

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



FROM: Department of Environmental Health

SUBMITTAL DATE:
July 13, 2016

SUBJECT: Adoption of Ordinance No. 838.2, an ordinance of the County of Riverside amending Ordinance 838 Regarding the Permitting of Tobacco Retailers. Countywide. (0); Funded by permits and potential fines for non-compliance.

RECOMMENDED MOTION: That the Board of Supervisors:

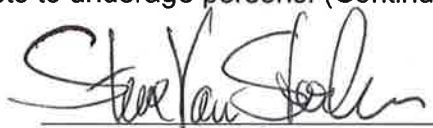
1. Adopt Ordinance No. 838.2, an ordinance amending Ordinance 838 Regarding the Permitting of Tobacco Retailers

BACKGROUND:

Summary

Ordinance 838.1 currently states all persons must be at least 18 years of age to legally purchase tobacco or tobacco paraphernalia. Riverside County Department of Environmental Health is charged with managing the Retail Tobacco Permitting Program. All retail tobacco facilities are inspected to ensure compliance with state and local laws. Decoy operations are also conducted to ensure that tobacco facilities are checking identification and not selling tobacco products to underage persons. (Continued)

SVS:KJ


Steve Van Stockum
Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Permits and potential fines for non-compliance

Budget Adjustment: No

For Fiscal Year: 16/17

C.E.O. RECOMMENDATION:

APPROVE

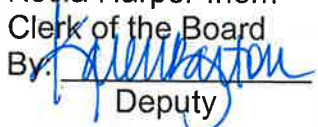
BY: 
Steven C. Horn

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended and that Ordinance No. 838.2 is adopted as recommended.

Ayes: Jeffries, Tavaglione, Washington, Benoit and Ashley
Nays: None
Absent: None
Date: July 26, 2016
xc: Env. Health

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

Prev. Agn. Ref.: 7/12/16, 3-24

District: 1-5

Agenda Number:

3-28

FORM APPROVED COUNTY COUNSEL

BY: TIFFANY N. NORTH DATE: 7/21/16

Departmental Concurrence

☐ Positions Added

☐ Change Order

☐ A-30

☐ 4/5 Vote

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

FORM 11: Adoption of Ordinance No. 838.2, an ordinance of the County of Riverside amending Ordinance 838 Regarding the Permitting of Tobacco Retailers. Countywide. (0); Funded by permits and potential fines for non-compliance.

DATE: July 13, 2016

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

Governor Brown signed Senate Bill No 7 on May 04, 2016 which raises the minimum age to purchase tobacco or tobacco products to 21 (except active military with valid military ID, which remains at 18). A section dealing with where tobacco advertising can be placed will be removed as Federal law deemed it unconstitutional. The definition of tobacco will be replaced to match the state of California's definition which unequivocally includes all vape and e-cigarettes. The amended ordinance will also reflect the minimum age to purchase all tobacco and tobacco paraphernalia will be 21 years or older (with the military exemption).

Impact on Citizens and Businesses

The purpose of the Retail Tobacco Permitting Program is to discourage retailers from selling tobacco products to underage persons. The Institute of Medicine reports that 90 percent of daily smokers began using tobacco before turning 19. With the minimum age required to purchase tobacco increased to 21, the goal is to reduce smoking rates thus resulting in a healthier community.

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1 her designee.

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

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

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

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

19 h. "Tobacco product" means any of the following:

20 (A) A product containing, made, or derived from tobacco or nicotine that is
21 intended for human consumption, whether smoked, heated, chewed, absorbed,
22 dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but
23 not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or
24 snuff.

25 (B) An electronic device that delivers nicotine or other vaporized liquids to the
26 person inhaling from the device, including, but not limited to, an electronic
27 cigarette, cigar, pipe, or hookah.
28

1 (C) Any component, part, or accessory of a tobacco product, whether or not sold
2 separately.

3 "Tobacco product" does not include a product that has been approved by the
4 United States Food and Drug Administration for sale as a tobacco cessation
5 product or for other therapeutic purposes where the product is marketed and sold
6 solely for such an approved purpose.

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

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

19
20 **Section 3. TOBACCO RETAILER'S PERMIT REQUIREMENTS AND**
21 **APPLICATION PROCESS.**

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

- 1 b. All applications shall be submitted on a form supplied by the Department and shall
2 contain the following information:
- 3 1. The name, address, and telephone number of each proprietor.
 - 4 2. The business name, address, and telephone number of the single
5 fixed location for which a tobacco retailer's permit is sought.
 - 6 3. The name and mailing address authorized by each proprietor to
7 receive all permit-related communications and notices (the
8 "Authorized Address"). If an authorized address is not supplied,
9 each proprietor shall be understood to consent to the provision of
10 notice at the business address specified in subparagraph 2 above.
 - 11 4. Proof that the location for which a tobacco retailer's permit is
12 sought has been issued a valid state tobacco retailer's license by the
13 California Board of Equalization.
 - 14 5. Whether or not any proprietor is a person who has been determined
15 to have violated this Ordinance or has been a proprietor at a
16 location that has been determined to have violated this Ordinance
17 and, if so, the dates and locations of all such violations.
 - 18 6. Such other information as the Department deems necessary for the
19 administration or enforcement of this Ordinance.
- 20 c. It shall be unlawful for any person to act as a tobacco retailer without first
21 obtaining and maintaining a valid tobacco retailer's permit pursuant to this
22 Ordinance for each location at which tobacco retailing is to occur. Tobacco
23 retailing without a valid tobacco retailer's permit shall constitute a public nuisance.
- 24 d. Nothing in this Ordinance shall be construed to grant any person obtaining and
25 maintaining a tobacco retailer's permit any status or right other than the right to act
26 as a tobacco retailer at the location in the County identified on the face of the
27 permit. For example, nothing in this Ordinance shall be construed to render
28 inapplicable, supersede, or apply in lieu of any other provision of applicable law,

1 including, without limitation, any condition or limitation on smoking in enclosed
2 places of employment made applicable to business establishments by California
3 Labor Code section 6404.5.

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

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

23 **Section 5. PERMITS ARE NONTRANSFERABLE.**

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

1 retailer at the new location. Or if the business is sold, the new owner must apply for
2 a new permit for that location before acting as a tobacco retailer.

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

9 **Section 6.** **FEES FOR PERMIT.**

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

16 **Section 7.** **PERMIT VIOLATIONS.**

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

- 20 1. MINIMUM AGE FOR PERSONS BUYING TOBACCO. It is unlawful for
21 any person, firm, tobacco retailer, or corporation to sell, give, or in any way
22 furnish to a person any tobacco product or tobacco paraphernalia if that
23 person, firm, or corporation knows or should have grounds to know that the
24 recipient is a person who is not at least the minimum age required by state
25 law to purchase or possess any tobacco product. Proof that a retailer, or his
26 or her employee or agent, demanded, was shown, and reasonably relied
27 upon evidence of legal age (such as identification) shall be a defense to any
28 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 21 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.

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 twenty-one (21) 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,

1 including the federal warning label. Cigarettes may not be manufactured,
2 distributed, sold, or offered for sale except in a package containing at least
3 twenty (20) cigarettes. Roll your own tobacco may not be manufactured,
4 distributed, sold, or offered for sale except in a package containing at least
5 0.60 ounces of tobacco.

6 b. PERMIT COMPLIANCE MONITORING.

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

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 twenty one (21) years old, such a person

1 shall not be required to appear or give testimony in any civil or administrative
2 process brought to enforce this Ordinance and the alleged violation shall be
3 adjudicated based upon the sufficiency and persuasiveness of the evidence
4 presented.

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

- 7 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one
8 thousand dollars (\$1,000) for a first violation in any sixty-month (60)
9 period; or
- 10 2. A fine not less than one thousand five hundred dollars (\$1,500) and not
11 exceeding two thousand five hundred dollars (\$2,500) for a second
12 violation in any sixty-month (60) period; or
- 13 3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten
14 thousand dollars (\$10,000) for a third or subsequent violation in any sixty
15 month (60) period.

16 d. Violations of this Ordinance may, in the discretion of the District Attorney or
17 County Counsel, be prosecuted as infractions or misdemeanors.

18 e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of
19 this Ordinance shall constitute a violation.

20 f. Violations of this Ordinance are hereby declared to be public nuisances.

21 g. In addition to other remedies provided by this Ordinance or by other law, any
22 violation of this Ordinance may be remedied by a civil action brought by the
23 County Counsel, including, but not limited to, administrative or judicial nuisance
24 abatement proceedings, civil or criminal code enforcement proceedings, and suits
25 for injunctive relief.

26 h. ADMINISTRATIVE CITATIONS AND PENALTIES. In addition to the remedies
27 and penalties contained in this Ordinance, and in accordance with Government
28 Code Section 53069.4, an enforcement officer may issue an administrative citation

1 for any violation of this Ordinance. The following procedures shall govern the
2 imposition, enforcement, collection and administrative review of administrative
3 citations and penalties.

4 1. Content of Citation. The administrative citation shall be issued on a form
5 approved by County Counsel and shall at a minimum contain the following
6 information:

- 7 i. Date, location and approximate time the violation was observed.
- 8 ii. The ordinance violated and a brief description of the violation.
- 9 iii. The amount of the administrative penalty imposed for the violation.
- 10 iv. Instructions for the payment of the penalty, and the time period by
11 which it shall be paid and the consequences of failure to pay the
12 penalty within this time period.
- 13 v. Instructions on how to appeal the citation.
- 14 vi. The signature of the enforcement officer. The failure of the citation
15 to set forth all required contents shall not affect the validity of the
16 proceedings.

17 2. Service of Citation.

- 18 i. If the proprietor, owner, employee, agent, occupant or other person
19 who has violated the Ordinance is present at the scene of the
20 violation, the enforcement officer shall attempt to obtain their
21 signature on the administrative citation and shall deliver a copy of
22 the administrative citation to them.
- 23 ii. If the proprietor, owner, employee, agent, occupant or other person
24 who has violated the Ordinance is a business, and the business
25 owner is on the premises, the enforcement officer shall attempt to
26 deliver the administrative citation to them. If the enforcement
27 officer is unable to serve the business owner on the premises, the
28 administrative citation may be left with the manager or employee of

1 the business. If left with the manager or employee of the business, a
2 copy of the administrative citation shall also be mailed to the
3 business owner by certified mail, return receipt requested.

4 iii. If no one can be located at the property, then the administrative
5 citation shall be posted in a conspicuous place on or near the
6 property and a copy mailed by certified mail, return receipt
7 requested to the owner, occupant or other person who has violated
8 the Ordinance. The citation shall be mailed to the property address
9 and/or the address listed for the owner on the last County Equalized
10 Assessment Roll.

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

13 3. Administrative Penalties.

14 i. The penalties assessed for each violation shall not exceed the
15 following amounts:

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

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

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

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

27 4. Administrative Appeal

28 i. Notice of Appeal. The recipient of an administrative citation may

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

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

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

- 23 a) Notice of Hearing. Notice of the administrative hearing shall
24 be given at least ten (10) days before the hearing to the
25 person requesting the hearing. The notice may be delivered
26 to the person or may be mailed to the address listed in the
27 notice of appeal.
- 28 b) Hearing Officer. The administrative hearing shall be held

1 before the Director of Department of Environmental Health
2 or their designee. The hearing officer shall not be the
3 enforcement officer who issued the administrative citation
4 or said enforcement officer's immediate supervisor. The
5 Director may contract with a qualified provider to conduct
6 administrative hearings or to process administrative
7 citations.

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

18 d) Hearing Officer's Decision. The hearing officer, based upon
19 the evidence submitted, shall either dismiss or uphold the
20 citation. The citation recipient shall receive a refund of the
21 full penalty assessment if the citation is dismissed. The
22 hearing officer's decision following the administrative
23 hearing shall be personally delivered to the person
24 requesting the hearing or sent by first class mail. The
25 hearing officer may allow payment of the administrative
26 penalty in installments, if the person provides evidence
27 satisfactory to the hearing officer of an inability to pay the
28 penalty in full. The hearing officer's decision shall contain

1 instructions for obtaining review of the decision by the superior
2 court.

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

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

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

23 iii. Judgment. The court shall retain the court's filing fee regardless of
24 the outcome of the appeal. If the court finds in favor of the
25 contestant, the amount of the fine or penalty shall be reimbursed to
26 the contestant by the local agency. Any deposit of the fine or
27 penalty shall be refunded by the issuing agency in accordance with
28 the judgment of the court. If the fine or penalty has not been


1 deposited and the decision of the court is against the contestant, the
2 issuing agency may proceed to collect the penalty pursuant to the
3 procedures set forth in this Ordinance, or in any other manner
4 provided by law.


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

14 **EFFECTIVE DATE.** This Ordinance shall become effective 30 days after adoption.

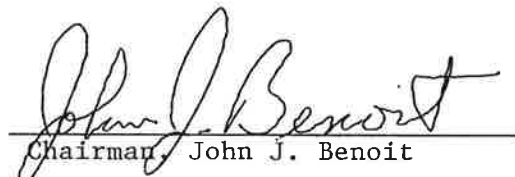
15 **Adopted:** 838 Item 9.2 of 09/13/2005 (Eff: 10/13/2005)

16 **Amended:** 838.1 Item 9.10 of 01/26/2010 (Eff: 02/25/2010)

FORM APPROVED COUNTY COUNSEL
BY:  6/28/16
ERIC STOPHER
DATE

19 
20 Clerk of the Board
21 Kecia Harper-Ihem

Deputy

18 
19 Chairman John J. Benoit

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5
6
7
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9
10
11 STATE OF CALIFORNIA)
12 COUNTY OF RIVERSIDE) ss

13
14 I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said county
15 held on July 26, 2016, the foregoing ordinance consisting of 10 Sections was adopted by
16 the following vote:

17 AYES: Jeffries, Tavaglione, Washington, Benoit and Ashley

18 NAYS: None

19 ABSENT: None
20

21 DATE: July 26, 2016

22 KECIA HARPER-IHEM
Clerk of the Board

23 BY: 
Deputy

24 SEAL
25
26
27
28



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

July 29, 2016

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

TEL: (951) 368-9225
E-MAIL: legals@pe.com

RE: ADOPTION OF ORDINANCE NO. 838.2

To Whom It May Concern:

Attached is a copy for publication in your newspaper for **ONE (1) TIME** on **Wednesday, August 3, 2016**.

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

Your invoice must be submitted to this office, 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,

Cecilia Gil

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

Gil, Cecilia

From: Legals <legals@pe.com>
Sent: Friday, July 29, 2016 8:54 AM
To: Gil, Cecilia
Subject: Re: FOR PUBLICATION: Adoption of Ord. NO. 838.2

Good morning,

Received for publication. Proof with cost to follow.

Nick Eller

Legal Advertising Phone: 1-800-880-0345 / Fax: 951-368-9018 / E-mail: legals@pe.com

Please Note: Deadline is 10:30 AM, three (3) business days prior to the date you would like to publish. **Additional days required for larger ad sizes**

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The Press-Enterprise PE.COM / La Prensa

On Fri, Jul 29, 2016 at 8:49 AM, Gil, Cecilia <CCGIL@rcbos.org> wrote:

Good morning! Adoption of Ordinance is attached, for publication on Wednesday, August 3, 2016. Please confirm. THANK YOU!

Cecilia Gil

Board Assistant

Clerk of the Board of Supervisors

(951) 955-8464

MS# 1010



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

July 29, 2016

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

TEL: (760) 778-4502
E-MAIL: legals@thedesertsun.com

RE: ADOPTION OF ORDINANCE NO. 838.2

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Attached is a copy for publication in your newspaper for **ONE (1) TIME** on **Wednesday, August 3, 2016**.

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

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Sincerely,

Cecilia Gil

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

Gil, Cecilia

From: Email, TDS-Legals <legals@thedesertsun.com>
Sent: Friday, July 29, 2016 9:56 AM
To: Gil, Cecilia
Subject: RE: FOR PUBLICATION: Adoption of Ord. NO. 838.2

Received and will publish. Have a great weekend Cecilia.

Lynne Stephenson

Executive Assistant to the President and Publisher



Mobile: 760.880.3859
Office: 760.778.4502
lynne.stephenson@desertsun.com

desertsun.com

From: Gil, Cecilia [mailto:CCGIL@rcbos.org]
Sent: Friday, July 29, 2016 8:50 AM
To: Email, TDS-Legals <legals@thedesertsun.com>
Subject: FOR PUBLICATION: Adoption of Ord. NO. 838.2

Good morning! Adoption of Ordinance is attached, for publication on Wednesday, August 3, 2016. Please confirm. THANK YOU!

Cecilia Gil

Board Assistant
Clerk of the Board of Supervisors
(951) 955-8464
MS# 1010

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

ORDINANCE NO. 838
(AS AMENDED THROUGH 838.2)
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 a person under 21 years of age; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to a person under 21 years of age; in protecting youth 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 a person under 21 years of age, 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" means any of the following:
(A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including,

but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(B) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(C) Any component, part, or accessory of a tobacco product, whether or not sold separately.

"Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

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" shall mean: 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. **PROCESS.**

TOBACCO RETAILER'S PERMIT REQUIREMENTS AND APPLICATION

- 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.

a.

PERMIT VIOLATIONS.

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 21 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.
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 twenty-one (21) 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 "Decoy") if the potential violation occurs when:
 - i. the Decoy is participating in a compliance check supervised by a peace officer or an enforcement officer; or
 - ii. the 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 twenty one (21) 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.

EFFECTIVE DATE. This Ordinance shall become effective 30 days after adoption.

John J. Benoit, Chairman of the Board

I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said County, held on **July 26, 2016**, the foregoing Ordinance consisting of ten (10) sections was adopted by said Board by the following vote:

AYES: Jeffries, Tavaglione, Washington, Benoit and Ashley
NAYS: None
ABSENT: None

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



FOR BILLING INQUIRIES:
CALL (951) 368-9712
EMAIL billinginquiry@pe.com

THE PRESS-ENTERPRISE

DATE	ORDER NUMBER	PONumber	PRODUCT	SIZE	AMOUNT
8/3/16	0010186205		PE Riverside	3 x 472 Li	2,053.20

Invoice text: Adoption of Ord. NO. 838.2

RECEIVED RIVERSIDE COUNTY
CLERK/BOARD OF SUPERVISORS
2016 AUG - 8 AM 10:45

DEH
3-28 of 07/26/16

Placed by: Cecilia Gil

Legal Advertising Invoice

BALANCE DUE

2,053.20

SALES/CONTACT INFORMATION		ADVERTISER INFORMATION		
Nick Eller 951-368-9229	BILLING DATE	BILLED ACCOUNT NUMBER	ADVERTISER/CLIENT NUMBER	ADVERTISER/CLIENT NAME
	08/03/2016	1100141323	1100141323	BOARD OF SUPERVISORS



THE PRESS-ENTERPRISE

Legal Advertising Invoice

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

ADVERTISER/CLIENT NAME		
BOARD OF SUPERVISORS		
BILLING DATE	BILLED ACCOUNT NUMBER	ADVERTISER/CLIENT NUMBER
08/03/2016	1100141323	1100141323
BALANCE DUE	ORDER NUMBER	TERMS OF PAYMENT
2,053.20	0010186205	DUE UPON RECEIPT

BILLING ACCOUNT NAME AND ADDRESS

REMITTANCE ADDRESS

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

The Press-Enterprise
Dept LA 24453
Pasadena, CA 91185-4453

THE PRESS-ENTERPRISE

1825 Chicago Ave, Suite 100
Riverside, CA 92507
951-684-1200
951-368-9018 FAX

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

Publication(s): The Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.: Adoption of Ord. NO. 838.2

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 in 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, under date of August 25, 1995, Case Number 267864, and under date of September 16, 2013, Case Number RIC 1309013; 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:

08/03/2016

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

Date: Aug 03, 2016

At: Riverside, California

Legal Advertising Representative, The Press-Enterprise

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

Ad Number: 0010186205-01

P.O. Number:

RECEIVED RIVERSIDE COUNTY
CLERK/BOARD OF SUPERVISORS
AUG 10 8 - 504 9102

Ad Copy:

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

**ORDINANCE NO. 838
(AS AMENDED THROUGH 838.2)
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 a person under 21 years of age; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to a person under 21 years of age; in protecting youth 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 a person under 21 years of age, 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" means any of the following:
 - (A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
 - (B) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
 - (C) Any component, part, or accessory of a tobacco product, whether or not sold separately."Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.
- 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" shall mean: 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 21 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.
 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 twenty-one (21) 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 "Decoy") if the potential violation occurs when:
 - i. the Decoy is a minor who is a customer of the tobacco retailer;

- i. the Decoy is participating in a compliance check supervised by a peace officer or an enforcement officer; or
 - ii. the 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 twenty one (21) 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.

EFFECTIVE DATE. This Ordinance shall become effective 30 days after adoption.

John J. Benoit, Chairman of the Board

I HEREBY CERTIFY that at a regular meeting of the Board of Supervisors of said County, held on **July 26, 2016**, the foregoing Ordinance consisting of ten (10) sections was adopted by said Board by the following vote:

AYES: Jeffries, Tavaglione, Washington, Benoit and Ashley
 NAYS: None
 ABSENT: None

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