

1 **ORDINANCE NO. 838**

2 **AN ORDINANCE OF THE COUNTY OF RIVERSIDE**
3 **REGARDING THE LICENSURE OF TOBACCO RETAILERS**
4

5 The Board of Supervisors of the County of Riverside Ordains as Follows:

6 **Section 1. PREAMBLE.**

7 Prior to the adoption of this ordinance, the Board of Supervisors reviewed the following
8 Statistics:

- 9 a. Minors obtain cigarettes and other tobacco products at alarming rates. Each year, an
10 estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of
11 age, yielding the tobacco industry \$480 million in profits from underage smokers
12 nationwide. In Riverside County, 10,000 teens light up for the first time and
13 purchase 5 million packs of cigarettes a year.
- 14 b. In a 2004 California youth-buying survey, 12% of retailers surveyed unlawfully
15 sold tobacco product to minors.
- 16 c. The rate of tobacco sales to minors in Riverside County is one of the highest in the
17 State at 44%.
- 18 d. 88% of adults who have ever smoked tried their first cigarette by the age of 18, and
19 the average age at which smokers try their first cigarette is 14½.
- 20 e. A requirement for a tobacco retailer license will not unduly burden legitimate
21 business activities of retailers who sell or distribute cigarettes or other tobacco
22 products to adults. It will, however, allow the County to regulate the operation of
23 lawful businesses to discourage violations of federal, state, and local tobacco-related
24 laws.
- 25 f. 65% of California’s key opinion leaders surveyed support implementation of
26 tobacco-licensing requirements.
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28

1 **Section 2.** **PURPOSE AND INTENT.** Riverside County has a substantial interest in
2 promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in
3 discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws
4 prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in
5 protecting children from being lured into illegal activity through the misconduct of adults. It is the intent
6 of this ordinance to encourage responsible tobacco retailing and to discourage violations of tobacco-
7 related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to
8 minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are
9 criminally proscribed or to alter the penalty provided therefore.

10 **Section 3.** **DEFINITIONS.** For the purposes of this ordinance, the following words and
11 terms shall have the following meanings:

- 12 a. “Arm’s Length Transaction” shall mean: a sale in good faith and for valuable
13 consideration that reflects the fair market value in the open market between two
14 informed and willing parties, neither under any compulsion to participate in the
15 transaction. A sale between relatives, related companies or partners, or a sale for
16 the primary purpose of avoiding the effect of the violations of this Ordinance is
17 presumed not to be an Arm’s Length Transaction.
- 18 b. “Department” shall mean: County Health Officer or his or her designee.
- 19 c. “Person” shall mean: any natural person, partnership, cooperative association,
20 corporation, personal representative, receiver, trustee, assignee, or any other legal
21 entity.
- 22 d. “Proprietor” shall mean: a Person with an ownership or managerial interest in a
23 business. An ownership interest shall be deemed to exist when a Person has a ten
24 percent (10%) or greater interest in the stock, assets, or income of a business other
25 than the sole interest of security for debt. A managerial interest shall be deemed to
26 exist when a Person can or does have, or can or does share, ultimate control over
27 the day-to-day operations of a business.
- 28 e. “Self-Service Display” shall mean: the open display of Tobacco Products or

1 Tobacco Paraphernalia in a manner that is accessible to the general public without
2 the assistance of the retailer or employee of the retailer. A Vending Machine is a
3 form of Self-Service Display.

- 4 f. “Smoking” shall mean: possessing a lighted Tobacco Product, Tobacco
5 Paraphernalia, or any other weed or plant (including a lighted pipe, lighted cigar, or
6 lighted cigarette of any kind), the lighting of a Tobacco Product, Tobacco
7 Paraphernalia, or any other weed or plant (including a pipe, cigar, or cigarette of
8 any kind).
- 9 g. “Tobacco Paraphernalia” shall mean: cigarette papers or wrappers, pipes, holders of
10 smoking materials of all types, cigarette rolling machines, and any other item
11 designed for the smoking, preparation, storing, or consumption of Tobacco
12 Products.
- 13 h. “Tobacco Product” shall mean: (1) any substance containing tobacco leaf,
14 including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco,
15 dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or
16 formulation of matter containing biologically active amounts of nicotine that is
17 manufactured, sold, offered for sale, or otherwise distributed with the expectation
18 that the product or matter will be introduced into the human body but does not
19 include any product specifically approved by the Federal Food and Drug
20 Administration for use in treating nicotine or tobacco product dependence.
- 21 i. “Tobacco Retailer” shall mean: any Person who sells, offers for sale, or does or
22 offers to exchange for any form of consideration, tobacco, Tobacco Products, or
23 Tobacco Paraphernalia; “Tobacco Retailing” shall mean the doing of any of these
24 things. This definition is without regard to the quantity of tobacco, Tobacco
25 Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for
26 exchange.

1 **Section 4. TOBACCO LICENSE PREREQUISITE; APPLICATION PROCESS.**

- 2 a. It shall be unlawful for any Person to act as a Tobacco Retailer without first
- 3 obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this
- 4 Ordinance for each location at which that activity is to occur. Tobacco Retailing
- 5 without a valid Tobacco Retailer’s license shall constitute a public nuisance.
- 6 b. A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license,
- 7 including, for example, a revoked license:
- 8 1. Shall keep all Tobacco Products and Tobacco Paraphernalia from public
- 9 view. The public display of Tobacco Products or Tobacco Paraphernalia in
- 10 violation of this provision shall constitute an “offer for sale” for the
- 11 purposes of Section 5.c.
- 12 2. Shall not display any advertisement relating to Tobacco Products or
- 13 Tobacco Paraphernalia that promotes the sale or distribution of such
- 14 products from the Tobacco Retailer’s location or that would lead a
- 15 reasonable consumer to believe that such products can be obtained at the
- 16 Tobacco Retailer’s location.
- 17 c. Nothing in this ordinance shall be construed to grant any Person obtaining and
- 18 maintaining a Tobacco Retailer’s license any status or right other than the right to
- 19 act as a Tobacco Retailer at the location in the County identified on the face of the
- 20 license. For example, nothing in this ordinance shall be construed to render
- 21 inapplicable, supercede, or apply in lieu of any other provision of applicable law,
- 22 including, without limitation, any condition or limitation on smoking in enclosed
- 23 places of employment made applicable to business establishments by California
- 24 Labor Code section 6404.5.
- 25 d. Application for a Tobacco Retailer’s license shall be submitted in the name of each
- 26 Proprietor proposing to conduct retail tobacco sales and shall be signed by each
- 27 Proprietor or an authorized agent thereof. It is the responsibility of each Proprietor
- 28 to be informed of the laws affecting the issuance of a Tobacco Retailer’s license. A

1 license that is issued in error or on the basis of false or misleading information
2 supplied by a Proprietor shall be revoked pursuant to Section 10.d. of this
3 ordinance.

4 e. In addition to any other penalty under this ordinance a Person found to have
5 engaged in Tobacco Retailing without a valid Tobacco Retailers license shall be
6 ineligible to apply for or be issued a Tobacco Retailing license according to the
7 following:

- 8 1. After a first violation for a Person within any sixty-month (60) period, no
9 new license may issue for the Person as a Proprietor until thirty (30) days
10 have passed from the date of last violation.
- 11 2. After a second violation for a Person within any sixty-month (60) period, no
12 new license may issue for the Person as a Proprietor until ninety (90) days
13 have passed from the date of last violation.
- 14 3. After three or more violations for a Person within any sixty-month (60)
15 period, no new license may issue for the Person as a Proprietor until five (5)
16 years have passed from the date of last violation.
- 17 4. Each day that a Person engages in Tobacco Retailing without a valid
18 Tobacco Retailers license shall constitute a separate violation.

19 f. Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in
20 violation of this ordinance are subject to seizure and forfeiture. Forfeited Tobacco
21 Products and Tobacco Paraphernalia shall be destroyed.

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

- 24 1. The name, address, and telephone number of each Proprietor.
- 25 2. The business name, address, and telephone number of the single fixed
26 location for which a Tobacco Retailer's license is sought.
- 27 3. The name and mailing address authorized by each Proprietor to receive all
28 license-related communications and notices (the "Authorized Address"). If

1 an Authorized Address is not supplied, each Proprietor shall be understood
2 to consent to the provision of notice at the business address specified in
3 subparagraph 2. above.

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

7 5. Whether or not any Proprietor is a Person who has been determined to have
8 violated this ordinance or has been a Proprietor at a location that has been
9 determined to have violated this ordinance and, if so, the dates and locations
10 of all such violations.

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

13 **Section 5. LICENSE ISSUANCE; STANDARDS.**

14 a. No license may issue to authorize Tobacco Retailing at other than a fixed location.
15 For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from
16 vehicles are prohibited.

17 b. Upon the receipt of an application for a Tobacco Retailer's license and the license
18 fee, the Department shall issue a license unless substantial record evidence
19 demonstrates that one of the following bases for denial exists:

- 20 1. The application is incomplete or inaccurate.
- 21 2. The application seeks authorization for Tobacco Retailing at a location for
22 which a prohibition on issuing licenses is in effect pursuant to Section 10.b.
23 of this ordinance. However, this subparagraph shall not constitute a basis
24 for denial of a license if the applicant provides the County with
25 documentation demonstrating by clear and convincing evidence that the
26 applicant has acquired or is acquiring the location or business in an Arm's
27 Length Transaction.

- 1 3. The application seeks authorization for Tobacco Retailing for a Proprietor
2 for which a prohibition on issuing licenses is in effect pursuant to Section
3 10.b. of this ordinance.
- 4 4. The application seeks authorization for Tobacco Retailing that is prohibited
5 pursuant to Section 5.a. of this ordinance, that is unlawful pursuant to any
6 other County ordinance, or that is unlawful pursuant to any other local,
7 state, or federal law.

8 **Section 6.** **LICENSES NONTRANSFERABLE.**

- 9 a. A Tobacco Retailer’s license is nontransferable. If the information required in the
10 license application pursuant to Section 4.g. 1., 2., or 3. changes, a new Tobacco
11 Retailer’s license is required before the business may continue to act as a Tobacco
12 Retailer. For example, if a Proprietor to whom a license has been issued changes
13 business location, that Proprietor must apply for a new license prior to acting as a
14 Tobacco Retailer at the new location. Or if the business is sold, the new owner
15 must apply for a license for that location before acting as a Tobacco Retailer.
- 16 b. Notwithstanding any other provision of this ordinance violations accumulated
17 against a location or business shall continue to be counted against the location or
18 business unless the location or business has been transferred to a new Proprietor
19 and the new Proprietor provides the County with documentation demonstrating by
20 clear and convincing evidence that the new Proprietor has acquired or is acquiring
21 the location or business in an Arm’s Length Transaction.

22 **Section 7.** **FEES FOR LICENSE.**

- 23 a. A Tobacco Retailer license is invalid unless the appropriate fee has been paid in
24 full and the term of the license has not expired. The term of a Tobacco Retailer
25 license is one (1) year. Each Tobacco Retailer shall apply for the renewal of his or
26 her Tobacco Retailer’s license no later than thirty (30) days prior to expiration of
27 the term.

1 least three (3) times per twelve (12) month period. The Department may
2 check the compliance of Tobacco Retailers previously found to be in
3 compliance a fewer number of times so that the Department may check the
4 compliance of Tobacco Retailers previously found in violation a greater
5 number of times.

6 3. Compliance checks shall determine, at a minimum, if the Tobacco Retailer
7 is conducting business in a manner that complies with tobacco laws
8 regulating youth access to tobacco. When appropriate, the compliance
9 checks shall determine compliance with other tobacco-related laws.

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

14 i. the Youth Decoy is participating in a compliance check supervised
15 by a peace officer or a code enforcement official; or

16 ii. the Youth Decoy is participating in a compliance check funded in
17 part, either directly or indirectly through sub-contracting, by the
18 county Department of Health and Human Services or funded in part,
19 either directly or indirectly through sub-contracting, by the
20 California Department of Health Services.

21 c. NO CONTEST PLEA. A plea of "no contest" or its equivalent by a Tobacco
22 Retailer for a violation of any law designated in subsection (a) above shall operate
23 as an admission that this ordinance has been violated for the purposes of license
24 revocation.

25 **Section 10. REVOCATION OF LICENSE.**

26 a. REVOCATION OF LICENSE FOR VIOLATION.

27 1. In addition to any other penalty authorized by law, a Tobacco Retailer's
28 license shall be revoked if the County Hearing Officer finds, after notice to

1 the licensee and opportunity to be heard, that the licensee, including his or
2 her agents or employees, has violated any of the requirements, conditions, or
3 prohibitions of this ordinance (hereinafter “License Violation”).

4 2. No attorney may take part in the defense of a license revocation proceeding
5 unless the attorney’s participation meets any exception for attorneys
6 appearing in small claims court under California Code of Civil Procedure
7 section 116.530. This prohibition shall not apply if the County elects to be
8 represented by an attorney in the proceeding and notice of the election is
9 include in the notice given pursuant to subsection (1) above.

10 3. For a first or second alleged License Violation within any sixty-month (60)
11 period, the County Counsel may engage in settlement negotiations and may
12 enter into a settlement agreement with a Tobacco Retailer alleged to have
13 violated this ordinance without approval from the Board of Supervisors.
14 Settlements shall not be confidential and shall contain the following
15 minimum terms:

16 i. After an alleged first License Violation at a location within any sixty-month
17 (60) period:

- 18 a. An agreement to stop acting as a Tobacco Retailer for at least one
19 (1) day;
- 20 b. A settlement payment to the County of at least one thousand dollars
21 (\$1000); and
- 22 c. An admission that the violation occurred and a stipulation that the
23 violation will be counted when considering what penalty will be
24 assessed for any future violations.

25 ii. After an alleged second License Violation at a location within any sixty-
26 month (60) period:

- 27 a. an agreement to stop acting as a Tobacco Retailer for at least ten
28 (10) days;

- b. a settlement payment to the County of at least five thousand dollars (\$5000); and
- c. an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

b. **NEW LICENSE AFTER REVOCATION FOR VIOLATION.**

- 1. After a first License Violation at a location within any sixty-month (60) period, no new license may issue for the location until ten (10) days have passed from the date of the last revocation or violation, whichever is later.
- 2. After a second License Violation at a location within any sixty-month (60) period, no new license may issue for the location until thirty (30) days have passed from the date of the last revocation or violation, whichever is later.
- 3. After of a third License Violation at a location within any sixty-month (60) period, no new license may issue for the location until ninety (90) days have passed from the date of the last revocation or violation, whichever is later.
- 4. After four or more License Violations at a location within any sixty-month (60) period, no new license may issue for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.

c. **EXPIRATION OF LICENSE.** A Tobacco Retailer's license that is not timely renewed pursuant to Section 7.a. shall expire at the end of its term. To reinstate a license that has expired due to the failure to timely pay the renewal fee, the proprietor must:

- 1. Submit the renewal fee plus a reinstatement fee of ten percent (10%) of the renewal fee.
- 2. Submit a signed affidavit affirming that the Proprietor has not sold any Tobacco Product or Tobacco Paraphernalia during any period that the license was expired.

1 d. REVOCATION OF LICENSE ISSUED IN ERROR. A Tobacco Retailer's
2 license shall be revoked if the Department finds, after notice and opportunity to be
3 heard, that one or more of the bases for denial of a license under Section 5.b.
4 existed at the time application was made or at anytime before the license issued.
5 The revocation shall be without prejudice to the filing of a new application for a
6 license.

7 **Section 11.** **ENFORCEMENT.** The remedies provided by this ordinance are
8 cumulative and in addition to any other remedies available at law or in equity.

- 9 a. Whenever evidence of a violation of this ordinance is obtained in part through the
10 participation of a Person under the age of eighteen (18) years old, such a Person
11 shall not be required to appear or give testimony in any civil or administrative
12 process brought to enforce this ordinance and the alleged violation shall be
13 adjudicated based upon the sufficiency and persuasiveness of the evidence
14 presented.
- 15 b. Violations of this ordinance are subject to a civil action brought by the District
16 Attorney or County Counsel, punishable by:
- 17 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one
18 thousand dollars (\$1000) for a first violation in any sixty-month (60) period;
19 or
 - 20 2. A fine not less than one thousand five hundred dollars (\$1500) and not
21 exceeding two thousand five hundred dollars (\$2,500) for a second violation
22 in any sixty-month (60) period; or
 - 23 3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten
24 thousand dollars (\$10,000) for a third or subsequent violation in any sixty-
25 month (60) period.
- 26 c. Violations of this ordinance may, in the discretion of the District Attorney or
27 County Counsel, be prosecuted as infractions or misdemeanors.
28

- d. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation.
- e. Violations of this ordinance are hereby declared to be public nuisances.
- f. 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.

Section 12. 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.

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