shall engage in tobacco retailing if the person is younger than the minimum age in state law for being sold or for possessing any tobacco product.
 4. **DISPLAY OF TOBACCO RELATED LICENSES/PERMITS.** Each tobacco retailer must maintain a license from the California State Board of Equalization as well as a tobacco retailer's permit allowing the sale of tobacco products for each tobacco retail location. Both permits shall be prominently displayed in a publicly and readily visible location at the permitted location.
 5. **SELF-SERVICE DISPLAYS PROHIBITED.** No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.
 6. **TOBACCO SALES PUBLIC NOTIFICATION SIGNS POSTED.** Every store that sells tobacco must post a boldly-printed, contrasting color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors. The sign must contain the following words: "The Sale of Tobacco Products to Persons Under 18 Years of Age Is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5 ASK-4-ID. Business and Professions Code Section 22952." The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5 inches), and the required notice must meet specified font sizes.
 7. **TOBACCO SALES AND ADVERTISING LOCATION.**
 - i. It is unlawful for a tobacco retailer engaged in the retail sale of tobacco or tobacco paraphernalia to place or maintain, or to cause to be placed or maintained, any tobacco or tobacco paraphernalia or its advertising within two (2) feet of candy, snacks, or nonalcoholic

beverages or less than four (4) feet above the floor inside any store or business.

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

8. **SALE OF BIDIS.** No tobacco retailer shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as "bidis" or "beedies," unless that tobacco product is sold, offered for sale, or intended to be sold in a business establishment that prohibits the presence of persons under eighteen (18) years of age on its premises.
9. **TOBACCO SALES AT NON-FIXED SITES.** It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products to engage in tobacco retailing at other than a fixed, permitted location. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
10. **TOBACCO COUPONS AND SAMPLES.** It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products, including but not limited to smokeless tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale distribution of any tobacco products to any person on any private property that is open to the general public. "Non-sale distribution" means to give tobacco products or tobacco paraphernalia to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for tobacco products to the general public at no cost or at nominal cost.
11. **SINGLE SALE OF CIGARETTES.** No tobacco retailer may sell one or more cigarettes, other than in a sealed and properly labeled package. A sealed and properly labeled package means the original packaging of the manufacturer or importer which meets federal labeling requirements, including the federal warning label. Cigarettes may not be manufactured, distributed, sold, or offered for sale except in a package containing at least twenty (20) cigarettes. Roll-your-own tobacco may not be manufactured, distributed, sold, or offered for sale except in a package containing at least 0.60 ounces of tobacco.

b. **PERMIT COMPLIANCE MONITORING**

1. Compliance with this Ordinance shall be monitored by the Department. Any peace officer or enforcement officer may enforce the penal provisions of this Ordinance.
2. The Department shall check the compliance of each tobacco retailer as necessary to carry out the purpose and intent of this Ordinance. Subject to the discretion of the Department, the Department may check the compliance of tobacco retailers previously found to be in compliance a fewer number of times so that the Department may check the compliance of tobacco retailers previously found in violation a greater number of times.
3. Compliance checks shall determine, at a minimum, check compliance with the requirements of this Ordinance and specifically if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the Department may also determine compliance with other tobacco-related laws.
4. The County shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
 - i. the Youth Decoy is participating in a compliance check supervised by a peace officer or an enforcement officer; or
 - ii. the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through sub-contracting, by the Department.

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

Section 8. REVOCATION OF PERMIT

a. REVOCATION OF PERMIT FOR VIOLATION.

1. In addition to any other penalty authorized by law, a tobacco retailer's permit may be revoked if the Department finds that the proprietor, including his or her agents or employees, has violated any of the requirements, conditions, or prohibitions of this Ordinance (hereinafter "Permit Violation").
2. A tobacco retail proprietor may appeal the Department's determination to revoke its tobacco retail permit in the same manner and in conjunction with an appeal of an administrative citation as provided by Section 9.h. of this Ordinance.
3. A proprietor or tobacco retailer without a valid tobacco retail permit, including, for example, a revoked permit:
 - i. Shall keep all tobacco products and tobacco paraphernalia from public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute an "offer for sale."
 - ii. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location.
 - iii. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this Ordinance may be destroyed.

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

1. After a first permit violation at a location no new tobacco retailer's permit may be issued for the location until a minimum of one (1) day has passed from the date of the last revocation or violation, whichever is later.
2. After a second permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of thirty (30) days have passed from the date of the last revocation or violation, whichever is later.
3. After a third permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of ninety (90) days have passed from the date of the last revocation or violation, whichever is later.
4. After four or more permit violations at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.

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

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

- a. Violators who operate without the necessary tobacco retailer's permit shall be subject to closure of the tobacco retail facility.
- b. Whenever evidence of a violation of this Ordinance is obtained in part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Ordinance and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- c. Violations of this Ordinance are subject to a civil action brought by the District Attorney or County Counsel, punishable by:
 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty-month (60) period; or
 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.
 - 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 the Ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last County Equalized Assessment Roll.
 - iv. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.
 - 3. **Administrative Penalties.**
 - i. The penalties assessed for each violation shall not exceed the following amounts:
 - a) \$100.00 for a first violation;
 - b) \$200.00 for a second violation of this Ordinance within one (1) year; and
 - c) \$500.00 for each additional violation of this Ordinance within one (1) year.
 - ii. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.

- iii. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
 - iv. The penalties assessed shall be payable to the County of Riverside.
4. Administrative Appeal
- i. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation as set forth in Section 9.h.2. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on the Administrative Citation Appeal forms and shall be accompanied by payment of the full penalty assessment, and shall contain the following information:
 - a) A brief statement setting forth the appellants interest in the proceedings;
 - b) A brief statement of the material facts which the appellant claims supports their contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
 - c) An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
 - d) The notice of appeal must be signed by the appellant.
 - ii. Administrative Hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:
 - a) Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
 - b) Hearing Officer. The administrative hearing shall be held before the Director of Department of Environmental Health or their designee. The hearing officer shall not be the enforcement officer who issued the administrative citation or said enforcement officer's immediate supervisor. The Director may contract with a qualified provider to conduct administrative hearings or to process administrative citations.
 - c) Conduct of the Hearing. The Enforcement Officer who issued the administrative citation shall not be required to, but may, participate in the administrative hearing. The contents of the enforcement officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the hearing officer shall make his or her determination based on the information contained in the notice of appeal.
 - d) Hearing Officer's Decision. The hearing officer, based upon the evidence submitted, shall either dismiss or uphold the citation. The citation recipient shall receive a refund of the full penalty assessment if the citation is dismissed. The hearing officer's decision following the administrative hearing shall be personally delivered to the person requesting the hearing or sent by first class mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.

5. Review of Administrative Hearing Officer's Decision.
- i. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the Superior Court. The failure to file the written appeal and to pay the court filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.
 - ii. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.
 - iii. Judgment. The court shall retain the court's filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fine or penalty shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to the procedures set forth in this Ordinance, or in any other manner provided by law.

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

Marion Ashley, Chairman of the Board

I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said County, held on **January 26, 2010**, the foregoing Ordinance consisting of ten (10) sections was adopted by said Board by the following vote:

AYES: Buster, Stone, Benoit and Ashley
NAYS: None
ABSENT: Tavaglione

Kecia Harper-Ihem, Clerk of the Board
By: Cecilia Gil, Board Assistant

REMITTANCE ADDRESS
POST OFFICE BOX 12009
RIVERSIDE, CA 92502-2209
FAX (951) 368-9026

BILLING PERIOD 02/07/10 - 02/08/10
BILLING DATE 02/08/10
ADVERTISING/CLIENT NAME BOARD OF SUPERVISORS
FOR BILLING INFORMATION CALL (951) 368-9713
TOTAL AMOUNT DUE 1,792.06
UNAPPLIED AMOUNT 0

PAGE NO 1
TERMS OF PAYMENT Due Upon Receipt

BILLED ACCOUNT NAME AND ADDRESS

BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE
P.O. BOX 1147
RIVERSIDE CA 92502

BILLED ACCOUNT NUMBER 045202 REP NO LE04

Statement #: 56523428 Amount Paid \$ _____ Your Check # _____


PLEASE DETACH AND RETURN UPPER PORTION WITH YOUR REMITTANCE

DATE	REFERENCE	DESCRIPTION-OTHER COMMENTS/CHARGES	SAU SIZE BILLED UNITS	RATE	GROSS AMOUNT	NET AMOUNT
02/07	4153836 CO	ORDINANCE NO. 838 Class : 10 Ctext Ad# 10152036 Placed By : Cecilia Gil	1,523 L	1.30	1,979.90	1,979.90
<p>COMING SOON! Electronic Tearsheet Delivery Service It's easy! Search, view, save, email notification & more</p>						

RECEIVED RIVERSIDE COUNTY
2010 FEB 16 PM 2:11

ENV. Health
9.10 of 01/26/10
1 hr.

CURRENT NET AMOUNT DUE	30 DAYS	60 DAYS	OVER 90 DAYS	UNAPPLIED AMOUNT	PLEASE PAY THIS AMOUNT
					1,792.06

THE PRESS-ENTERPRISE  P.O. BOX 12009
RIVERSIDE, CA 92502-2209
TELEPHONE (951) 368-9711
(951) 368-9720 (951) 368-9713

ADVERTISING
STATEMENT/INVOICE

* UNAPPLIED AMOUNTS ARE INCLUDED IN TOTAL AMOUNT DUE



STATEMENT NUMBER	BILLING PERIOD	BILLED ACCOUNT NUMBER	ADVERTISER/CLIENT NUMBER	ADVERTISER/CLIENT NAME
56523428	02/07/10 - 02/08/10	045202		BOARD OF SUPERVISORS

THE PRESS-ENTERPRISE

3450 Fourteenth Street
Riverside CA 92501-3878
951-684-1200
951-368-9018 FAX

PROOF OF PUBLICATION
(2010, 2015.5 C.C.P.)

Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.: ORDINANCE NO. 838

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673 and under date of August 25, 1995, Case Number 267864; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

02-07-10

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: Feb. 7, 2010
At: Riverside, California

BOARD OF SUPERVISORS

P.O. BOX 1147
COUNTY OF RIVERSIDE
RIVERSIDE CA 92502

Ad #: 10152036

PO #:

Agency #: _____

Ad Copy:

BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA ORDINANCE NO. 838

(AS AMENDED THROUGH 838.1)

AN ORDINANCE OF THE COUNTY OF RIVERSIDE REGARDING THE PERMITTING OF TOBACCO RETAILERS

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

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

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

a. "Arm's Length Transaction" shall mean: a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Ordinance is presumed not to be an arm's length transaction.

b. "Department" shall mean: the County of Riverside Department of Environmental Health, including the Director of the Department of Environmental Health or his or her designee.

c. "Enforcement officer" shall mean the Director of Environmental Health or his or her designee.

d. "Person" shall mean: any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

e. "Proprietor" shall mean: a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share ultimate control over the day-to-day operations of a business.

f. "Self-Service Display" shall mean: the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

g. "Tobacco Paraphernalia" shall mean: cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

h. "Tobacco Product" shall mean: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

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

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

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

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

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

1. The name, address, and telephone number of each proprietor.

2. The business name, address, and telephone number of the single fixed location for which a tobacco retailer's permit is sought.

3. The name and mailing address authorized by

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

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

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

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

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

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

Section 4. PERMIT ISSUANCE STANDARDS.

a. Upon the receipt of an application for a tobacco retailer's permit and the permit fee, the Department shall issue a permit unless substantial record evidence demonstrates that one of the following bases for denial exists:

1. The application is incomplete or inaccurate.

2. The application seeks authorization for tobacco retailing at a location for which a prohibition on issuing permits is in effect pursuant to Section 8.b. of this Ordinance. However, this subparagraph shall not constitute a basis for denial of a permit if the applicant provides the County with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

3. The application seeks authorization for tobacco retailing for a proprietor for which a prohibition on issuing permits is in effect pursuant to Section 8.b. of this Ordinance.

4. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Section of this Ordinance; that is unlawful pursuant to any other County ordinance; or that is unlawful pursuant to any other local, state, or federal law.

Section 5. PERMITS ARE NONTRANSFERABLE

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

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

Section 6. FEES FOR PERMIT

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

Section 7. PERMIT VIOLATIONS

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

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

2. POSITIVE IDENTIFICATION REQUIRED. No tobacco retailer shall engage in tobacco retailing without first examining the identification of the purchaser, if the purchaser reasonably appears underage, and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product or tobacco paraphernalia.

3. MINIMUM AGE FOR PERSONS SELLING TOBACCO. No tobacco retailer shall engage in tobacco retailing if the person is younger than the minimum age in state law for being sold or for possessing any tobacco product.

4. • **DISPLAY OF TOBACCO RELATED LICENSES/PERMITS.** Each tobacco retailer must maintain a license from the California State Board of Equalization as well as a tobacco retailer's permit allowing the sale of tobacco products for each tobacco retail location. Both permits shall be prominently displayed in a publicly and readily visible location at the permitted location.

5. **SELF-SERVICE DISPLAYS PROHIBITED.** No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.

6. **TOBACCO SALES PUBLIC NOTIFICATION SIGNS POSTED.** Every store that sells tobacco must post a boldly-printed, contrasting color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors. The sign must contain the following words: "The Sale of Tobacco Products to Persons Under 18 Years of Age is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report an Unlawful Tobacco Sale Call 1-800-5 ASK-4-ID. Business and Professions Code Section 22952." The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5 inches), and the required notice must meet specified font sizes.

7. **TOBACCO SALES AND ADVERTISING LOCATION.**

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

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

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

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

10. **TOBACCO COUPONS AND SAMPLES.** It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products, including but not limited to smokeless tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale distribution of any tobacco products to any person on any private property that is open to the general public. "Non-sale distribution" means to give tobacco products or tobacco paraphernalia to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers, or rebate offers for tobacco products to the general public at no cost or at nominal cost.

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

b. **PERMIT COMPLIANCE MONITORING**

1. Compliance with this Ordinance shall be monitored by the Department. Any peace officer or enforcement officer may enforce the penal provisions of this Ordinance.

2. The Department shall check the compliance of each tobacco retailer as necessary to carry out the purpose and intent of this Ordinance. Subject to the discretion of the Department, the Department may check the compliance of tobacco retailers previously found to be in compliance a fewer number of times so that the Department may check the compliance of tobacco retailers previously found in violation a greater number of times.

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

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

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

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

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

Section 8. **REVOCATION OF PERMIT**

a. • **REVOCAION OF PERMIT FOR VIOLATION.**

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

2. A tobacco retail proprietor may appeal the Department's determination to revoke its tobacco retail permit in the same manner and in conjunction with an appeal of an administrative citation as provided by Section 9.h. of this Ordinance.

3. A proprietor or tobacco retailer without a valid tobacco retail permit, including, for example, a revoked permit:

i. Shall keep all tobacco products and tobacco paraphernalia from public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute an "offer for sale."

ii. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location.

iii. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this Ordinance may be destroyed.

b. **NEW TOBACCO RETAILER'S PERMIT AFTER REVOCAION FOR VIOLATION.**

1. After a first permit violation at a location no new tobacco retailer's permit may be issued for the location until a minimum of one (1) day has passed from the date of the last revocation or violation, whichever is later.

2. After a second permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of thirty (30) days have passed from the date of the last revocation or violation, whichever is later.

3. After a third permit violation at a location within any sixty-month (60) period, no new tobacco retailer's permit may be issued for the location until a minimum of ninety (90) days have passed from the date of the last revocation or violation, whichever is later.

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

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

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

a. Violators who operate without the necessary tobacco retailer's permit shall be subject to closure of the tobacco retail facility.

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

c. Violations of this Ordinance are subject to a civil action brought by the District Attorney or County Counsel, punishable by:

1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty-month (60) period; or

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.

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

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

3. Administrative Penalties.
i. The penalties assessed for each violation shall not exceed the following amounts:

- a) \$100.00 for a first violation;
- b) \$200.00 for a second violation of this Ordinance within one (1) year; and
- c) \$500.00 for each additional violation of this Ordinance within one (1) year.

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

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

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

4. Administrative Appeal

i. Notice of Appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the Department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation as set forth in Section 9.h.2. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on the Administrative Citation Appeal forms and shall be accompanied by payment of the full penalty assessment, and shall contain the following information:

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

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

a) Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.

b) Hearing Officer. The administrative hearing shall be held before the Director of Department of Environmental Health or their designee. The hearing officer shall not be the enforcement officer who issued the administrative citation or said enforcement officer's immediate supervisor. The Director may contract with a qualified provider to conduct administrative hearings or to process administrative citations.

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

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

5. Review of Administrative Hearing Officer's Decision.

i. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the Superior Court. The failure to file the written appeal and to pay the court filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.

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

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

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

Marion Ashley, Chairman of the Board
I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said County, held on January 26, 2010, the foregoing Ordinance consisting of ten (10) sections was adopted by said Board by the following vote:

AYES: Buster, Stone, Benoit and Ashley

NAYS: None

ABSENT: Tavaglione

Kecia Harper-Ihem, Clerk of the Board

By: Cecilia Gil, Board Assistant

The Desert Sun

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144

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RIVERSIDE CA 92502-1147

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For the Period	Thru
02/01/10	02/28/10
Due Date	Amount Due
03/15/10	3,721.32
AMOUNT PAID	

Date	EDT	Class	Description	Times Run	Col	Depth	Total Size	Rate	Amount
0201			BALANCE FORWARD						4,598.82
0201			COMMERCIAL PAYMENT THANK YOU						3,922.18-
0205	CLS	0001	CECILIA NO 0461 NOTICE O	8	2	135.00	2160.00		230.10
0205	CLS	0001	CECILIA NO 0462 BOARD OF	8	2	67.00	1072.00		117.22
0207	CLS	0001	CECILIA [REDACTED] BOARD OF	8	2	730.00	1680.00		1,217.80
0212	CLS	0001	CECILIA NO 0590 NOTICE O	8	2	92.00	1472.00		158.72
0213	CLS	0001	CECILIA NO 0615 NOTICE O	8	2	75.00	1200.00		130.50
0213	CLS	0001	CECILIA NO 0616 NOTICE O	8	2	92.00	1472.00		158.72
0214	CLS	0001	CECILIA NO 0627 NOTICE O	8	2	92.00	1472.00		158.72
0214	CLS	0001	CECILIA NO 0628 NOTICE O	8	2	65.00	1040.00		113.90
0219	CLS	0001	CECILIA NO 0689 BOARD OF	8	2	208.00	3328.00		351.28
0219	CLS	0001	CECILIA NO 0690 BOARD OF	8	2	242.00	3872.00		407.72
<div> <div>2010 MAR -8 PM 3:10</div> <div>RECEIVED RIVERSIDE COUNTY BOARD OF SUPERVISORS</div> </div>									
Current		Over 30 Days	Over 60 Days	Over 90 Days	Over 120 Days	Total Due			
3,044.68		487.14	189.50	.00	.00	3,721.32			
Contract Type		Contract Qnty.	Expiration Date	Current Usage	Total Used	Quantity Remaining	Salesperson		
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RIV069	RIVERSIDE COUNTY-BOARD OF SUP.	0003688032	

THE DESERT SUN PUBLISHING CO.
ADVERTISING INVOICE/STATEMENT

9.10 of 01/26/10

**PROOF OF PUBLICATION
(2015.5.C.C.P)**

STATE OF CALIFORNIA
County of Riverside

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of a printer of the, **DESERT SUN PUBLISHING COMPANY** a newspaper of general circulation, printed and published in the city of Palm Springs, County of Riverside, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Riverside, State of California under the date of March 24, 1988. Case Number 191236; that the notice, of which the annexed is a printed copy (set in type not smaller than non paniel, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

February 7th, 2010

All in the year 2010

I certify (or declare) under penalty of perjury that foregoing is true and correct.

Dated at Palm Springs, California this ---9th--- d
of----- February -----, 2010

Signature

PATRIOT NEW

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2

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