

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



1.1

On motion of Supervisor Stone, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED, FOUND AND DETERMINED that the following ordinances were duly published:

<u>ORDINANCE</u>	<u>DATE</u>	<u>NEWSPAPER</u>
No. 348.4686	February 4, 2010	Riverside County Record
No. 838	February 7, 2010	The Press-Enterprise

Roll Call:

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

I hereby certify that the foregoing is a full, true and correct copy of an order made and entered on March 2, 2010 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: March 2, 2010
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in and
for the County of Riverside, State of California.

(seal)

By: Kaleu Buster, Deputy

AGENDA NO.

1.1

ATTACHMENTS FILED WITH
THE CLERK OF THE BOARD

Affidavit of Publication

(2015.5 C.C.P.)

County of Riverside

State of California

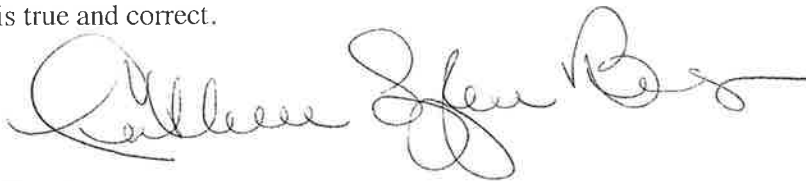
Catherine Sy-pin-Barnes, being first duly sworn, deposes and says: That at all times hereinafter mentioned that she was a citizen of the United States over the age of eighteen years, and a resident of said County, and was and during all said times the principal clerk of the printer and publisher of The Riverside County Record-News, a newspaper of general circulation adjudicated by court decree, printed and published weekly in said County of Riverside, State of California, that said Riverside County Record-News is and was at all times herein mentioned, a newspaper of general circulation as that term is defined in section 4460 of the Political Code, and, as provided by that section, is published for the dissemination of local and telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not devoted to nor published for the entertainment or instruction of a particular class, profession, trade, call or race of denominations; that at all said time said newspaper has been established, printed and published in said County and State at regular intervals more than one year preceding the date of publication of the notice herein mentioned; that said notice was set in type not smaller than nonpareil and preceded with words printed in black face type not smaller than nonpareil describing and expressing in general terms the purport and character of the notice intended to be given; that the

RIVERSIDE COUNTY RECORD NEWSPAPER

of which the annexed is a printed copy, published and printed in said newspaper in at least 1 weekly issues, as follows:

February 4, 2010

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



Signature

Dated: February 4, 2010 at
Riverside, California

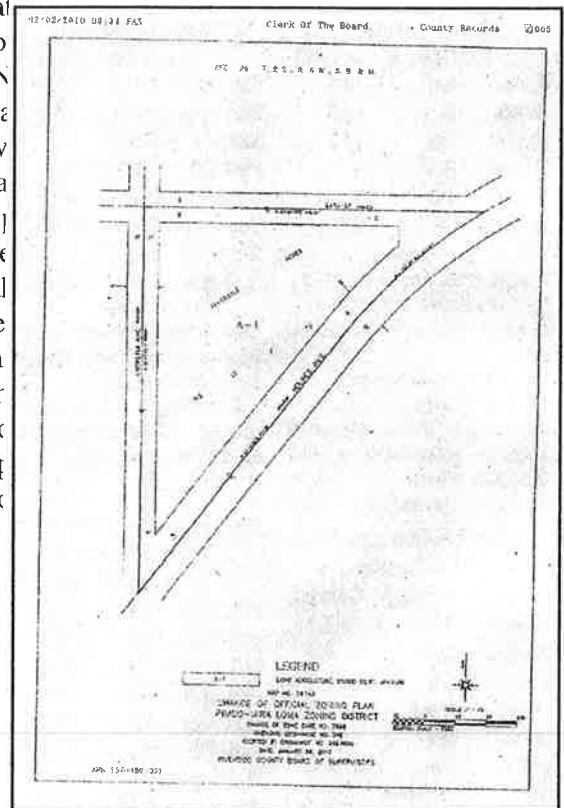
BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA ORDINANCE NO. 348.4686

AN ORDINANCE OF THE COUNTY OF RIVERSIDE AMENDING ORDINANCE NO. 348 RELATING TO ZONING

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

Section 1. Section 4.1 of Ordinance No. 348, and Prado-Mira Loma District Zoning Plan Map No. 38, as amended, are further amended by placing in effect in the zone or zones as shown on the map entitled "Change of Official Zoning Plan, Prado-Mira Loma District, Map No. 38.143 Change of Zone Case No. 7698," which map is made a part of this ordinance.

Section 2. This ordinance shall take effect 30 days after its adoption.



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 two (2) sections was adopted by said Board by the following vote:
AYES: Buster, Tavaglione, Stone, Benoit and Ashley
NAYS: None
ABSENT: None
Kecia Harper-Ihem, Clerk of the Board
By: Cecilia Gill, Board Assistant
Published: February 4, 2010

RCR096

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 "beedis," 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