

MEETING DATE: 06/22/09

AGENDA ITEM: 1) Introduction of an Ordinance Amending Title 11, Business Regulations, of the Culver City Municipal Code Relating to Add a New Chapter 11.15 Relating to the Licensing of Tobacco Retailers; and 2) Adoption of a Resolution Establishing a Tobacco Retailer License Fee and Establishing Penalties for Violations of Tobacco Retailer Licensing Regulations.

ATTACHMENTS

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ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING TITLE 11, BUSINESS REGULATIONS, OF THE CULVER CITY MUNICIPAL CODE TO ADD A NEW CHAPTER 11.15 RELATING TO THE LICENSING OF TOBACCO RETAILERS.

WHEREAS, the U.S. Department of Health and Human Services estimates that approximately 438,000 people die in the United States from tobacco-related diseases each year, and the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year or 10% of all deaths worldwide; and

WHEREAS, the City Council of the City of Culver City finds the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents a threat to the community's public health, safety and welfare; and

WHEREAS, the California Legislature has recognized the dangers of tobacco use and the access to tobacco products by underage youth and has enacted legislation including:

1. Legislative declaration that smoking is the single most important source of preventable disease and premature death in California (California Health & Safety Code § 118950); and

2. State law prohibitions on the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (California Penal Code § 308); and

3. State law requirements that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (California Business & Professions Code § 22956) and sanction

1 the use of underage decoys to conduct onsite compliance checks of tobacco
2 retailers (California Business & Professions Code § 22952); and

3 4. State law prohibitions on the sale of tobacco products and
4 paraphernalia through self-services displays with limited exceptions for
5 tobacco stores; and "bidis" (hand-rolled filterless cigarettes imported primarily
6 from India and Southeast Asian countries) except in adult-only
7 establishments (California Business & Professions Code §§ 22960, 22962;
8 Penal Code § 308.1); and

9 5. State law prohibitions on the manufacture, distribution, or sale
10 of cigarettes in packages of less than 20 and "roll-your-own" tobacco in
11 packages containing less than 0.60 ounces of tobacco (California Penal
12 Code § 308.3); and

13 6. State law requires all tobacco retailers to be licensed by the
14 Board of Equalization in order to curb the illegal sale and distribution of
15 cigarettes (California Business and Professions Code §§ 22970.1, 22972);
16 and

17 7. State law permits cities and counties to enact local tobacco
18 retail licensing ordinances and allows for the suspension or revocation of a
19 local license for a violation of any state tobacco control law (California
20 Business & Professions Code § 22971.3); and

21 **WHEREAS**, according to research conducted by the U.S. Department of
22 Health and Human Services, despite state tobacco control laws, retailers continue to sell
23 tobacco to underage consumers, as evidenced by the following:

24 1. Each day, nearly 4,000 children under 18 years of age smoke
25 their first cigarette, and almost 1,500 children under 18 years of age begin
26 smoking daily;

1 2. More than 75% of all current smokers in 2001 began smoking
2 before the age of 18; and

3 3. Among middle school students who were current cigarette users
4 in 2004, 70.6% were not asked to show proof of age when they purchased or
5 attempted to purchase cigarettes from a store, and 66.4% were not refused
6 purchase because of their age; and

7 4. In 2002, youth smoked approximately 540 million packs of
8 cigarettes, generating nearly \$1.2 billion in tobacco industry revenue; and

9 **WHEREAS**, research conducted by the American Lung Association of
10 California demonstrates that local tobacco retail ordinances can and have dramatically
11 reduced youth access to cigarettes by as much as 68%; and

12 **WHEREAS**, a requirement for a tobacco retailer license will assist in
13 discouraging violations of federal, state and local tobacco-related laws and will not unduly
14 burden legitimate business activities of retailers who sell or distribute cigarettes or other
15 tobacco products to adults; and

16 **WHEREAS**, the City Council desires to encourage responsible tobacco
17 retailing and to discourage violations of tobacco-related laws, especially those which
18 prohibit or discourage the sale or distribution of tobacco products to minors; and

19 **WHEREAS**, the City Council finds a local licensing system for tobacco
20 retailers is appropriate to ensure that retailers comply with tobacco control laws and
21 business standards of the City, to protect the community's public health, safety and
22 welfare; and

23 **WHEREAS**, the City Council hereby declares that the intent and purpose of
24 requiring tobacco retailers to be licensed by the City is to protect the public health, safety,
25 and welfare by discouraging the sale of tobacco products to minors.

26 **NOW THEREFORE**, the City Council of the City of Culver City, California,
27 **DOES HEREBY ORDAIN** as follows:
28

1 **SECTION 1.** Title 11 of the Culver City Municipal Code is hereby amended
2 to add a new Chapter 11.15 relating to the licensing of tobacco retailers as follows:

3 **CHAPTER 11.15: TOBACCO RETAILER LICENSING**

- 4 § 11.15.005 Purpose
5 § 11.15.010 Definitions
6 § 11.15.015 License Requirements and Prohibitions
7 § 11.15.020 Application Procedure
8 § 11.15.025 License Fee
9 § 11.15.030 Issuance of License
10 § 11.15.035 License Renewal and Expiration
11 § 11.15.040 Compliance Monitoring and Enforcement
12 § 11.15.045 Violations Unlawful; Penalties
13 § 11.15.050 Suspension and Revocation; Administrative Fines

14 **§ 11.15.005 PURPOSE.**

15 It is the intent of the City Council of the City of Culver City, in enacting
16 this ordinance, to encourage responsible tobacco retailing and to discourage
17 violations of tobacco-related laws, especially those which prohibit or discourage the
18 sale or distribution of tobacco and nicotine product to minors.

19 **§ 11.15.010 DEFINITIONS.**

20 For the purposes of this Chapter, the following definitions shall
21 apply unless the context clearly indicates or requires a different meaning.

22 **Department** shall mean the Finance Department of the City of Culver
23 City.

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

1 **Self-Service Display** shall mean the open display of Tobacco
2 Products or Tobacco Paraphernalia in a manner that is physically accessible
3 in any way to the general public without the assistance of the Tobacco
4 Retailer or employee of the Tobacco Retailer and a direct person-to-person
5 transfer between the purchaser and the Tobacco Retailer or employee of the
6 Tobacco Retailer. A Vending Machine is a form of Self-Service Display.

7 **Tobacco Paraphernalia** shall mean cigarette papers or wrappers,
8 pipes, holders of Smoking materials of all types, cigarette rolling machines,
9 and any other instrument or paraphernalia designed for the smoking,
10 preparation, storing, ingestion or consumption of Tobacco Products.

11 **Tobacco Product** shall mean any substance containing tobacco leaf,
12 including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco,
13 snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of
14 tobacco; and any product or formulation of matter containing biologically
15 active amounts of nicotine that is manufactured, sold, offered for sale, or
16 otherwise distributed with the expectation that the product or matter will be
17 introduced into the human body, but does not include any product specifically
18 approved by the United States Food and Drug Administration for use in
19 treating nicotine or tobacco dependence.

20 **Tobacco Retailer** shall mean any person who sells, offers for sale, or
21 exchanges or offers to exchange for any form of consideration, in public view,
22 tobacco, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing"
23 shall mean the selling, offering for sale, or exchanging or offering to
24 exchange for any form of consideration, in public view, tobacco, Tobacco
25 Products or Tobacco Paraphernalia. Any person who distributes free or low
26 cost samples of tobacco, Tobacco Products or Tobacco Paraphernalia shall
27 be deemed to be a Tobacco Retailer under this Chapter.
28

1 **Tobacco Retail Establishment** shall mean a fixed location at which
2 tobacco, Tobacco Products and/or Tobacco Paraphernalia is sold, offered for
3 sale, exchanged or offered for exchange for any form of consideration.

4 **Tobacco Retailer License** shall mean a license issued by the
5 Department authorizing a Proprietor to engage in Tobacco Retailing.

6 **Vending Machine** shall mean a machine, appliance, or other
7 mechanical device operated by currency, token, debit card, credit card, or
8 any other form of payment that is designed or used for vending purposes,
9 including, but not limited to, machines or devices that use remote control
10 locking mechanisms.

11 **§ 11.15.015 LICENSE REQUIREMENTS AND PROHIBITIONS.**

12 A. No person shall operate as a Tobacco Retailer or engage in
13 Tobacco Retailing without first obtaining and maintaining a valid Tobacco
14 Retailer License pursuant to this Chapter for each Tobacco Retail
15 Establishment.

16 B. Each Tobacco Retailer license shall be conspicuously displayed
17 at all times in a publicly visible location within the licensed Tobacco Retail
18 Establishment.

19 C. Tobacco Retailing by means of a Self-Service Display is
20 prohibited.

21 D. No Tobacco Retailer shall sell or transfer tobacco, a Tobacco
22 Product or Tobacco Paraphernalia, to another person who appears to be
23 under the age of 27 years, without first examining the identification of the
24 recipient to confirm that the recipient is at least the minimum age under state
25 law to purchase and possess the tobacco, Tobacco Product or Tobacco
26 Paraphernalia.

1 E. No Tobacco Retailer shall permit any person who is younger
2 than the minimum age established by state law for the purchase or
3 possession of tobacco, Tobacco Products or Tobacco Paraphernalia, to
4 participate in the sale of tobacco, Tobacco Products or Tobacco
5 Paraphernalia.

6 F. A Tobacco Retailer without a valid Tobacco Retail License:

7 1. Shall keep all tobacco, Tobacco Products and Tobacco
8 Paraphernalia out of public view. The public display of tobacco,
9 Tobacco Products and Tobacco Paraphernalia in violation of this
10 Section shall constitute Tobacco Retailing without a Tobacco Retail
11 License and a violation of Section 11.15.015.A of this Chapter.

12 2. Shall not display any advertisement relating to tobacco,
13 Tobacco Products or Tobacco Paraphernalia that promotes the sale or
14 distribution of such products from the Tobacco Retail Establishment or
15 that could lead a reasonable consumer to believe such products can
16 be obtained at the Tobacco Retail Establishment without the Tobacco
17 Retailer first obtaining and maintaining a valid Tobacco Retailer
18 License pursuant to this Chapter for each Tobacco Retail
19 Establishment at which the advertisement is displayed.

20 G. The sale of tobacco, Tobacco Products or Tobacco
21 Paraphernalia from other than a fixed location, including but not limited to
22 Tobacco Retailing by persons on foot or from vehicles is prohibited and no
23 Tobacco Retailer License shall be issued under this Chapter to any such
24 activity.

25 H. Nothing in this Chapter shall be construed to grant any person
26 obtaining and maintaining a Tobacco Retailer License any status or right
27 other than the right to act as a Tobacco Retailer at the licensed Tobacco
28

1 Retail Establishment in the City of Culver City. Nothing in this Chapter is
2 intended to be construed to render inapplicable, supersede, or affect any
3 other provision of applicable state or federal law.

4 **§ 11.15.020 APPLICATION PROCEDURE.**

5 A. All applications shall be completed on a form prepared and
6 supplied by the Department. The application shall be signed under penalty of
7 perjury. The following information shall be included, without limitation, on the
8 application:

9 1. The name, address and telephone number of the
10 Proprietor, including, for non-corporate Proprietors, the names of all
11 principles. Corporate Proprietors shall include the name of the
12 designated agent for service of process.

13 2. A single name and mailing address authorized by each
14 Proprietor to receive all communications and notices (the "Authorized
15 Address") required by, authorized by, or convenient to the enforcement
16 of this Chapter. If an Authorized Address is not supplied, each
17 Proprietor shall be understood to consent to the provision of notice at
18 the business address specified on the application.

19 3. The business name, address and telephone number of
20 the Tobacco Retail Establishment, for which the application is
21 submitted.

22 4. Proof that the Tobacco Retail Establishment for which
23 the application is submitted has been issued a valid state tobacco
24 retailer license by the California Board of Equalization.

25 5. Whether any other licenses have been issued to the
26 Proprietor for tobacco retail sales within the City of Culver City, and if
27
28

1 so the name and address of each of the Tobacco Retail
2 Establishments for which these licenses have been issued.

3 6. Whether or not any Proprietor or any agent or employee
4 of the Proprietor has admitted violating, or has been found to have
5 violated this Chapter, and, if so, the dates and locations of all such
6 violations within the previous five years.

7 7. A statement by the Proprietor under penalty of perjury
8 that the contents of the application are true and correct.

9 8. Such other information as the Department deems
10 necessary for the administration or enforcement of this Chapter as
11 specified on the application form required by this Section.

12 B. For Proprietors with multiple Tobacco Retail Establishments
13 within the City of Culver City, a separate application is required for each
14 proposed Tobacco Retail Establishment.

15 C. Any change to the information required to be submitted in order
16 to apply for a Tobacco Retailer License shall be provided to the Department
17 within 10 business days of such change in information.

18 D. The Proprietor shall be required to disclose any violations of the
19 state tobacco licensing laws at any Tobacco Retail Establishment within the
20 five years prior to the application for which the Proprietor's state tobacco
21 retailer's license was either suspended or revoked.

22 **§ 11.15.025 LICENSE FEE.**

23 The annual fee for a Tobacco Retailer License and the procedures for
24 the processing and collection of such fee shall be established by resolution of
25 the City Council.

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1 **§ 11.15.030 ISSUANCE OF LICENSE.**

2 A. Except as otherwise provided herein, and except where a
3 Tobacco Retailer Establishment would not otherwise be permitted under
4 local, state or federal laws, a license shall be issued upon receipt of a
5 complete application in conformity with all requirements set forth in Section
6 11.15.020 and the payment of the required license fee.

7 B. A Tobacco Retailer License shall not be issued where:

8 1. Suspension or revocation proceedings have been
9 initiated by any local, state or federal agency for violations of local,
10 state or federal tobacco control laws within the preceding 30-day
11 period.

12 2. The Proprietor or any person employed by the Proprietor
13 has been convicted of any violation of any local, state or federal
14 tobacco control law within six months prior to the date of application.

15 3. The Proprietor's Tobacco Retailer License was revoked
16 for the same Tobacco Retail Establishment within the five years
17 preceding the date of the application.

18 4. The Proprietor has not obtained a valid state tobacco
19 retailer license from the California Board of Equalization.

20 5. The Proprietor does not have a valid Culver City
21 business tax certificate or is delinquent on the payment of business
22 tax, late payment penalties or other associated fees.

23 6. The information presented on the application is
24 incomplete, inaccurate, or false.

25 7. The application seeks a Tobacco Retailer License for a
26 Proprietor to whom this Chapter prohibits a license to be issued.
27
28

1 C. A Tobacco Retailer License is valid only for the Tobacco Retail
2 Establishment for which it has been issued and may not be transferred from
3 one person to another or from one Tobacco Retail Establishment to another.

4 **§ 11.15.035 LICENSE RENEWAL AND EXPIRATION.**

5 A. A Tobacco Retailer license will be valid through the last day of
6 February of every year and if not renewed, will expire.

7 B. If any material information required for issuance of a Tobacco
8 Retailer License has changed since the original license was issued, the
9 Proprietor shall be ineligible for a license renewal, but must apply for a new
10 Tobacco Retailer License in accordance with the application procedures set
11 forth in Section 11.15.020 of this Chapter.
12

13 C. A Tobacco Retailer License that is not timely renewed shall
14 expire at the end of its term. To reinstate a license that has expired or to
15 renew a license not timely received pursuant to this Chapter, the Proprietor
16 must follow the application procedures set forth in Section 11.15.020 of this
17 Chapter.
18

19 **§ 11.15.040 COMPLIANCE MONITORING.**

20 Compliance with the provisions of this Chapter shall be monitored by
21 the Finance Department, Police Department and/or Enforcement Services
22 Division, including any authorized designee of such Departments and
23 Division, and/or by any other person or persons so designated by the City
24 Manager.
25

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11.15.045 VIOLATIONS UNLAWFUL; PENALTIES.

A. A violation of any provision of this Chapter is unlawful.

B. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

C. A violation of any provision of this Chapter is subject to a civil action brought by the City Attorney, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation.

D. A violation of any provision of this Chapter may, in the discretion of the City Attorney, be prosecuted as an infraction or misdemeanor.

E. The City Council shall, by resolution, establish the penalties for a violation of this Chapter, but in no event shall such penalties exceed the maximum penalties permitted under State law.

F. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

G. In addition to the criminal penalties attached to violations of this Chapter, any violation of this Chapter is hereby declared a public nuisance.

H. Violations of Section 11.15.015.A through Section 11.15.015.C of this Chapter are unlawful.

11.15.050 SUSPENSION AND REVOCATION; ADMINISTRATIVE FINES.

A. In addition to any criminal or other penalty authorized by this Code and other applicable law, a Tobacco Retailer License may be suspended or revoked by the Committee on Permits and Licenses based on one or more of the following findings:

1 1. The Tobacco Retailer, or his or her agents or employees,
2 has violated any provision of this Chapter, or any other local, state or
3 federal tobacco related law; or

4 2. The information contained in the application, including
5 supplemental information, if any, is found to be false or misleading in
6 any material respect; or

7 3. The Tobacco Retailer License was issued in error or on
8 the basis of false or misleading information supplied by the Proprietor;
9 or

10 4. The Tobacco Retailer License fee is unpaid; or

11 5. The Tobacco Retailer License has been transferred in
12 violation of this Chapter; or

13 B. Upon a finding of a first license violation, the Tobacco Retailer
14 License may be suspended for up to 30 days; upon a finding of a second
15 license violation within five years of the first violation, the Tobacco Retailer
16 License may be suspended for up to 90 days; and upon a finding of a third
17 license violation within five years of the first violation, the Tobacco Retailer
18 License may be revoked.

19 C. In addition to any criminal or other penalty authorized by this
20 Code and other applicable law, an administrative fine may be imposed on a
21 Tobacco Retailer for a violation of any provision of this Chapter, in
22 accordance with the procedures set forth in Sections 11.01.600, et seq. of
23 this Code.

24 D. The procedure used for appealing a revocation or suspension
25 shall be in accordance with the procedures set forth in Sections 11.01.500, et
26 seq. of this Code.

1 E. A Tobacco Retailer, whose license has been revoked, may not
2 apply for a new Tobacco Retailer License for a period of five years after the
3 effective date of the revocation.

4 F. During any period of license suspension or revocation, the
5 Tobacco Retailer must remove from public view all tobacco, Tobacco
6 Products, Tobacco Paraphernalia, and Tobacco-related advertising.

7 **SECTION 2.** Pursuant to Section 619 of the City Charter, this Ordinance
8 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
9 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
10 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
11 Culver City News and shall post this Ordinance or a summary thereof in at least three
12 places within the City.

13 **SECTION 3.** The City Council hereby declares that, if any provision, section,
14 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
15 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
16 reason of any preemptive legislation, then the City Council would have independently
17 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases
18 or words of this ordinance and as such they shall remain in full force and effect.

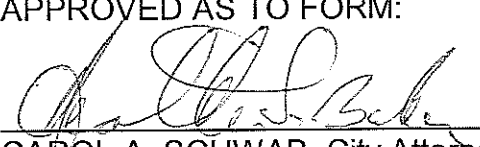
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20 **APPROVED AND ADOPTED** this ____ day of _____, 2009.

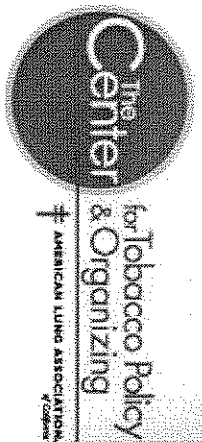
21
22 _____
23 ANDREW WEISSMAN, Mayor
24 City of Culver City, California

25 ATTEST:

26 APPROVED AS TO FORM:

27 _____
28 MARTIN R. COLE, City Clerk
A09-00236

27 
28 CAROL A. SCHWAB, City Attorney



CITY HALL

California's Center for Tobacco Policy & Organizing

Matrix of Strong Local Tobacco Retailer Licensing Ordinances

April 2009

In order to reduce illegal sales of tobacco products to minors, many cities and counties in California have adopted strong local tobacco retailer licensing ordinances. This document highlights **sixty-three ordinances** in which the fee and enforcement provisions are particularly noteworthy. Although over eighty communities throughout the state have passed tobacco retailer licenses, some of them do not contain provisions that would make them effective. A strong local tobacco licensing law is defined as one that includes the following four components:

- Requirements that all retailers that sell tobacco products must obtain a license and renew it annually.
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

The **sixty-three communities** that have adopted these strong ordinances are detailed on the following pages in reverse chronological order from most recently passed and listed here in alphabetical order: Arroyo Grande, Baldwin Park, Banning, Beaumont, Berkeley, Burbank, California City, Calimesa, Carson, Coachella, Compton, Concord, Contra Costa County, Corona, Davis, Delano, Desert Hot Springs, El Cajon, Elk Grove, Gardena, Glendale, Goleta, Grover Beach, Hemet, Hollister, Inglewood, Kern County, Lake Elsinore, Lomita, Long Beach, Los Angeles (City), Los Angeles County, McFarland, Moreno Valley, Murrieta, Nevada City, Norco, Oakland, Pacifica, Pasadena, Perris, Rancho Cordova, Richmond, Riverside (City), Sacramento County, Sacramento (City), San Fernando, San Francisco, San Jacinto, San Luis Obispo (City), San Luis Obispo County, Santa Ana, Santa Barbara (City), Santa Barbara County, Santa Monica, Sierra Madre, South Pasadena, Tehachapi, Temecula, Vista, Wasco, and Yolo County.

For each ordinance, the Matrix contains information about the population of the city or county, the fee amount, enforcement details, the schedule of license suspensions/revocations, any additional provisions and local contact information.

The details of the ordinances outlined in the Matrix demonstrate that strong ordinances can be adopted in many communities and that the details are flexible enough to be tailored to the specific community realities and needs. Strong licensing ordinances have been adopted by cities in fifteen different counties in both rural and urban areas. In addition, ordinances have been adopted in both small (Nevada City – pop. 3,074, Calimesa – pop. 7,536) and large cities (Los Angeles – pop. 4,045,873, San Francisco – pop. 824,925). The fees range from \$30 for some smaller cities with only a couple of retailers to \$635, with the majority of fees between \$200 - \$350. Enforcement and

compliance checks for these ordinances are handled by a variety of different agencies including the police department, sheriff's department, public health department, code enforcement and others.

The Technical Assistance Legal Center (TALC) has a model tobacco retailer licensing ordinance available at http://talc.phlaw.org/pdf_files/0018.pdf. For questions about the model ordinance, contact Ian McLaughlin with TALC at 510-302-3315. While all the ordinances on this matrix are considered strong, they are not all exactly like the TALC model ordinance. Most significantly, some communities pay for compliance checks through other sustainable funding sources. Although finding alternative funding sources may not be possible in most communities, we have included these ordinances because there may be locations where these strategies make sense.

The Center has additional documents on tobacco retailer licensing, including a fact sheet on the effectiveness of these ordinances and a document with answers to tough questions from opponents and elected officials about tobacco retailer licensing, available at www.Center4TobaccoPolicy.org/localpolicies-licensing.

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of South Pasadena February 2009 Population: 25,792	\$120 Annual	The Finance Department is responsible for compliance. Any peace officer may enforce the provisions of the law. Compliance checks will be conducted for each retailer at least once per year. More frequent compliance checks may be conducted for new retailers and those who have committed previous violations.	1 st violation within one year – 15 day suspension 2 nd violation within two years – 30 day suspension 3 rd violation within three years – 90 day suspension 4 th violation within four years – one year suspension	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov or Wesley Reutimann, Day One: (626) 229-9750 wreutley@dayonepasadena.com
City of Santa Monica November 2008 Population: 91,439	Fee not set yet but ordinance requires it to be sufficient to cover administration and enforcement	The City Manager or Manager's designee is responsible for suspension and revocation of the license.	1 st violation within 5 years – up to 30 day suspension 2 nd violation within 5 years – up to 90 day suspension 3 rd violation within 5 years – license may be revoked	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Baldwin Park October 2008 Population: 81,281	Fee not set yet but ordinance requires it to be sufficient to cover administration and	The Community Development Department shall be responsible for compliance. Any peace officer or may enforce the provisions of this law. The number of compliance checks per year will be	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov

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Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
	enforcement	established by the Chief Executive Officer and could be as often as 3 times per year.	day revocation 4 th violation within 5 years – 5 year revocation	legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Requires that no license may be granted to any business offering food or alcoholic beverages for sale for consumption on the premises. Requires that no license may be issued for any location that is exclusively zoned for residential uses.	
County of San Luis Obispo October 2008 Population: 116,716	\$342/Annual	The Sheriff's Department will be responsible for compliance. At least four compliance checks per year will be conducted.	1 st violation within 5 years – 30 day suspension 2 nd violation within 5 years – 90 day suspension 3 rd violation within 5 years – 1 year suspension 4 th violation within 5 years – 5 year suspension	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Requires that no license may be granted to any business whose main purpose is offering food or alcoholic beverages for sale for consumption on the premises. Requires retailers to check the age of purchasers who appear to be under the age of 30. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18).	Amber Alewine, Health Education Specialist, County of San Luis Obispo Health Agency: (805) 761-1157 aaalewine@co.slo.ca.us
City of San Fernando October 2008 Population: 25,230 (note: the original license with no fee was passed in 2002)	\$250/Annual	The administrative services department shall be responsible for enforcement.	1 st violation within one year – 30 day suspension unless the retailer submits a training plan with the administrative services department for the training of all sales employees in the laws pertaining to the sales of tobacco and shows evidence that the training has been completed	Bans mobile sales. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18).	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chtreayas@ph.lacounty.gov

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Perris August 2008 Population: 53,605	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxler, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxler@co.riverside.ca.us
City of Gardena July 2008 Population: 61,781	\$167 Initial \$120 Renewal	The police department and administrative services department shall be responsible for compliance. Any peace officer or may enforce the provisions of this law. The police department will conduct compliance checks on at least 50 percent of the retailers each year.	1 st violation within 5 years – 30 day revocation 2 nd violation within 5 years – 60 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the City to pay a fine and get a reduced revocation.	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18).	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Delano June 2008 Population: 53,855	\$165/Annual	Compliance monitored by the Delano Police Department.	Violators are subject to license suspension, administrative penalties, or both. License Suspension: 1 st violation within 5 years – up to 30-day suspension	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Requires retailers to check the age of	Neslee Nsuarani, Project Director, Kern County Department of Public Health: (661) 868-0489, nsuarani@co.kern.ca.us

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Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Oakland April 2008 Population: 420,163	\$50/Annual application fee \$1500/Annual inspection fee (businesses selling alcohol with deemed permits are exempted from the inspection fee since they already pay for an inspection fee)	The Oakland Police Department is responsible for compliance. Any peace officer can enforce the provisions of the law. The City Administrator is responsible for adopting rules of procedures and regulations for carrying out the provisions of this chapter.	2 nd violation within 5 years – up to 30-day suspension 3 rd violation within 5 years – up to 90-day suspension 4 th violation within 5 years – up to 180-day suspension or revocation Administrative Penalties: 1 st violation within 1 year – penalty up to \$100 2 nd violation within 1 year – penalty up to \$200 3 rd violation within 1 year – penalty up to \$500	Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). All applicants for a Tobacco Retailer's Permit must submit verification that they have attended a training program provided or approved by the Chief of Police on the laws related to the sale of tobacco products in California.	Serena Chen, Tobacco and Policy Director, American Lung Association of California: (510) 893-5474 x303 schen@alac.org
			1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – Five year revocation Tobacco retailers may engage in a settlement agreement with the City Administrator after a first or second violation. The settlement agreement after a first violation would include a 1-day suspension of selling tobacco, at least a \$1,000 fine, and an admission that the violation occurred. The settlement agreement after a second violation would include a 10-day suspension of selling tobacco, at least a \$5,000 fine, and an admission that the violation occurred.	Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Establishes violation of this permit to be a public nuisance and therefore subject to administrative fines of \$1,000 per day as long as the problem is not abated.	

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Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Hemet March 2008 Population: 74,185	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Bayler, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Long Beach February 2008 Population: 492,642	\$442/Annual	The Long Beach Police Department is responsible for compliance checks for illegal sales to minors. The Department of Health and Human Services, City Attorney and City Prosecutor are responsible for inspections and enforcement of all other tobacco laws.	1 st violation within 5 years – up to 10 day suspension 2 nd violation within 5 years – up to 30 day suspension 3 rd violation within 5 years – permit may be revoked If permit is revoked, may not apply for new permit for 120 calendar days Any decision to suspend or revoke may be appealed	Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Don Evans, City of Long Beach Tobacco Retail Enforcement Program: (562) 570-7923 Don.evans@longbeach.gov Or Margaret (Peggy) Prareely, Project Director, City of Long Beach, Tobacco Retail Enforcement Program: (562) 570-7955 Margaret.prareely@longbeach.hi.gov
City of Pacifica February 2008 Population: 39,616	\$300/Annual	The police department, business license department, and code enforcement officials are responsible for monitoring compliance. Any peace officer or code enforcement official may enforce the provisions. At least two compliance checks will be conducted for each tobacco retailer annually.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation Tobacco retailers may engage in a settlement agreement with the city attorney after a first or second violation.	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Requires that no license may be granted to any business offering food or alcoholic beverages for sale for consumption on the premises. Requires retailers to check the age of purchasers who appear to be under the age of 27.	Derek Smith, Program Director, Tobacco Prevention Program, San Mateo County Health Department: (650) 573-2012 DSmith1@co.sanmateo.ca.us Or Amanda Cue, Senior Director of Prevention, Youth Leadership Institute: (650) 347-4963 acue@yli.org

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
County of Los Angeles December 2007 Population: 1,092,078	\$235/Annual	Compliance checks are divided up between the County Sheriff's Department and the County Department of Public Health's Environmental Health Program. The Sheriff's Department is responsible for compliance checks that include youth decoy operations. The Health Department will perform compliance checks for all other violations of the ordinance (such as proper posting of the license) and will perform at least one compliance check per retailer each year.	1 st violation within 5 years – up to 30 day suspension 2 nd violation within 5 years – up to 90 day suspension 3 rd violation within 5 years – up to 120 day suspension 4 th violation within 5 years – license revoked	Bans mobile sales. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Smoking is prohibited inside the premises of all tobacco retailers and within 20 feet of any entrance, exit or window to the store.	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Inglewood October 2007 Population: 118,878	\$350/Annual	Enforcement will be conducted by the Inglewood Police Department, the Business License Division, or the Code Enforcement Division.	1 st violation within 5 years – \$1,000 fine 2 nd violation within 5 years – up to 90 day suspension 3 rd violation within 5 years – license may be revoked	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Michael Franklin, Dakota Communications, (310) 815-8444, mfringewood@aol.com or Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Glendale September 2007	\$225/Annual	Enforcement will be conducted by the Glendale Police	1 st violation within 5 years – up to 30 day suspension	Bans mobile sales.	Guadalupe Rivera, Glendale Adventist Medical Center:

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
Population: 207,157		Department, neighborhood services inspectors and code enforcement, and permit investigators.	2 nd violation within 5 years – up to 90 day suspension 3 rd violation within 5 years – permit may be revoked	Requires retailers to check the age of purchasers who appear to be under the age of 27.	(323) 255-9030. quaddie1@yahoo.com or Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 clhreyes@ph.lacounty.gov
City of Moreno Valley September 2007 Population: 183,680	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Davis August 2007 Population: 65,814	\$348/Annual	The Yolo County Department of Environmental Health is responsible for administration of the ordinance. The Yolo County District Attorney's office handles enforcement and three sting operations per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 90 day revocation 3 rd violation within 5 years – 1 year revocation 4 th violation within 5 years – 5 year revocation	Bans mobile sales. Requires that clerks are the minimum legal age to purchase tobacco products. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Bans tobacco sales or giveaways at bars or any location licensed to serve alcohol for on-site consumption.	Steven Jensen Yolo County Health Department, Tobacco Education Program: (530) 666-8616, steven.jensen@yolocounty.org
City of Desert Hot Springs August 2007	\$350/Annual Fee paid to the County of	The Riverside County Health Department is responsible for the enforcement of the ordinance.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
Population: 26,068	Riverside to conduct the administration and enforcement of the ordinance.	The Department will check compliance with the law at each retailer at least three times per year.	day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	mbaxter@co.riverside.ca.us
City of Lake Elsinore August 2007 Population: 49,807	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Compton July 2007 Population: 99,242	\$500/Annual	Municipal Law Enforcement Services shall be responsible for compliance. Any peace officer or law enforcement officer may enforce the provisions of this law. Compliance checks will be conducted for each retailer at least once per year.	1 st violation within 3 years – (1) written warning; (2) advised of penalties for additional violations; (3) required to provide documentation that all employees have engaged in the retail sales of tobacco have received training in a city-approved program within 60 days after the warning; and (4) license suspended for 30 to 90 days 2 nd violation within 3 years – up to one year suspension 3 rd violation within 3 years – license may be revoked	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Requires that no license may be granted to any business offering food or alcoholic beverages for sale for consumption on the premises.	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Coachella July 2007 Population: 40,517	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	For a first or second violation, the retailer may enter a settlement with the city to pay a fine and get a reduced revocation. 1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Calimesa June 2007 Population: 7,536	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Lomita May 2007 Population: 21,056	\$150/Annual	The administrative services department, business license division and the community development department, neighborhood preservation division, shall be responsible for compliance. Any peace officer	1 st violation within 3 years – (1) written warning; (2) advised of penalties for additional violations; (3) required to provide documentation that all employees have engaged in the retail sales of tobacco have	Bans mobile sales. Requires that all tobacco-related products must be removed from public view during periods of suspension or revocation.	Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
		may enforce the provisions of this law. Compliance checks will be conducted for each retailer at least once per year.	received training in a city-approved program within 60 days after the warning 2 nd violation within 3 years – up to 30 day suspension 3 rd violation within 3 years – up to 90 day suspension 4 th violation within 3 years – up to one year suspension 5 th violation within 3 years – license may be revoked		
City of McFarland May 2007 Population: 13,390	\$165/Annual	Compliance monitored by the Kern County Environmental Health Services Department.	Violators are subject to license suspension, administrative penalties, or both. License Suspension: 1 st violation within 5 years – letter of reprimand 2 nd violation within 5 years – up to 30-day suspension 3 rd violation within 5 years – up to 90-day suspension 4 th violation within 5 years – up to 180-day suspension or revocation Administrative Penalties: 1 st violation within 1 year – penalty up to \$250 2 nd violation within 1 year – penalty up to \$500 3 rd violation within 1 year – penalty up to \$1,000	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. All applicants for a Tobacco Retailer's Permit must submit verification that they have attended a training program provided or approved by the County's Public Health Services Department on the laws related to the sale of tobacco products in California.	Nsele Nsuangani, Project Director, Kern County Department of Public Health: (661) 868-0489, nsuangani@co.kern.ca.us
City of Wasco March 2007 Population: 24,999	\$165/Annual	Compliance monitored by the Kern County Environmental Health Services Department.	Violators are subject to license suspension, administrative penalties, or both. License Suspension: 1 st violation within 5 years –	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Nsele Nsuangani, Project Director, Kern County Department of Public Health: (661) 868-0489, nsuangani@co.kern.ca.us

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Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
			letter of reprimand 2nd violation within 5 years – up to 30-day suspension 3rd violation within 5 years – up to 90-day suspension 4th violation within 5 years – up to 180-day suspension or revocation Administrative Penalties: 1st violation within 1 year – penalty up to \$250 2nd violation within 1 year – penalty up to \$500 3rd violation within 1 year – penalty up to \$1,000	All applicants for a Tobacco Retailer's Permit must submit verification that they have attended a training program provided or approved by the County's Public Health Services Department on the laws related to the sale of tobacco products in California.	
City of California City February 2007 Population: 14,365	\$165/Annual	Compliance monitored by the Kern County Environmental Health Services Department.	Violators are subject to license suspension, administrative penalties, or both. When a license suspension is warranted, the license may be suspended up to 180 days or revoked. When an administrative penalty is warranted, a penalty of up to \$500 may be imposed. If a valid license is not displayed, violators will be required to pay a fine of \$10 for first offense, \$100 for second offense, \$250 for third offense, and \$500 for fourth and each succeeding offense.	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. All applicants for a Tobacco Retailer's Permit must submit verification that they have attended a training program provided or approved by the County's Public Health Services Department on the laws related to the sale of tobacco products in California.	Nselle Nsugani, Project Director, Kern County Department of Public Health: (661) 868-0489, nsugani@co.kern.ca.us
City of Tehachapi February 2007 Population: 13,089	\$165/Annual	Compliance monitored by the Kern County Environmental Health Services Department.	Violators are subject to license suspension, administrative penalties, or both. License Suspension: 1st violation within 5 years – letter of reprimand	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Nselle Nsugani, Project Director, Kern County Department of Public Health: (661) 868-0489, nsugani@co.kern.ca.us

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Burbank February 2007 Population: 108,029	\$235 Initially \$200 Renewal	Compliance monitored by the Burbank Police Department.	1 st violation – up to 30-day suspension 2 nd violation within 5 years – up to 90-day suspension 3 rd violation within 5 years – license may be revoked Administrative Penalties: 1 st violation within 1 year – penalty up to \$250 2 nd violation within 1 year – penalty up to \$500 3 rd violation within 1 year – penalty up to \$1,000	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18).	Alisha Lopez, Director, Tobacco Prevention Program, Valley Community Clinic: (818) 301-6311, allopez@valleyclinic.org or Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Beaumont December 2006 Population: 31,477	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us

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Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Nevada City November 2006 Population: 3,074	\$100/annual	Compliance is monitored by the Nevada City Police Department. The Department will check compliance with youth access laws at least one time per year.	License will be revoked after a violation of the ordinance. 1 st violation within 5 years – no new license may be issued until 10 days after revocation 2 nd violation within 5 years – no new license may be issued until 30 days after revocation 3 rd violation within 5 years – no new license may be issued until 90 days after revocation 4 th violation within 5 years – no new license may be issued until 5 years after revocation	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18).	Felicia Sobonya, Nevada County Tobacco Use Prevention Coordinator: (530) 265-7018, Felicia.sobonya@co.nevada.ca.us
City of Sierra Madre November 2006 Population: 11,116	\$30/annual	Compliance monitored by the Sierra Madre Police Department.	1 st violation within 1 year – 30-day suspension or retailer must submit a training plan on tobacco laws for all employees and provide evidence that training has been completed 2 nd violation within 1 year – 90-day suspension 3 rd violation within 1 year – 1-year suspension and retailer must display a sign that it has violated public health laws regarding tobacco and that sales are currently banned	Bans mobile sales. Contains a "shame clause" which requires retailers who commit a third violation in one year to display a readily visible sign for the duration of the one-year suspension that states, "This retailer has violated important public health laws regulating tobacco. Tobacco sales are currently banned at this location."	Sandra Espadas, Programs Coordinator, Day One: (626) 229-9750, Sandra.dayonepasadena.co III or Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Carson November 2006 Population: 97,960	\$500/annual	Compliance monitored by the LA County Sheriff's Department – Carson Station. City peace officers and code enforcement officers are authorized to enforce the ordinance. Enforcement officers shall	1 st violation within 3 years – written warning, advised of penalties for further violations, or required to have all employees engaged in tobacco sales to undergo training by the City.	Bans mobile sales. Requires that all tobacco-related products must be removed from public view during periods of suspension or revocation.	Seunanihoa Puina, Outreach Worker, Office of Samoan Affairs: (310) 538-0555, spuina@samoanaffairs.org or

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
Kern County November 2006 Population: 298,603 (in unincorporated areas)	\$165/Annual	Compliance monitored by the Kern County Environmental Health Services Department.	Violators are subject to license suspension, administrative penalties, or both. License Suspension: 1 st violation within 5 years – letter of reprimand 2 nd violation within 5 years – up to 30-day suspension 3 rd violation within 5 years – up to 90-day suspension 4 th violation within 5 years – up to 180-day suspension or revocation Administrative Penalties: 1 st violation within 1 year – penalty up to \$250 2 nd violation within 1 year – penalty up to \$500 3 rd violation within 1 year – penalty up to \$1,000	Bans mobile sales. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. All applicants for a Tobacco Retailer's Permit must submit verification that they have attended a training program provided or approved by the County's Public Health Services Department on the laws related to the sale of tobacco products in California.	Nsele Nsugang, Project Director, Kern County Department of Public Health: (661) 868-0489, nsugangn@co.kern.ca.us
City of Santa Ana October 2006 Population: 353,184	\$635/annual	Compliance monitored by the Santa Ana Police Department and the City will contract with the California Department of Health Services, Food & Drug Branch to do regular compliance checks.	1 st violation – up to 60-day suspension 2 nd violation within 5 years – up to 120-day suspension 3 rd violation within 5 years – up to 180-day suspension 4 th violation – license may be	Bans mobile sales.	Andrea Portenier, Health Educator, Tobacco Use Prevention Program: (714) 834-7408, aportenier@ochca.com

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Concord September 2006 Population: 123,776	\$160/Annual	Compliance monitored by the Concord Police Department and any other City designee.	1 st violation within 2 years – up to 30-day suspension. 2 nd violation within 2 years – up to 90-day suspension. Subsequent violations within 2 years – 1 Year suspension.	Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Denise Dennis, Project Director, Contra Costa Health Services: (925) 313-6825, ddennis@nsd.cccounty.us
City of Banning August 2006 Population: 28,348	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of San Jacinto June 2006 Population: 35,672	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30-day revocation 3 rd violation within 5 years – 90-day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Riverside May 2006 Population: 296,842	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30-day revocation 3 rd violation within 5 years – 90-day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
Yolo County May 2006 Population: 23,265 (in unincorporated areas)	\$340/Annual	The Department of Environmental Health is responsible for administration of the ordinance. The District Attorney's office handles enforcement and three sting operations per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 90 day revocation 3 rd violation within 5 years – 1 year revocation 4 th violation within 5 years – 5 year revocation	Bans mobile sales. Requires that clerks are the minimum legal age to purchase tobacco products. Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Bans tobacco sales or giveaways at bars or any location licensed to serve alcohol for on-site consumption. Provides that a violation of the ordinance is a public and private nuisance and can be enforced by the District Attorney or any member of the public.	Steven Jensen Yolo County Health Department, Tobacco Education Program: (530) 666-8616, sleven.jensen@yolocounty.org
City of Murrieta May 2006 Population: 100,173	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation 3 rd violation within 5 years – 90 day revocation 4 th violation within 5 years – 5 year revocation	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Hollister May 2006 Population: 37,051	\$269/annual	Code enforcement and peace officers are responsible for enforcement of the ordinance. Each tobacco retailer shall be monitored for compliance at least one time per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30 day revocation; if violation occurs within one year of first violation, there is also a \$250 fine. 3 rd violation within 5 years – 90 day revocation; if violation occurs within 1 year of second violation, there is also a \$500 fine. 4 th violation within 5 years – 5 year revocation and \$1,000 fine.	Bans mobile sales. Requires retailers to check the age of purchasers who appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation. Authorizes the city attorney to enter into settlement agreements with retailers after a first or second violation.	Samela Perez San Benito County Public Health Services, Tobacco Education and Prevention Program: (831)636-4011, sam@santobacco.org
City of Norco March 2006 Population: 27,255	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30-day revocation 3 rd violation within 5 years – 90-day revocation 4 th violation within 5 years – 5 year revocation	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Richmond January 2006 Population: 103,577	Fee not set yet by City Fee paid to the City of	Compliance shall be monitored by the Richmond Police Department and the Chief of Police.	1 st violation within 2 years – up to 60 day suspension 2 nd violation within 2 years – up to 120 day suspension	Requires that all tobacco-related products and paraphernalia must be removed from public view during periods of suspension.	Denise Dennis, Project Director, Contra Costa Health Services: (925) 313-6825, ddennis@hscd.cccounty.us

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Vista May 2005 Population: 95,770	\$250/Annual The ordinance also provides incentives for retailers to lower the cost of the fee: see "Additional Provisions" at right.	Compliance shall be monitored by the San Diego Sheriffs Department. At least one compliance checks of each tobacco retailer shall be conducted during each twelve-month period.	1 st violation within 3 years – licensee issued a written warning and required to train employees within 60 days. 2 nd violation within 3 years – up to 30-day suspension 3 rd violation within 3 years – up to 90-day suspension 4 th violation within 3 years – up to one year suspension 5 th violation within 3 years – the license may be revoked	Bans mobile sales. Requires that all tobacco-related products and paraphernalia must be removed from public view during periods of suspension or revocation. The ordinance also provides incentives for retailers to lower the cost of the fee: \$50 - No violations the prior year \$25 - Using a cash register that reads the magnetic strip on a drivers' license and verifies age \$25 - Being approved (by the Sheriff's Department) training program with at least annual training for all employees \$25 - Having no tobacco advertising on the windows or doors	Gena Knutson, Vista Community Clinic (760) 407-1220 ext. 165. gena@vistacommunityclinic.org
City of Corona October 2005 Population: 147,428	\$350/Annual Fee paid to the County of Riverside to conduct the administration and enforcement of the ordinance.	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year.	1 st violation within 5 years – 10 day revocation 2 nd violation within 5 years – 30-day revocation 3 rd violation within 5 years – 90-day revocation 4 th violation within 5 years – 5 year revocation For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 18 Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Grover Beach September 2005 Population: 13,213	\$224/Annual	Compliance shall be monitored by the Grover Beach Police Department. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period.	1 st violation within 5 years – 30-day revocation. 2 nd violation within 5 years – 90-day revocation. 3 rd violation within 5 years – one	Bans mobile sales. Bans sales in businesses that sells alcohol for consumption on the premises (restaurants and bars). Requires retailers to check the ID of	Amber Alewine, Health Education Specialist, County of San Luis Obispo Health Agency: (805) 781-1157 alewine@co.slo.ca.us

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
Riverside County September 2005 Population: 554,571 (in unincorporated areas)	\$350/Annual	The Riverside County Health Department is responsible for the enforcement of the ordinance. The Department will check compliance with the law at each retailer at least three times per year. The Department may check known compliers less than three times per year in order to increase visits to known offenders.	1 st violation within 5 years – 10 day revocation. 2 nd violation within 5 years – 30-day revocation. 3 rd violation within 5 years – 90-day revocation. 4 th violation within 5 years – 5 year revocation. For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Bans mobile sales. Requires retailers to check the age of purchasers who reasonably appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products and advertising must be removed from public view during periods of suspension or revocation.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of Los Angeles September 2005 Population: 4,045,873 (note: the original license with no fee was passed in May, 2000)	\$300/Annual	The City Attorney's office contracts with the California Department of Health Services, Food & Drug Branch to do regular compliance checks. Investigatory program staff conducts citywide retailer inspections. There is a dedicated city prosecutor for this program.	1 st violation within 5 years – letter of reprimand from the City Attorney. 2 nd violation within 5 years – 30-day suspension. 3 rd violation within 5 years – 90-day suspension. 4 th violation within 5 years – one year suspension.	Bans mobile sales. Requires that all tobacco-related products and paraphernalia must be removed from public view during periods of suspension. Sets up a system for appeals and review hearings in a timely manner before the Police Permit Review Panel. Provides criminal penalties for unlicensed retailers and those who fail to comply with suspension periods.	Nora Manzanilla, City Attorney's Office: (213) 978-7742, tmanzan@attv.lacity.org or Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of Arroyo Grande February 2005 Population: 17,036	\$208/Annual	The Arroyo Grande Police Department will conduct at least 4 compliance checks of each tobacco retailer each year.	1 st violation within 5 years – 30-day suspension. 2 nd violation within 5 years – 90-day suspension. 3 rd violation within 5 years – one	Bans mobile sales. Bans sales at locations licensed to sale alcoholic beverages for consumption on the premises (bars). Requires that all tobacco-related	Amber Alewine, Health Education Specialist, County of San Luis Obispo Health Agency: (805) 781-1157 alewine@co.slo.ca.us

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Rancho Cordova February 2005 Population: 60,975	\$287/Annual	Police will conduct compliance checks of all retailers several times per year. Code enforcement will check on violations other than youth access.	year suspension. 4 th violation within 5 years – the license shall be revoked. 1 st violation within 5 years – 30-day suspension. 2 nd violation within 5 years – 90-day suspension. 3 rd violation within 5 years – one year suspension. 4 th violation within 5 years – the license shall be revoked.	products and advertising must be removed from public view during periods of suspension or revocation. Requires that all tobacco-related products and paraphernalia must be removed from public view during periods of suspension or revocation.	Yvonne Rodriguez, Health Program Coordinator County of Sacramento Chronic Disease Prevention Program: (916) 875-6494, rodriquezyv@saccounty.net Or Carolyn Martin, Sacramento Tobacco Retail Licensing Task Force: (916) 489-5293 March76@aol.com
City of Elk Grove September 2004 Population: 139,542	\$270/Annual	The Elk Grove Police Department will conduct an annual inspection of all retailers as well as quarterly youth decoy operations of randomly selected retailers.	1 st violation within 5 years – 30-day suspension. 2 nd violation within 5 years – 90-day suspension. 3 rd violation within 5 years – one year suspension. 4 th violation within 5 years – the license shall be revoked.	Bans mobile sales.	Yvonne Rodriguez, Health Program Coordinator County of Sacramento Chronic Disease Prevention Program: (916) 875-6494, rodriquezyv@saccounty.net Or Carolyn Martin, Sacramento Tobacco Retail Licensing Task Force: (916)-489-5293, March76@aol.com
City of El Cajon June 2004 Population: 97,934	\$198/Annual	The City Finance Department will conduct compliance checks of each retailer once per year per retailer. Any peace officer or code enforcement officer may also enforce the ordinance.	1 st violation within 5 years – 30-day suspension. Alternatively, the retailer may pay an administrative fine in lieu of the suspension. The fine does not expunge the violation. 2 nd violation within 5 years – 90-day suspension. And if the violation occurs within 12 months of the first, an administrative fine will be issued. 3 rd violation within 5 years – one year suspension. And if the violation occurs within 12 months of the first, an	Bans mobile sales. Bans sales in businesses that sell either food or alcohol for consumption on the premises (restaurants and bars). Requires retailers to check the age of purchasers who "reasonably appear" to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco-related products, paraphernalia, and advertising must be removed from	Debbie Kelley, American Lung Association of San Diego: (619) 297-3901 debbie@lungsandiego.org Or Lorenzo Higley, Director of Program Services at Communities Against Substance Abuse: (619) 442-2727, programservicesdir@eccasa.org

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
Sacramento County May 2004 Population: 563,514 (in unincorporated areas)	\$324/Annual	Each store will receive a visual inspection annually by the Environmental Health Division (code inspectors). The Sheriff's department will conduct compliance checks at a percentage of retailers each year.	administrative fine will be issued. 4 th violation within 5 years – the license shall be revoked. And if the violation occurs within 12 months of the first, an administrative fine will be issued. For violations involving the sale to a minor of tobacco or tobacco products: 1 st violation within 3 years – 30-day suspension. 2 nd violation within 3 years – 90-day suspension. 3 rd violation within 3 years – 1 Year suspension. 4 th violation within 3 years – the license shall be revoked For all other violations of the license (for example, self-service displays, not posting license, etc.): First, a written warning will be sent to the retailer. Then there will be a re-inspection, with the cost charged to the retailer. If the violation has not been fixed the license will be suspended or revoked.	public view during periods of suspension or revocation. For a first or second violation, however, the retailer may post a sign during suspension stating "Tobacco Products Not for Sale because this store has violated a public health law regulating tobacco." Specifies the right of a private citizen ("private enforcer") to enforce this ordinance. Bans mobile sales. In addition to youth decoy operations, the fee pays for the Health Department's youth purchase surveys.	Yvonne Rodriguez, Health Program Coordinator County of Sacramento Chronic Disease Prevention Program: (916) 875-6494, rodriquezyv@saccounty.net Or Carolyn Martin, Sacramento Tobacco Retail Licensing Task Force: (916) 489-5293, Marcb76@aol.com
City of Sacramento March 2004 Population: 475,743	\$300/Annual	Together, the city police department and the code enforcement division will conduct youth decoy enforcement (compliance checks).	1 st violation within 5 years – 30-day suspension. 2 nd violation within 5 years – 90-day suspension. 3 rd violation within 5 years –	Bans mobile sales. Requires that all tobacco products and tobacco paraphernalia must be removed from public view during periods of suspension or revocation.	Yvonne Rodriguez, Health Program Coordinator County of Sacramento Chronic Disease Prevention Program: (916) 875-6494, rodriquezyv@saccounty.net

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Pasadena February 2004 Population: 148,126	\$225/Annual	Code Enforcement Officers will also conduct visual site inspections. 2.0 FTE were added to the Code Enforcement Division. The Police Vice-Narcotics unit will conduct quarterly compliance checks of randomly selected retailers (the equivalent of one compliance check per retailer per year) and Environmental Health will conduct visual site inspections of stores.	one year suspension. 4 th violation within 5 years – the license shall be revoked. 1 st violation – up to 30 day suspension 2 nd violation within 5 years – up to 90 day suspension 3 rd violation within 5 years – the license may be revoked.	In addition to youth decoy operations, the fee pays for the Health Department's youth purchase surveys. The Ordinance passed in Pasadena includes the following provisions, some of which relates to the retailer license and some does not: Bans mobile sales. Requires that all tobacco-related advertising must be removed from public view during periods of suspension or revocation. Establishes a conditional use permit (CUP) for significant tobacco retailers. Created smoke-free city parks.	Or Carolyn Martin, Sacramento Tobacco Retail Licensing Task Force: (916) 489-5293, March76@aol.com Statice Wilmore, Tobacco Control Project Coordinator, City of Pasadena Health Department: (626) 744-6051, swilmore@cityofpasadena.net t or Christina Reyes, MPH, Research Analyst, Tobacco Control and Prevention Program, LA County Dept. of Public Health: (213) 351-7309 chreyes@ph.lacounty.gov
City of San Luis Obispo August 2003 Population: 44,697	\$276/Annual	Three police officers and one police sergeant will conduct 4 compliance checks per-retailer per-year on a part time basis. It was written into the law that at least four compliance checks must be conducted each year and the cost of compliance monitoring shall be incorporated into the license fee.	1 st violation within 5 years – 30 day suspension 2 nd violation within 5 years – 90 day suspension 3 rd violation within 5 years – One year suspension. 4 th violation within 5 years – the license shall be revoked.	Bans mobile sales Bans sales at locations licensed to sale alcoholic beverages for consumption on the premises (bars). Requires that all tobacco products must be removed from public view during periods of suspension or revocation.	Amber Alewine, Health Education Specialist, County of San Luis Obispo Health Agency: (805) 781-1157 aalewine@co.slo.ca.us

Other Retailer Licensing Ordinances

The ordinances passed by the previous communities listed include fees that pay for comprehensive enforcement programs and compliance checks. These ordinances, along with the TALC model ordinance, are the best examples because of the fees that cover administration and enforcement. The last seven ordinances are still strong, but they do not have dedicated fees to pay for enforcement. The enforcement and compliance checks in these ordinances are funded through other stable and sustainable sources.

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
City of Temecula June 2006 Population: 101,057	No fee planned, but could be adopted later.	Compliance can be monitored by any peace officer. City pays for enforcement activities through existing funds.	1 st violation within 5 years – 10 day revocation. 2 nd violation within 5 years – 30-day revocation. 3 rd violation within 5 years – 90-day revocation. 4 th violation within 5 years – 5 year revocation. For the first and second violation the retailer can enter a settlement with the County to pay a fine and get a reduced revocation.	Requires retailers to check the age of purchasers who reasonably appear to be under the age of 27. Requires that clerks are the minimum legal age to purchase tobacco products (currently 18). Requires that all tobacco products and advertisements must be removed from public view during periods of suspension or revocation. Bans mobile sales.	Martin Baxter, Senior Health Educator, Riverside County Public Health Department: (760) 778-2222 mbaxter@co.riverside.ca.us
City of San Francisco November 2003 Population: 824,825	\$175/Annual Licensing Fee \$50/one time application and initial inspection fee	Environmental Health Inspectors will conduct 2 routine visual site inspections per-retailer per-year. (Note: San Francisco had a strong ongoing enforcement program in place before their licensing ordinance was passed. The police department does approximately 45 enforcement operations at retail outlets every month. The cost of this program is paid for through MSA monies and therefore these enforcement costs were not included in the license fee.)	1 st violation – up to 90-day suspension 2 nd violation within 12 months – up to 6-month suspension Each subsequent violation within 12 months – up to one year suspension.	In addition to the suspension schedule, the following administrative penalties may be assessed: \$100 for the first violation, \$200 for a second violation, and not to exceed \$500 for the third and each subsequent violation.	Alyonik Hrushow Project Director, Tobacco Control, San Francisco Department of Public Health: (415) 581-2447, Alyonik.Hrushow@sfdph.org
Contra Costa County January 2003 Population: 173,573 (in	\$160/Annual	Health Services Department (tobacco) staff will conduct site visits to the stores on an annual basis to enforce the licensing	1 st violation – up to 30-day suspension. 2 nd violation within 2 years – up	Bans mobile sales. Requires that all tobacco-related products must be removed from public	Denice Dennis, Project Director, Contra Costa Health Services: (925) 313-6825.

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
unincorporated areas)		ordinance and self-service display ban. This activity is paid for through the license fee. The Sheriff's Office will conduct 100 sting operations each year using other funding sources.	to 90-day suspension. 3 rd violation and subsequent violations within 2 years – up to one year suspension.	view during periods of suspension or revocation.	ddennis@hsd.cccounty.us
City of Berkeley December 2002 Population: 106,697	\$427/Annual With a 3.5% annual increase for COLA	Environmental Health Specialists will conduct three visual site inspections per retailer per year. 0.5 FTE was added to the Environmental Health Department. (Note: Berkeley's fee does not pay for PC 308 compliance checks. The city's police department had an ongoing program to conduct bi-annual compliance checks of randomly selected stores. The police department absorbs the related costs of these operations.)	1 st violation within 5 years – up to 30 day suspension. 2 nd violation within 5 years – up to 90 day suspension. 3 rd violation within 5 years – up to one year suspension. 4 th violation within 5 years – the license may be revoked	Requires that all tobacco products must be removed from public view during periods of suspension or revocation.	Marcia Brown-Machen, Tobacco Prevention Program Director, City of Berkeley Health Department: (510) 981-5309, MBrown-Machen@clberkeley.ca.us
City of Santa Barbara June 2002 Population: 90,305	\$30/Annual	Enforcement will be handled by the Santa Barbara Police Department. MSA funds are used to conduct compliance checks.	1 st violation within 2 years – letter of warning 2 nd violation within 2 years – 30-day suspension 3 rd violation within 2 years – 90-day suspension 4 th violation within 2 years – 1-year suspension	Bans mobile sales.	Dawn Dunn, Program Administrator, Tobacco Prevention Settlement Program, Santa Barbara County Public Health Department: (805) 681-5407, Dawn.dunn@sbcphd.org
City of Goleta November 2001 Population: 30,400	\$30/Annual	Enforcement will be handled by the Santa Barbara County Public Health Department. MSA funds are used to conduct compliance checks.	1 st violation within 2 years – letter of warning 2 nd violation within 2 years – 30-day suspension 3 rd violation within 2 years – 90-day suspension 4 th violation within 2 years – 1-year suspension	Bans mobile sales.	Dawn Dunn, Program Administrator, Tobacco Prevention Settlement Program, Santa Barbara County Public Health Department: (805) 681-5407, Dawn.dunn@sbcphd.org
County of Santa Barbara	\$30/Annual	Enforcement will be handled by the Public Health Department.	1 st violation within 2 years – letter of warning	Bans mobile sales.	Dawn Dunn, Program Administrator, Tobacco

Community/Date Passed	Fee	Enforcement Activities	Suspension/Revocation Schedule	Additional Provisions	Local Contact
November 2001 Population: 142,816 (in unincorporated areas)		MSA funds are used to conduct compliance checks.	2 nd violation within 2 years – 30-day suspension 3 rd violation within 2 years – 90-day suspension 4 th violation within 2 years – 1-year suspension		Prevention Settlement Program, Santa Barbara County Public Health Department: (805) 681-5407, Dawn.dunn@sbcphd.org

Sources: Population figures are from the State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change – January 1, 2007 and 2008
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ORDINANCE NO. 07- 23

AN ORDINANCE OF THE CITY OF INGLEWOOD, CALIFORNIA,
ADDING AN ARTICLE 8 TO CHAPTER 8 OF THE INGLEWOOD
MUNICIPAL CODE RELATING TO THE REGULATION OF
BUSINESSES, TRADES AND PROFESSIONS BY ESTABLISHING
LICENSING REQUIREMENTS AND PROCEDURES FOR ALL
BUSINESSES WHO ENGAGE IN THE SALE OF TOBACCO
PRODUCTS.

WHEREAS, the City Council of the City of Inglewood, California wishes to
encourage responsible tobacco retailing and to discourage violations of tobacco-
related laws, especially those which prohibit or discourage the sale or distribution
of tobacco and nicotine products to minors; and

WHEREAS, the City Council of the City of Inglewood, California hereby
finds as follows:

A. The U.S. Department of Health and Human Services estimates that
every year more than 440,000 people die in the United States from tobacco-related
diseases; and the World Health Organization (WHO) estimates that by 2030,
tobacco will account for 10 million deaths per year, making it the greatest cause of
death worldwide.

B. The California Legislature has recognized the dangers of tobacco use
and the access to tobacco products by underage youth and has enacted legislation
including:

1. Legislative declaration that smoking is the single most
important source of preventable disease and premature death in California
(Cal. Health & Safety Code § 118950); and

2. State law prohibitions on the sale or furnishing of cigarettes,
tobacco products, and smoking paraphernalia to minors, as well as the

1 purchase, receipt, or possession of tobacco products by minors (Cal. Pen.
2 Code § 308); and

3 3. State law requirements that tobacco retailers check the
4 identification of tobacco purchasers who reasonably appear to be under 18
5 years of age (Cal. Bus. & Prof. Code § 22956) and sanction the use of
6 underage decoys to conduct onsite compliance checks of tobacco retailers
7 (Cal. Bus. & Prof. Code § 22952); and

8 4. State law prohibitions on the sale of tobacco products and
9 paraphernalia through self-services displays, and "bidis" (hand-rolled filter-
10 less cigarettes imported primarily from India and Southeast Asian
11 countries) except in adult-only establishments (Cal. Bus. & Prof. Code §
12 22962; Pen. Code § 308.1); and

13 5. State law prohibitions on the manufacture, distribution, or sale of
14 cigarettes in packages of less than 20 and "roll-your-own" tobacco in
15 packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code §
16 308.3); and

17 6. State law requires all tobacco retailers to be licensed by the Board
18 of Equalization in order to curb the illegal sale and distribution of cigarettes
19 (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

20 7. State law permits cities and counties to enact local tobacco retail
21 licensing ordinances, including more stringent restrictions on the access to
22 tobacco products, and allows for the suspension or revocation of a local
23 license for a violation of any state tobacco control law (Cal. Bus. & Prof.
24 Code § 22971.3).

25 C. Studies from the American Lung Association and the United States
26 Surgeon General confirm that despite state and local laws prohibiting the sale of
27 tobacco products to minors, they are still able to access cigarettes, as evidenced by
28

1 the fact that directly through retailers and vending machines they consume 924
2 million packs of cigarettes each year nationwide.

3 D. Research demonstrates that local tobacco retail ordinances have and
4 can dramatically reduce youth access to cigarettes by as much as 85%.

5 E. California retailers continue to sell tobacco to underage consumers,
6 evidenced by the following:

7 1. 14% of all tobacco retailers unlawfully sold to minors in 2004; and

8 2. 31.5 % of non-traditional tobacco retailers such as deli, meat, and
9 produce markets sold to minors in 2004; and

10 3. Teens surveyed in 2002 say they bought their cigarettes at: gas
11 stations (58%), liquor stores (45%), and supermarkets and small grocery
12 stores (25%).

13 F. A requirement for a tobacco retailer license will assist in discouraging
14 violations of federal, state and local tobacco-related laws and will not unduly
15 burden legitimate business activities of retailers who sell or distribute cigarettes
16 or other tobacco products to adults.

17 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF
18 INGLEWOOD, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

19 SECTION 1: An Article 8 entitled "Regulations for Businesses Engaged in
20 the Sale of Tobacco Products" is hereby added to the text of Chapter 8 of the
21 Inglewood Municipal Code to read as follows:

22 "Article 8. REGULATIONS FOR BUSINESSES ENGAGED IN
23 THE SALE OF TOBACCO PRODUCTS

24 Section 8-109. Purpose and Intent.

25 It is the intent of the City Council, in enacting this ordinance, to encourage
26 responsible tobacco retailing and to discourage violations of tobacco-related laws,
27 especially those which prohibit or discourage the sale or distribution of tobacco and
28 nicotine products to minors.

1 Section 8-110. Definitions.

2 For the purpose of Inglewood Municipal Code sections 8-109 through 8-117,
3 the following terms shall have the meanings defined in this section unless the
4 context clearly requires otherwise:

5 (a) "Arm's Length Transaction" shall mean a sale in good faith and for
6 valuable consideration, that reflects the fair market value in the open market,
7 between two informed and willing parties, neither of which is under any
8 compulsion to participate in the transaction. A sale between relatives, partners,
9 corporate or other entities which have some or all of the same directors and/or
10 principles, or any sale for which a significant purpose is avoiding the effect of the
11 violations of this article is not an Arm's Length Transaction.

12 (b) "Person" shall mean any natural person, partnership, cooperative
13 association, corporation, personal representative, receiver, trustee, assignee, or
14 any other legal entity.

15 (c) "Proprietor" shall mean a Person with an ownership or managerial
16 interest in a tobacco retail establishment. An ownership interest shall be deemed
17 to exist when a Person has a ten percent (10%) or greater interest in the stock,
18 assets, or income of a business other than the sole interest of security for debt. A
19 managerial interest shall be deemed to exist when a Person can or does have or
20 share ultimate control over the day-to-day operations of a business.

21 (d) "Self-Service Display" shall mean the open display of Tobacco Products
22 or Tobacco Paraphernalia in a manner that is accessible to the general public
23 without the assistance of the retailer or employee of the retailer. A Vending
24 Machine is a form of Self-Service Display.

25 (e) "Tobacco Paraphernalia" shall mean cigarette papers or wrappers, pipes,
26 holders of smoking materials of all types, cigarette rolling machines, and any other
27 instrument or paraphernalia designed for the smoking, preparation, storing,
28 ingestion or consumption of Tobacco Products.

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

10 (g) "Tobacco Retailer" shall mean any Person who sells, offers for sale, or
11 does or offers to exchange for any form of consideration, in public view, tobacco,
12 Tobacco Products, or Tobacco Paraphernalia. Any person who distributes free or
13 low cost samples of Tobacco Products or Tobacco Paraphernalia shall be deemed to
14 be a Tobacco Retailer under this Article.

15 (h) "Vending Machine" shall mean a machine, appliance, or other
16 mechanical device operated by currency, token, debit card, credit card, or any
17 other form of payment that is designed or used for vending purposes, including,
18 but not limited to, machines or devices that use remote control locking
19 mechanisms.

20 (i) "Youth Decoy" shall mean a person under the age of 18 who is used by
21 the police department to conduct random onsite sting investigations to determine
22 compliance with tobacco retailing laws.

23 **Section 8-111. Tobacco Retailer License Required.**

24 (a) No person shall engage in or operate as a Tobacco Retailer without first
25 obtaining and maintaining a valid Tobacco Retailer's license pursuant to this
26 Article for each location at which that activity is to occur. In addition to the
27 criminal penalties attached to violations of this section, Tobacco Retailing without
28 a valid Tobacco Retailer's license is hereby declared a public nuisance.

1 (b) The display of any advertisement relating to Tobacco Products or
2 Tobacco Paraphernalia that promotes the sale or distribution of such products
3 from the Tobacco Retailer's location or that could lead a reasonable consumer to
4 believe that such products can be obtained at that location without the Tobacco
5 Retailer first obtaining and maintaining a valid Tobacco Retailer's license
6 pursuant to this Article for each location at which the advertisement is displayed
7 is prohibited and unlawful.

8 (c) The sale of tobacco products or tobacco paraphernalia from other than a
9 fixed location, including but not limited to Tobacco Retailing by persons on foot or
10 from vehicles is prohibited and unlawful and no license shall be issued under this
11 article to any such activity.

12 (d) Nothing in this article shall be construed to grant any Person obtaining
13 and maintaining a Tobacco Retailer's license any status or right other than the
14 right to act as a Tobacco Retailer at the permitted location in the City of
15 Inglewood. Nothing in this article is intended to be construed to render
16 inapplicable, supercede, or affect any other provision of applicable law, including
17 but not limited to, any provision of this Code, or any condition or limitation on
18 smoking in an enclosed place of employment pursuant to California Labor Code
19 section 6404.5.

20 **Section 8-112. Application Procedure.**

21 (a) All applications shall be completed on a form prepared and supplied by
22 the responsible City department. The application shall be signed under penalty of
23 perjury. The following information shall be included, without limitation in the
24 application:

25 (1) The name, address and telephone number of the proprietor, including,
26 for non-corporate proprietors, the names of all principles. Corporate proprietors
27 shall include the name of the designated agent for service of process.

28 ///

1 (2) The name, address and telephone number of a responsible person or
2 persons designated by the proprietor to receive any notices from the City relating
3 to the business. If the designated agent information (name, address and telephone
4 number) for notices is not provided, each proprietor shall be understood to have
5 consented to the provision of notice at the business address specified on the
6 application.

7 (3) The business name, address and telephone number of the retail location.

8 (4) Whether any other licenses have been issued to applicant for tobacco
9 retail sales within the City of Inglewood, and if so the name and address of the
10 businesses for which these licenses have been issued.

11 (5) Whether or not any proprietor had admitted violating, or has been
12 found to have violated this article, or whose proprietorship has admitted violating,
13 or has been found to have violated this article, and, if so, the dates and location of
14 all such violations of all such violations within the previous six years.

15 (6) All information required to be submitted in order to apply for a
16 tobacco retailer's license shall be updated with the department whenever the
17 information changes. A tobacco retailer shall provide the department with any
18 updates within ten (10) business days of a change.

19 (7) Such other information as the department deems necessary for the
20 administration or enforcement of this article.

21 (8) A statement by the proprietor under penalty of perjury that the contents
22 of the application are true and correct. False statements on the application shall
23 be cause for license revocation.

24 (9) For retailers with multiple locations within the City of Inglewood, a
25 separate application is required for each proposed retail location.

26 (b) No license shall be issued without satisfactory proof that the Tobacco
27 Retailer has obtained a valid state tobacco retailer's license from the California
28 Board of Equalization.

1 (c) Applicant shall be required to disclose any violations of the State tobacco
2 licensing laws at any location within the City of Inglewood within the five years
3 prior to the application for which applicant's state tobacco retailer's license was
4 either suspended or revoked.

5 Section 8-113. License Fee.

6 The Annual Fee for filing an application for a Tobacco Retailer's License
7 shall be established by resolution of the City Council and may be amended from
8 time to time. The application fee shall be paid at the time of the initial application
9 for a license and on the first day of January of each year thereafter. The fee paid
10 shall not be refundable. The License Fee shall be calculated so as to recover the
11 cost of both the administration and enforcement of the Tobacco Retailer's License
12 program, including the cost of issuing the license, renewing the license,
13 administering the Tobacco Retailer's Licensing program, retailer inspection and
14 compliance checks, documentation of violations, adjudications and prosecutions of
15 violators.

16 Section 8-114. Issuance of License.

17 (a) Except as otherwise provided herein, and except where a Tobacco
18 Retailer's establishment would be not otherwise be permitted under local, state
19 and/or federal laws, a license shall be issued upon receipt of a complete application
20 and conformity with all of the requirements set forth in the Application Procedure
21 section of this Article, and payment of the license fee.

22 (b) A Tobacco Retailer's license will not be issued where:

23 (1) Suspension or revocation proceedings have been initiated by any local,
24 state or federal agency for violations of local, state or federal tobacco control laws
25 within the preceding thirty (30) day period.

26 (2) Proprietor or any person employed by proprietor has been convicted of
27 any violation of any local, state or federal tobacco control laws within six (6)
28 months prior to the date of application.

1 (3) The Applicant has failed to pay an outstanding fine.

2 (4) The information presented on the application is incomplete, inaccurate,
3 or false.

4 (5) The application seeks authorization for tobacco retailing for a proprietor
5 to whom this article prohibits a license to be issued.

6 (6) The application seeks authorization that is unlawful pursuant to the
7 Inglewood Municipal Code which includes but it not limited to the city's zoning,
8 building codes, licensing and permitting, or that is unlawful pursuant to any other
9 local, state, or federal law.

10 (c) Every license issued under this Article shall be posted and displayed at
11 all times in a conspicuous place within the business location that is visible within
12 the public portions of the business.

13 (d) A Tobacco Retailer's license is valid only for the location for which it has
14 been issued and may not be transferred from one Person to another or from one
15 location to another.

16 (e) Notwithstanding any other provision of this article, prior violations at a
17 location shall continue to be counted against a location and license ineligibility
18 periods shall continue to apply to a location unless:

19 (1) The location has been fully transferred to a new Proprietor or fully
20 transferred to entirely new Proprietors; and

21 (2) The new Proprietor provides the City with clear and convincing evidence
22 that the new Proprietor has acquired the location in an Arm's Length Transaction.

23 **Section 8-115. License Renewal and Expiration.**

24 (a) A Tobacco Retailer license will be valid through December 31st of every
25 year and if not renewed, will expire. Each Tobacco Retailer shall apply for the
26 renewal of his or her Tobacco Retailer's license and submit the license fee no later
27 than thirty (30) days prior to expiration of the term.

28

1 (b) If any material information required for issuance of a license herein has
2 changed since the original license was issued, a new tobacco retailer's license is
3 required before the business may continue to act as a tobacco retailer.

4 (c) A tobacco retailer's license that is not timely renewed shall expire at the
5 end of its term. To reinstate a license that has expired or to renew a license not
6 timely received pursuant to this article, the proprietor must follow the application
7 procedures set forth in Inglewood Municipal Code Section 8-112.

8 **Section 8-116. Positive Identification Required; Minimum Age to Sell Tobacco**
9 **Products.**

10 (a) No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco
11 Product or Tobacco Paraphernalia to another Person who appears to be under the
12 age of twenty-seven (27) years, without first examining the identification of the
13 recipient to confirm that the recipient is at least the minimum age under state
14 law, to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

15 (b) No Tobacco Retailer shall permit any person who is younger than the
16 minimum age established by state law for the purchase or possession of Tobacco
17 Products, to engage or participate in the sale of tobacco products or tobacco
18 paraphernalia.

19 **Section 8-117. Compliance Monitoring and Enforcement.**

20 (a) The provisions of this chapter shall be enforced by the Inglewood Police
21 Department, or an authorized designee of the Business License Division, Code
22 Enforcement Division, or by any other person or persons so designated by the City
23 Administrator.

24 (b) Compliance checks shall determine, at a minimum, if the Tobacco
25 Retailer is conducting business in a manner that complies with tobacco laws
26 regulating youth access to tobacco.

27 (c) The City may use persons under the age of 18, but not younger than 15
28 (youth decoys) to conduct random onsite sting inspections to determine whether or

1 not a Tobacco Retailer is in compliance with all state and local laws relative to
2 retail sales of tobacco products and tobacco paraphernalia. These youth decoys
3 may be used for compliance and enforcement activities supervised by a peace
4 officer. Participation in these enforcement and compliance activities by a person
5 under the age of 18 shall not constitute a violation of Penal Code section 308 and
6 the person under 18 years of age is immune from prosecution under any provision
7 of law prohibiting the purchase of tobacco products by a person under 18 years of
8 age.

9 Section 8-118. Violations Unlawful. Penalties.

10 (a) Violations of Section 8-111 (a-c) of this Article are unlawful.

11 (b) Pursuant to Government Code Section 36900(c) the maximum amount
12 of the fine imposed for each code violation prosecuted as a misdemeanor under this
13 article shall be as follows:

14 (1) Two hundred dollars for a first violation;

15 (2) Five hundred dollars for a second violation within one year; and

16 (3) One thousand dollars for each additional violation within one year.

17 Section 8-119. Suspensions and Revocations. Administrative Fines.

18 (a) In addition to any criminal or other penalty authorized by law, a Tobacco
19 Retailer's license may be suspended or revoked by the City Administrator or his
20 designee if it is determined that the licensee or his or her agents or employees has
21 violated the conditions of the license imposed pursuant to this article, or any other
22 state or federal law pertaining to the sale of tobacco products to underage minors.

23 (b) A Tobacco Retailer's license may be revoked by the City Administrator or
24 his designee if one of the following conditions exists:

25 (1) The information contained in the application, including supplemental
26 information, if any, is found to be false in any material respect; or

27 (2) The license was issued in error or on the basis of false or misleading
28 information supplied by a Proprietor; or

1 (3) The Tobacco Retailer's License is unpaid; or

2 (4) The Tobacco Retailer's License has been transferred in violation of this
3 article; or

4 (5) The Tobacco Retailer's License has violated any section of this article, or
5 any state or federal tobacco related law.

6 (c) The procedure used for appealing a revocation shall substantially
7 conform to that set forth in Section 8-37 of Article 3 of Chapter 8 of the Inglewood
8 Municipal Code or its successor provisions.

9 (d) Upon a finding of a first license violation, a fine of \$1,000 shall be
10 imposed.

11 (e) Upon a finding of a second license violation within a five-year period of
12 the first violation, the license may be suspended for up to ninety (90) days.

13 (f) Upon a finding by the City of a third violation within five years of the
14 first violation, the license may be revoked.

15 (g) A Tobacco Retailer, whose license has been revoked, may not apply for a
16 new tobacco retailer's license for a period of six months after the effective date of
17 the revocation.

18 (h) In addition to the criminal or administrative fine imposed the City may
19 also impose an additional charge to cover the City's actual enforcement costs
20 including but not limited to time spent by code enforcement staff, supervisors and
21 city attorney's office, costs of compliance reinspections, and collection costs.

22 (i) In addition to the above any criminal or administrative remedy, a
23 violation of this article may be remedied by a civil injunction or abatement action
24 initiated by the city attorney.

25 (j) During any period of license suspension or revocation, the Tobacco
26 Retailer must remove from public view all tobacco products, tobacco
27 paraphernalia, and tobacco-related advertising.

28 ///

1 SECTION 2. A paragraph (20) of Section 8-53.1 shall be added to Article 3
2 of Chapter 8 (Business Trades and Professions) to read as follows:
3 “(20) Businesses Engaged in the Sale of Tobacco Products.”
4 SECTION 3. The City Clerk shall certify to the passage and adoption of
5 this ordinance and to its approval by the City Council and shall cause the same to
6 be published in accordance with the City Charter; and thirty days from the final
7 passage and adoption, this ordinance shall be in full force and effect.
8 Passed, approved and adopted this _____ day of _____, 2007.
9
10
11
12
13 ATTEST:
14
15 _____
16 YVONNE HORTON
17 CITY CLERK
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ROOSEVELT F. DORN
MAYOR

Santa Monica Municipal Code

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[Article 4 PUBLIC WELFARE, MORALS AND POLICY](#)

Chapter 4.45 TOBACCO RETAILER LICENSING

4.45.010 Intent.

It is the intent of the City Council, in enacting this Chapter, to encourage responsibility in tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to minors. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.020 Definitions.

The following words and phrases, as used in this Chapter, shall have the following meanings:

- (a) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (b) "Proprietor" means a person with an ownership or managerial interest in a business covered by this Chapter. An ownership interest shall be deemed to exist when a person has a ten percent 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 share ultimate control over the day-to-day operations of a business.
- (c) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco or bidis.
- (d) "Tobacco retailer" means any person who sells, offers for sale or sample, advertises or otherwise promotes, or does or offers to exchange for any form of consideration, in public view, any tobacco products. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.030 Tobacco retailer license required.

- (a) No person shall operate as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this Chapter for each location at which that activity is to occur.
- (b) Tobacco retailing without a valid tobacco retailer's license is a public nuisance. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.040 Application procedure.

- (a) Applicants for a license under this Chapter shall pay a non-refundable license fee in an amount established by Council resolution and sufficient to cover the costs of administration, enforcement and education.
- (b) All applications shall be completed on a form prepared and supplied by the City Manager or the Manager's designee.
- (c) Applicant shall be required to disclose any violations of the State tobacco licensing laws at any location within the City of Santa Monica within the five years prior to the application for which applicant's state tobacco retailer's license was either suspended or revoked. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.050 Issuance of license.

- (a) Except as otherwise provided herein, and except where a tobacco retailer's establishment would not otherwise be permitted under local, State or Federal laws, a license shall be issued upon receipt of a complete application in conformity with all of the requirements set forth in the application procedure section of this Chapter, and payment of the license fee.

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(b) A tobacco retailer's license will not be issued where:

(1) Suspension or revocation proceedings have been initiated by any local, State or Federal agency for violations of local, State or Federal tobacco control laws within the preceding thirty-day period.

(2) Proprietor or any person employed by proprietor has been convicted or civilly adjudged liable for violating any local, State or Federal tobacco control law within six months prior to the date of application.

(3) The proprietor's tobacco retailer's license was revoked for the same location within the five years preceding the date of the application.

(4) The tobacco retailer has not obtained a valid State tobacco retailer's license from the California Board of Equalization.

(5) The tobacco retailer does not have a valid Santa Monica business license or is delinquent on the payment of business tax, late payment penalties or other associated fees.

(c) Every license issued under this Chapter shall be conditioned upon compliance with all applicable signage and advertising regulations.

(d) Every license issued under this Chapter shall be posted and displayed at all times in a conspicuous place within the business location that is visible to the public.

(e) Notwithstanding any other provision of this Chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless the location has been fully transferred to a new proprietor. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.060 License renewal and expiration.

(a) A tobacco retailer license will be valid until June 30th of every year and if not renewed will expire. Each tobacco retailer shall apply for the renewal of its tobacco retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

(b) If any material information required for issuance of a license herein has changed since the original license was issued, a new tobacco retailer's license is required before the business may continue to act as a tobacco retailer. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.070 Prohibitions.

(a) No tobacco retailer shall violate any local, State or Federal law that relates to the sale, use, smoking, or other regulation of tobacco products.

(b) No tobacco retailer shall sell or transfer a tobacco product to another person who appears to be under the age of twenty-seven years, without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law, to purchase and possess the tobacco product.

(c) No tobacco retailer shall permit any person who is younger than the minimum age established by State law for the purchase or possession of tobacco products, to participate in the sale of tobacco products.

(d) No tobacco retailer shall display tobacco products in a manner that is accessible to the general public without the assistance of the tobacco retailer or its employee.

(e) No tobacco retailer shall sell or display cigarettes out of the manufacturer's package or without required health warnings.

(f) No tobacco retailer shall sell tobacco products from other than a fixed location, including but not limited to sales by persons on foot or from vehicles. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)

4.45.080 Remedies.

(a) A tobacco retailer's license may be revoked by the City Manager or the Manager's designee if one of the following conditions exist:

(1) The information contained in the application, including supplemental information, if any, is found to be false in any material respect;

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(2) The license was issued in error or on the basis of false or misleading information supplied by a proprietor.

(b) In addition to any other remedy authorized by law, a tobacco retailer's license may be suspended or revoked by the City Manager or the Manager's designee if it is determined that the tobacco retailer or its agents violated the conditions of this Chapter or any local, State or Federal law pertaining to the sale of tobacco products to underage minors, as follows:

(1) Upon a finding of a first violation, the license may be suspended for up to thirty days;

(2) Upon a finding of a second violation within five years of the first violation, the license may be suspended for up to ninety days;

(3) Upon a finding of a third violation within five years of the first violation, the license may be revoked.

(c) No proprietor may re-apply for a tobacco retailer's license at the same retail location for five years after the date of revocation.

(d) The procedure used for revocation shall substantially conform to that set forth in the Santa Monica Municipal Code regarding business licenses generally. Any decision to revoke or suspend a license may be appealed according to the provisions of the Santa Monica Municipal Code. An appeal shall stay all proceedings in furtherance of the appealed action.

(e) During any period of license suspension or revocation, the tobacco retailer must remove from public view all tobacco products and related advertising.

(f) Violations of this Chapter constitute a misdemeanor.

(g) Violations of this Chapter may be remedied by a civil injunction or abatement action initiated by the City Attorney. (Added by Ord. No. 2277CCS § 1, adopted 11/11/08)



public health
law & policy

technical assistance
legal center

Model California Ordinance Requiring a Tobacco Retailer License (with Annotations)

Revised June 2008

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The Technical Assistance Legal Center is a project of Public Health Law & Policy and the Public Health Institute.
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Model California Ordinance Requiring a Tobacco Retailer License (with Annotations)
(Issued September 1998, Revised March 2002, Revised May 2005, Revised July 2006, Revised June 2008)

This model is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised.

**AN ORDINANCE OF THE [CITY / COUNTY] OF [____]
REQUIRING THE LICENSURE OF TOBACCO RETAILERS
AND AMENDING THE [____] MUNICIPAL CODE**

The [City Council of the City / Board of Supervisors of the County] of [____] does ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. FINDINGS. The [City Council of the City / Board of Supervisors of the County] of [____] hereby finds and declares as follows:²

WHEREAS, based in part on the information contained in this section, the [City Council/ Board of Supervisors] finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the [City/ County]; and

WHEREAS, the [City Council/ Board of Supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [City/County], to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 438,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;³ and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year, killing 50% more people in 2015 than HIV/AIDS, and will be responsible for 10% of all deaths worldwide;⁴ and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950);

² Each of the authorities identified in this model ordinance is available on-line or from the Technical Assistance Legal Center at the address, phone, and e-mail address indicated on the first page of this model ordinance.

³ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 1997-2001*. 2005, 54(25): p. 625-628. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5425a1.htm.

⁴ World Health Organization. *World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health*. 2007, p. 12. Available at: www.who.int/whosis/whostat2007_10highlights.pdf.

- State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308);
- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952);
- State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962);
- State law prohibits the sale of “bidis” (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1); and
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the [City / County] to regulate business activity in order to discourage violations of law; and

[WHEREAS, [note any local ordinances regulating the sale of tobacco products, such as a complete ban on self-service tobacco displays, or a conditional use permit or other land use restriction on tobacco sales] [; and]

WHEREAS, despite the state’s efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- Each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily;⁵

⁵ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *Results from the 2004 National Survey on Drug Use and Health: National Findings*. 2005. Available at: <http://oas.samhsa.gov/NSDUH/2k4nsduh/2k4Results/2k4Results.pdf>.

- More than 75% of all current smokers in 2001 began smoking before the age of 18;⁶
- Among middle school students who were current cigarette users in 2004, 70.6% were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4% were not refused purchase because of their age;⁷
- In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue⁸; and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:

- A review of thirteen California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of 68% in the youth sales rate;⁹
- A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998;¹⁰
- A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youth able to purchase tobacco;¹¹ and

WHEREAS, the implementation of tobacco retailer licensing requirements is supported by most Californians, as evidenced by the following:

- Statewide, over 80% of California adults think tobacco retailers should be licensed;¹²
- Similarly, in rural areas in California, 78% of adults think tobacco retailers should be licensed, and 91% agree that a store owner who repeatedly sells cigarettes to minors should no longer have the right to sell cigarettes;¹³

⁶ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *2003 National Survey on Drug Use and Health: Results*. 2003. Available at: www.oas.samhsa.gov/nhsda/2k3nsduh/2k3Results.htm#ch5.

⁷ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Morbidity and Mortality Weekly Report: Tobacco Use, Access & Exposure to Tobacco Among Middle & High School Students, U.S., 2004*. 2005, 54: p. 297-301. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5412a1.htm.

⁸ Heaton C, Farrelly MC, Weitzkamp D, et al. "Youth Smoking Prevention and Tobacco Industry Revenue." *Tobacco Control*, 15: 103-106, 2006. Available at: <http://tobaccocontrol.bmj.com/cgi/content/full/15/2/103>.

⁹ American Lung Association of California, Center for Tobacco Policy and Organizing. *Tobacco Retail Licensing is Effective*. 2007. Available at: www.center4tobaccopolicy.org/_files/_files/5377_Tobacco%20Retailer%20Licensing%20is%20Effective%20October%202007.pdf.

¹⁰ Ma GX, Shive S and Tracy M. "The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998." *Addictive Behaviors*, 26(5): 677-87, 2001. Abstract available at: www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11676378&dopt=Abstract.

¹¹ Forster JL et al. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health*, 88(8): 1193-1197, 1998. Available at: www.ajph.org/cgi/reprint/88/8/1193.

¹² California Department of Health Services, Tobacco Control Section. *California Tobacco Control Update*. 2004. Available at: <http://dhs.ca.gov/tobacco/documents/pubs/2004TCSupdate.pdf>.

¹³ American Lung Association of California, Center for Tobacco Policy and Organizing. *Survey of California Rural and Small Town Voters About Local Tobacco Retail Licensing Ordinances*. 2008. Available at: www.center4tobaccopolicy.org/_files/_files/Rural_Poll_Summary_of_Findings_Final_5-21-08.pdf.

- 65% of California's key opinion leaders surveyed support implementation of tobacco-licensing requirements;¹⁴
- Over 90% of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco;¹⁵ and

WHEREAS, seventy-eight cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from smoking;¹⁶ and

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- Nearly 11% of all tobacco retailers unlawfully sold to minors in 2007;¹⁷
- Non-traditional tobacco retailers such as deli, meat, and donut shops sold to minors in 2007 at a much higher rate than the statewide average, as high as 16%;¹⁸
- Teens surveyed in 2002 say they bought their cigarettes at: gas stations (58%), liquor stores (45%), and supermarkets and small grocery stores (29% combined);¹⁹
- [insert local sales rate to minors, if available] [: and]

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the [City / County] to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, [City / County] has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

NOW THEREFORE, it is the intent of the [City Council / Board of Supervisors], in enacting this ordinance, to ensure compliance with the business standards and practices of the [City / County] and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of

¹⁴ California Department of Health Services, Tobacco Control Section. *Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000)*. 2003. Available at: www.dhs.ca.gov/tobacco/documents/pubs/WavesComplete.pdf.

¹⁵ *Id.*

¹⁶ American Nonsmokers' Rights Foundation. *California Municipalities With Ordinances Restricting Youth Access To Tobacco*. 2008. Available at: http://talcc.phlaw.org/pdf_files/0021.pdf.

¹⁷ California Department of Health Services, Tobacco Control Section. *Youth Purchase Survey, 2007: Percent of Retailers Selling Tobacco to Youth by Store Type*. 2007 (graph on file with TALC).

¹⁸ *Id.*

¹⁹ California Department of Health Services, Tobacco Control Section. *Final Report, Tobacco Control Successes in California: A Focus on Young People, Results from the California Tobacco Surveys, 1990-2002*. 2003, p. 11-12. Available at: www.dhs.ca.gov/tobacco/documents/eval/2003CTSReport.pdf.

tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

COMMENT: These findings lay out the policy rationale for the ordinance and specifically demonstrate why local licensing laws are not preempted by California's youth access law, California Penal Code section 308(a) ("PC 308"). PC 308(e) preempts local laws that are "inconsistent" with the state law that prohibits tobacco sales to minors and provides civil and criminal penalties. However, by regulating businesses in order to discourage violations of federal or state law but not increasing the penalties established by such laws, the city or county is staying within the safe harbor created by the *Cohen* and *Bravo Vending* cases.

Cohen upheld San Francisco's regulation of escort services to discourage prostitution, while *Bravo Vending* upheld Rancho Mirage's ban on tobacco vending machines, which was intended to discourage tobacco sales to minors. In addition to the *Cohen* and *Bravo Vending* cases, helpful authorities are *EWAP, Inc. v. City of Los Angeles*, 97 Cal. App. 3d 179, 191 (1979) (regulation of adult arcade to discourage lewd conduct), and *Brix v. City of San Rafael*, 92 Cal. App. 3d 47, 53 (1979) (regulation of massage parlors to discourage prostitution).

It is not necessary to include all of these findings in your final ordinance. These findings should be tailored to the needs of your community.

SECTION II. [Article / Section] of the [____] Municipal Code is hereby amended to read as follows:

Sec. [____ (*1)]. DEFINITIONS. The following words and phrases, whenever used in this [article / chapter], shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) "Arm's Length Transaction" means 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 of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this [article / chapter] is not an Arm's Length Transaction.

(b) "Department" means [____], and any agency or Person designated by the Department to enforce or administer the provisions of this [article / chapter].

COMMENT: This term is used in the ordinance to refer to the city or county agency charged with issuing licenses and enforcing the ordinance. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the ordinance.

(c) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

COMMENT: The Municipal Code likely contains a definition of "person" and, if so, the definition provided here can be omitted.

(d) "Proprietor" means 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 share ultimate control over the day-to-day operations of a business.

COMMENT: This term is defined to help prevent sham ownership changes made to evade the license penalty provisions.

(e) "Self-Service Display" means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

(f) "Smoking" means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind) and means the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

(g) "Tobacco Paraphernalia" means 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.

COMMENT: This definition draws on the language of Penal Code section 308(a). It is up to your community to decide whether to regulate sales of Tobacco Paraphernalia in addition to sales of Tobacco Products. Tobacco paraphernalia is included in this Model Ordinance because regulation of Tobacco Paraphernalia furthers the goal of preventing youth access and use of Tobacco Products. If only tobacco sales are to be regulated, this definition and the words "Tobacco Paraphernalia" used throughout this model should be omitted.

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

COMMENT: This definition is written broadly to include nontraditional tobacco and nicotine products such as nicotine gel and nicotine lollipops, but without interfering with the FDA's mission of approving products intended to benefit public health, such as nicotine patches and other nicotine cessation products.

(i) "Tobacco Retailer" means 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 doing 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.

Sec. [____ (*2)]. REQUIREMENTS AND PROHIBITIONS

(a) TOBACCO RETAILER LICENSE REQUIRED. It shall be unlawful for any Person to act as a Tobacco Retailer in the [City / County] without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this [article / chapter] for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

COMMENT: This is the primary operative section of the ordinance. It requires a license for each retail location. So, for example, a supermarket chain would need a tobacco retailer license for each store.

Note that because this ordinance will most often be adopted as an amendment to an existing business license ordinance, it uses the term "license." A city or county could, of course, choose to label the requirement a "permit," as the two terms are generally interchangeable. The term used should be consistent with other provisions of the city or county code to which this ordinance is added.

(b) LAWFUL BUSINESS OPERATION. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article / chapter] for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

COMMENT: This provision makes licensing an effective tool for comprehensively enforcing tobacco control laws. A city or county can use the license revocation provisions to encourage compliance with all tobacco-related laws. This provision also gives a city or county additional enforcement options: either enforcing the underlying tobacco law—such as the prohibition on selling tobacco to minors (Penal Code section 308 or the STAKE Act)—and/or discouraging illegal behavior by revoking a license. Losing the right to sell tobacco will likely be a bigger financial deterrent than an occasional fine imposed under other laws.

(c) **DISPLAY OF LICENSE.** Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(d) **POSITIVE IDENTIFICATION REQUIRED.** No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of [twenty-seven (27)] years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

COMMENT: This provision eliminates the excuse that a purchaser arguably looked to be 18 years old. Perhaps more importantly, it allows compliance checks to be conducted with persons who are 18 or 19 years old, which eliminates the need to seek immunity from the district attorney for youth who act as decoys in operations testing a retailer's compliance with youth access laws and eliminates the issue of potentially putting minors in harm's way.

(e) **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

COMMENT: This provision deliberately omits stating a specific age such as "18" so that the law will not need to be amended if state law changes the legal age for using tobacco.

(f) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.

COMMENT: This provision goes beyond state law because the definition of Tobacco Product in this ordinance is broader than state law.

(g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license, including, for example, a person whose license has been revoked:

(1) Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a license under Section [____(*12)]; and

COMMENT: This provision vastly simplifies enforcement as it makes the mere display of Tobacco Products or Tobacco Paraphernalia evidence of sales and does not require enforcement officials to witness an actual sale.

(2) 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 could lead a reasonable consumer to believe that such products

can be obtained at that location.

COMMENT: This subsection provides that a retailer who can not legally sell tobacco products or paraphernalia may not display or advertise such products. To do so would be misleading to consumers (see Business & Professions Code section 17500) and could invite illegal sales. False commercial speech is not protected by the First Amendment.

[(h) [____] (The City or County may wish to add other desired requirements that, if violated, will constitute a violation of the license.)]

COMMENT: This is a convenient method of enacting additional tobacco control measures without having to pass separate ordinances. Please see the optional "Plug-in" provisions available from TALC for additional requirements and prohibitions to consider for this section. Note, however, that most measures added to this section can only be enforced as a license violation. In many cases, there will not be separate penalty provisions for violating the underlying measure unless this section or another section of the Code expressly so provides.

Sec. [____ (*3)]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

[(a)] No license may issue to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.

[(b) [____] (The City or County may wish to add other desired limits.)]

COMMENT: Please see the optional "Plug-in" provisions available from TALC at www.talc.phil.org for further limits on eligibility for a Tobacco Retailer License, such as prohibiting Tobacco Retailing in a residential zone or in a bar or restaurant.

Sec. [____ (*4)]. APPLICATION PROCEDURE.

(a) Application for a Tobacco Retailer's license 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 regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the [City / County] that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this [article / chapter], contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section [____(*11)(d)] of this [article / chapter]. Nothing in this [article / chapter] shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

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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 of the business seeking a license.

(2) The business name, address, and telephone number of the single fixed location for which a license is sought.

(3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this [article / chapter]. 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 license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.

(5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this [article / chapter] and, if so, the dates and locations of all such violations within the previous five years.

COMMENT: This is an important provision because it requires a tobacco retailer to disclose past violations which will make it easier for staff to determine if the application requires closer scrutiny. If the retailer does not disclose past violations and a license is issued, the license can be revoked as soon as the past violations are discovered pursuant to Section [____(*11)(d)] below.

(6) Such other information as the Department deems necessary for the administration or enforcement of this [article / chapter] as specified on the application form required by this section.

COMMENT: This requirement authorizes administrative and enforcement staff to establish application forms that require various types of information to aid effective operation and enforcement of the ordinance. For example, it may be useful to include in the application a statement, perhaps made under penalty of perjury, that the applicant has familiarized himself or herself with the legal requirements applicable to tobacco retailing. It would, of course, be helpful to provide written information about those requirements to those who apply for a license.

(b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within [ten (10)] business days of a change.

(c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to the laws' exemptions.

Sec. [____ (*5)]. ISSUANCE OF LICENSE. Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this [article / chapter], the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article / chapter].

(b) The application seeks authorization for Tobacco Retailing at a location for which this [article / chapter] prohibits issuance of Tobacco Retailer licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the [City / 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.

(c) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this [article / chapter] prohibits a license to be issued.

(d) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this [article / chapter] (e.g., mobile vending), that is unlawful pursuant to this Code [including without limitation the [e.g., zoning ordinance, building code, and business license tax ordinance]], or that is unlawful pursuant to any other law.

COMMENT: This section makes issuance of licenses a mandatory, ministerial duty of staff unless substantial evidence can be shown supporting one of the four justifications for denial of the license. "Substantial evidence" referred to in section *5 is oral or written evidence within the City's or County's records that is sufficiently reliable and persuasive that a court will accept it. The usual test is that it must be the kind of evidence upon which responsible people rely in making important business, personal, and other decisions. The technical rules of evidence used for court proceedings do not apply.

Providing evidence of the bases for denial under *5(b) and (c) should be simple and can take the form of a memo from Department staff or from staff members who maintain the records of revocations. Proving that an application contains false information will be more difficult and require greater attention to the quality of evidence (i.e., its persuasiveness and reliability.) If oral evidence is to be relied upon, such as citizen complaints, it should be reduced to writing, as by a staff memo to the file.

Although a license technically should not be issued if prohibited elsewhere in the city or county code, it is valuable to make note of what other tobacco ordinances staff should take into consideration under section *5(d). For example, if the code contains a zoning or

conditional use permit ordinance affecting tobacco retailers, the licensing ordinance should refer to it directly to assist staff in implementing the ordinance. It is also helpful to cite building codes (to ensure the structure has been permitted) and any business license tax (to ensure that these taxes are also paid).

Sec. [____ (*6)]. LICENSE RENEWAL AND EXPIRATION.

(a) **RENEWAL OF LICENSE.** A Tobacco Retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is [one year]. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than [thirty (30)] days prior to expiration of the term.

COMMENT: The payment term of licenses is a matter for local policy. If this ordinance is adopted as an amendment to a local business license ordinance, many administrative details, such as the term of licenses, may be covered by the existing license ordinance.

(b) **EXPIRATION OF LICENSE.** A Tobacco Retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

- (1) Submit the license fee and application renewal form; and
- (2) Submit a signed affidavit affirming that the Proprietor:
 - (i) has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or
 - (ii) has waited the appropriate ineligibility period established for Tobacco Retailing without a license, as set forth in Section [____ (*12)(a)] of this [article / chapter], before seeking renewal of the license.

Sec. [____ (*7)]. LICENSES NONTRANSFERABLE.

(a) A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

COMMENT: This provision requires a new license for any change in ownership. For example, if a Proprietor to whom a license has been issued changes business location, that Proprietor must apply for a new license prior to acting as a Tobacco Retailer at the new location. Or, if the business is sold or otherwise transferred to a new owner, the new owner must apply for a license for that location before acting as a Tobacco Retailer.

(b) Notwithstanding any other provision of this [article / chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

(1) the location has been fully transferred to a new Proprietor or fully transferred to entirely new Proprietors; and

(2) the new Proprietor(s) provide the [City / County] with clear and convincing evidence that the new Proprietor(s) have acquired or is acquiring the location in an Arm's Length Transaction.

COMMENT: This provision prevents sham transfers of ownership from defeating the effect of past violations. For example, if a retailer who is found in violation of the licensing law subsequently transfers ownership to his brother, and if the brother also then violates the ordinance, it would be counted as the second violation, not the first.

Sec. [____ (*8)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article / chapter] shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the [City / County] identified on the face of the permit. For example, nothing in this [article / chapter] shall be construed to render inapplicable, supercede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code [including without limitation the [e.g., zoning ordinance, building codes, and business license tax ordinance]], or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

COMMENT: This section makes explicit the fact that granting a Tobacco Retailer license does not affect a Tobacco Retailer's status under other local, state, or federal law. For example, obtaining a local license does not transform a business into a "retail or wholesale tobacco shop" in which smoking is allowed pursuant to California Labor Code 6404.5(d)(4). The reference to zoning, building, and business tax licensing ordinances is intended to allow each community to enforce all of its local regulations and to not allow a Tobacco Retailer to claim that he or she reasonably believed that a Tobacco Retailer license was all that was needed to do business in a given location. Tailor the list as appropriate.

Sec. [____ (*9)]. FEE FOR LICENSE. The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the [City Council / Board of Supervisors]. The fee shall be calculated so as to recover the cost of administration and enforcement of this [article / chapter], including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [article / chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

COMMENT: It is lawful to impose a fee on applicants in an amount sufficient to offset the cost of the entire tobacco retailer

be deposited. If criminal remedies are pursued, constitutional rights of criminal defendants to confront witnesses against them may require a youth decoy to testify.

(c) Violations of this [article / chapter] are subject to a civil action brought by the [City Prosecutor / District Attorney] or the [City Attorney / County Counsel], punishable by a civil fine not less than [two hundred fifty dollars (\$250)] and not exceeding [one thousand dollars (\$1,000)] per violation.

COMMENT: This provision provides civil fines for violating the licensing ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. Government Code section 36901.

(d) Violations of this [article / chapter] may, in the discretion of the [City Prosecutor / District Attorney], be prosecuted as infractions or misdemeanors when the interests of justice so require.

COMMENT: Sometimes called a “wobbler,” this provision affords the prosecuting attorney discretion whether to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a \$1,000 fine and/or six months in County Jail). Alternatively, violations can be set as *either* an infraction or a misdemeanor in all circumstances. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this [article / chapter] shall also constitute a violation of this [article / chapter].

COMMENT: This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions.

(f) Violations of this [article / chapter] are hereby declared to be public nuisances.

COMMENT: By expressly stating that violations are public nuisances, this provision allows enforcement of the ordinance via the administrative nuisance abatement procedures commonly found in municipal codes. Such a declaration also facilitates injunctive relief (where a court orders that a defendant do certain things or refrain from doing certain things, such as selling tobacco to minors).

(g) In addition to other remedies provided by this [article / chapter] or by other law, any violation of this [article / chapter] may be remedied by a civil action brought by the [City Attorney / County Counsel], including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

COMMENT: It is common to provide that the local government’s lawyers may go to court to seek injunctions and other penalties in

addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal. 3d 63 (1983).

Think carefully about the nuisance abatement procedure you choose. A local government may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period, as long as the ordinance is enacted pursuant to Government Code section 38773.5. Treble damages are not available, however, under the alternative nuisance abatement procedures in Government Code section 38773.1 and Health & Safety Code section 17980. Government Code section 38773.7 (authorizing treble damages) establishes a procedure for nuisance abatement where the cost of the abatement can be collected via the property tax roll as a special assessment against the property on which the violation occurs.

SECTION III. 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 [City Council / Board of Supervisors] of the [City / County] of [] 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.

COMMENT: This is standard language. Often this “boilerplate” is found at the end of an ordinance but its location is irrelevant.

enforcement program of the locality under such cases as *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997).

The license fee can incorporate the cost of enforcing *all* tobacco laws related to Tobacco Retailing because a violation of any tobacco-related law is a basis for revocation of a license. For example, if the enforcing agency is the police department, a new police officer could be hired for tobacco retailer enforcement activities and a percentage of the cost of the hire could be included in the fee so long as the same percentage of the officer's efforts are used to monitor and enforce license-related tobacco laws.

One approach to setting the fee is to estimate the cost of administration and enforcement of the licensing program. For example, estimate the number of stores in the city or county and how much time it will take a government employee to review applications and issue licenses. The fraction of that employee's time can then be used to calculate the annual cost of license administration, based on the cost of that employee's salary, benefits, and his or her share of administrative overhead such as rent, insurance, legal advice, etc. As for enforcement costs, calculate, for example, how many yearly inspections are necessary (ideally one to four per retailer) and how much staff time each inspection demands. It is important to document these calculations for two reasons: to provide support for the fee amount; and, to refute a potential legal challenge claiming the fee exceeds the cost of administration and enforcement. A spreadsheet developed to help calculate the actual costs for a particular community is available from TALC's website: www.talc.phil.org.

Note that the city or county can avoid having to calculate staff time by mandating that a set amount of time, e.g., 15 hours a week, shall be spent on license enforcement activity (including enforcing the tobacco laws that give rise to a license violation). New staff could be hired to meet this mandate and the cost can be incorporated into the license fee.

Government Code section 66018 governs the establishment of regulatory fees. Other Government Code notice and hearing requirements will apply if the ordinance is included in a zoning ordinance. Other local requirements established by charter or ordinance may apply as well. Government Code section 66018 requires a noticed public hearing. This ordinance provides that fees are established by resolution both because the Government Code permits the use of a resolution rather than an ordinance and because many cities and counties adopt an annual master fee-setting resolution that can be amended to include this fee.

Sec. [____ (*10)]. COMPLIANCE MONITORING.

(a) Compliance with this [article / chapter] shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this [article / chapter]. The [City / County] may designate any number of additional Persons to monitor compliance with this [article / chapter].

COMMENT: It is important to designate who will monitor license compliance or, in other words, who will enforce the license. Unless an enforcing authority is explicitly named, the license may not be enforced at all. Multiple agencies should be given authority to enforce the license, but it is probably a good idea to provide a primary enforcement agency to discourage conflicts and situations in which each agency defers to the other and neither enforces the ordinance.

(b) The Department or other Person designated to enforce the provisions of this [article / chapter] shall [(*see note on counties below)] check the compliance of each Tobacco Retailer at least [three (3)] times per twelve (12) month period. 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 new licensees and Tobacco Retailers previously found in violation of the licensing law more frequently. Nothing in this paragraph shall create a right of action in any licensee or other Person against the [City / County] or its agents.

COMMENT: It is a good idea to provide a minimum number of compliance checks to ensure that at least some level of enforcement will take place. One to four checks per year may be appropriate depending on the number of Tobacco Retailers in a community and the level of funding established through the license fee. Communities with a large number of retailers may wish to check compliance of a subset of retailers that are selected either randomly or based on past violations and complaints.

*Note that counties cannot directly mandate that the county sheriff conduct compliance checks. However, a county can provide dedicated funding to the sheriff that can be used only to conduct compliance checks. If this is desired, replace the first sentence in subsection (b) with:

The Department shall be funded to check the compliance of each Tobacco Retailer at least [three (3)] times per twelve (12) month period.

Alternatively, the county could contract for enforcement and compliance checks. Cities, on the other hand, can directly mandate that a certain city law enforcement agency conduct compliance checks.

The last sentence of this provision protects a city or county from a lawsuit claiming that the city or county is violating the licensing ordinance if the number of compliance checks conducted falls below the number mandated.

It is important to have an even-handed policy for compliance checks to avoid claims, both legal and political, of selective enforcement.

(c) Compliance checks shall be conducted so as to allow the Department to determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco. When the Department deems appropriate, the

compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.

COMMENT: Reducing the sale of Tobacco Products to minors is the primary reason to license tobacco retailers, so it makes sense to focus on youth access laws first (e.g., Penal Code section 308(a), self-service display bans, sale of bidis). Other laws, such as signage requirements, may be checked when time and resources permit.

(d) The [City / County] shall not enforce any law establishing a minimum age for Tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

(1) the Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the [City / County];

(2) the Youth Decoy is acting as an agent of a Person designated by the [City / County] to monitor compliance with this [article / chapter]; or

(3) the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the [name of city health department / name of county health department] or the California Department of Health Services.

COMMENT: This provision is intended to permit youth to participate in compliance checks without first obtaining a letter of immunity from the city or county. However, this provision does not provide protection from prosecution by agencies other than the city or county adopting this ordinance. A letter of immunity from the local district attorney is still recommended.

Sec. [____ (*11)]. REVOCATION OF LICENSE.

(a) REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this [article / chapter] or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section [____ (*2)] above.

COMMENT: The exact procedure for revocation of a license is not set forth in this Model Ordinance. The administrative procedure, civil proceeding, or combination of both, should be tailored to the needs of your community and must comply with the basic requirements of due process (notice to retailer and an opportunity to be heard.) TALC can assist in creating a procedure for revocation of licenses that is appropriate for your community.

Many local license laws "suspend" a license for a certain period of time, such as 30 days, for a violation and only revoke a license after repeated violations. This model ordinance instead uses revocation exclusively but permits a retailer to acquire a new license after a set period of time depending upon the number of past violations. Used in this way, revocation accomplishes the same goal as suspension but adds these benefits:

1. The burden is put on the retailer to seek to sell tobacco again. Retailers who have little interest in selling may simply choose to stop and not reapply. With suspension, a retailer "automatically" re-acquires the privilege of selling tobacco.
2. Because the retailer must reapply for a license, a new licensing fee must be paid and the retailer is re-educated regarding the requirements of the license by reading and completing the application.
3. Technical, but legally significant, difficulties arise if a license is allowed to "expire" before a final administrative decision regarding a suspension is made (e.g., a court may question how a license can be suspended if that license no longer exists).
4. Enforcement is more clear-cut: a retailer either has a license or the retailer does not. With suspension, a retailer could also have a suspended license which raises the question of how to treat additional violations during a suspension period.

A plea of "no contest" or "nolo contendere" is usually used by a defendant to prevent having a "guilty" plea used against him in a subsequent civil suit. This provision puts a Tobacco Retailer on notice that even a "no contest" plea can still be used to establish a licensing violation and will result in the revocation of the retailer's tobacco retailer license. Precedent exists in California state law for considering a "no contest" plea in relation to a license. See, e.g., Business and Professions Code section 5063 regarding CPA licenses. Note that a "no contest" plea can only be used to revoke a license, but not to impose any other enforcement provisions provided in the ordinance. If imposing additional enforcement provisions is desired (e.g., imposing a civil fine), the City or County will need to prove that the underlying violation occurred and not rely on the "no contest" plea as conclusive evidence of a violation.

(b) NEW LICENSE AFTER REVOCATION.

(1) After revocation for a first violation of this [article / chapter] 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 revocation.

(2) After revocation for a second violation of this [article / chapter] 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 revocation.

(3) After revocation for a third violation of this [article / chapter] 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 revocation.

(4) After revocation for four or more violations of this [article / chapter] 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 revocation.

COMMENT: This is the primary provision designating the length of time a Tobacco Retailer is ineligible to sell tobacco products once the retailer's license is revoked pursuant to subsection (a). Stronger or more lenient penalties may be provided as a matter of local policy. For example, some local ordinances permit first-time offenders to "settle" their way out of a first revocation by instead paying a fine (\$1,000, for example). TALC has prepared an optional "Plug-in" provision which, if incorporated into the Model Ordinance, would establish guidelines for this policy alternative.

By providing mandatory penalties, this model does not provide any discretion to enforcement staff. This lack of discretion makes for a simple ordinance and standardized, even-handed enforcement. If discretion with respect to penalties is desired, the ordinance must state the standard by which that discretion is to be exercised (e.g., financial hardship, history of compliance, etc.). Note, too, that these penalty provisions do not prevent the use of other legal tools, such as criminal prosecution under Penal Code section 308, enforcement of the Stop Tobacco Access to Kids Enforcement Act ("STAKE Act," Business and Professions Code sections 22950-22962), or the several judicial remedies discussed below.

Note that if a Tobacco Retail outlet is sold in an Arm's Length Transaction, then the violations no longer count against the location under the new owner's license pursuant to Section *7(b).

(c) **APPEAL OF REVOCATION.** A decision of the Department to revoke a license is appealable to [the name of appellate agency, panel, or person (e.g., police permit board, Board of Supervisors, city manager, or director of the health department)] and must be filed with [the name of the agency, panel, or person to receive the notice (e.g., City Clerk or Clerk of the Board of Supervisors)] within ten days of mailing of the Department's decision. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (d) below.

COMMENT: Some appeal right should be provided to ensure due process and to permit the city or county to correct any errors that may occur in the administrative process. How many levels of appeal to permit, which officer or body should hear the appeal, what officer should receive the notice of appeal, the time limits to set, etc. are local policy questions. Local governments would do well to trigger the 90-day statute of limitations for legal challenges by complying with the notice requirements of Code of Civil Procedure 1094.6(f) in making and giving notice of determinations under this ordinance.

(d) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section

[____(*5)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [City / County]. Such a revocation shall be without prejudice to the filing of a new license application.

Sec. [____ (*12)]. TOBACCO RETAILING WITHOUT A LICENSE.

(a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailing license as follows:

(1) After a first violation of this section at a location within any [sixty-month (60)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [thirty (30)] days have passed from the date of the violation.

(2) After a second violation of this section at a location within any [sixty-month (60)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [ninety (90)] days have passed from the date of the violation.

(3) After of a third or subsequent violation of this section at a location within any [sixty-month (60)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [five (5)] years have passed from the date of the violation.

COMMENT: This provision prohibits a Person who sells Tobacco or Tobacco Paraphernalia without a license from obtaining a license for a set amount of time or from transferring the business to another person to sell tobacco at the same location for that time. It does not apply to a wholly new business at the same site and cannot do so without violating the property rights of a landlord or of an innocent person who buys a site from which illegal tobacco sales previously occurred. The penalty period for selling without a license is greater than the penalty period for violating an existing license (see Section [____(*11)(b)]) because ignoring the law completely by selling without a license is deemed a greater offense. This ineligibility period is in addition to any other penalty the City or County might pursue, such as the fines set forth in Section *13.

Note that, if a Tobacco Retail outlet is sold in an Arm's Length Transaction, then the violations will not count against the location under the new owner's license pursuant to Section *7(b).

(b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the

Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this [article / chapter]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [____ (*11)(c)]. Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

COMMENT: Seizing and destroying illegally offered products requires additional procedures beyond the normal hearing for license revocation. In part, this is because of the possibility that the true owner of products seized is not the licensee. For example, cigarettes could be sold on a consignment basis. Such owners must be provided due process before their property is destroyed. An independent administrative hearing regarding the forfeiture of any seized products is recommended.

(c) For the purposes of the civil remedies provided in this [article / chapter]:

(1) each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this [article / chapter]; or

(2) each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this [article / chapter];

shall constitute a separate violation of this [article / chapter].

Sec. [____ (*13)]. ENFORCEMENT.

(a) The remedies provided by this [article / chapter] are cumulative and in addition to any other remedies available at law or in equity.

COMMENT: The following subsections are designed to offer a variety of options to the drafter and to the enforcing agency. Drafters may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

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

COMMENT: This provision is designed to eliminate any legal right a defendant might otherwise have to compel a youth decoy testify or

RESOLUTION NO. 2009-R _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA ESTABLISHING A TOBACCO RETAILER LICENSE FEE AND ESTABLISHING PENALTIES FOR VIOLATIONS OF TOBACCO RETAILER LICENSING REGULATIONS, PER CHAPTER 11.15 OF THE CULVER CITY MUNICIPAL CODE.

WHEREAS, pursuant to Culver City Municipal Code ("CCMC") Section 11.15.025, the City Council shall, by resolution, establish an annual fee for a Tobacco Retailer License ("Tobacco Retailer License Fee") and the procedures for the processing and collection of such fee; and

WHEREAS, the Tobacco Retailer License Fee established herein is based upon the reasonable cost of administration and enforcement of the Tobacco Retailer Licensing program;

WHEREAS, pursuant to CCMC Section 11.15.045.E, the City Council shall, by resolution, establish the penalties for a violation of Chapter 9.15, Tobacco Retailer Licensing, but in no event shall such penalties exceed the maximum penalties permitted under State law; and

WHEREAS, on June 22, 2009, at a duly noticed public meeting, the City Council considered establishment of the Tobacco Retailer License Fee and establishment of penalties for violations of Chapter 11.15, Tobacco Retailer Licensing; and

WHEREAS, after giving the public an opportunity to be heard and considering all information before it, the City Council approved the adoption of said fee and penalties as set forth herein below.

NOW, THEREFORE, the City Council of the City of Culver City, California,
DOES HEREBY RESOLVE as follows:



1. Tobacco Retailer License Fee.

A. The annual fee for a Tobacco Retailer License shall be \$235, which fee has been calculated so as to recover the cost of administration and enforcement of the Tobacco Retailer License program, including the cost of issuing the License, renewing the License, administering the Tobacco Retailer Licensing program, retailer inspection and compliance checks, documentation of violations, adjudications and prosecutions of violators.

B. The Tobacco Retailer License Fee is non-refundable and shall be paid at the time of the initial application for a Tobacco Retailer License and on or before the last day of February of each year thereafter.

2. Criminal Penalties.

The following penalties for violations of Chapter 11.15, Tobacco Retailer Licensing, are hereby established:

A. A violation charged as an infraction shall be punishable by:

- i. A fine not exceeding One Hundred Dollars (\$100.00) for a first violation;
- ii. A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation of the same provision of Chapter 9.11, Smoking Regulations, within one year;
- iii. A fine not exceeding Five Hundred Dollars (\$500.00) for each additional violation of the same provision of Chapter 9.11, Smoking Regulations, within one year.

B. A violation charged as a misdemeanor shall be punishable by:

- i. A fine not exceeding Two Hundred Fifty Dollars (\$250.00) for a first violation;

Tobacco Retailer Licensing Fees Survey

<u>Date</u>	<u>City</u>	<u>Annual Fee</u>
Oct-08	Santa Monica	\$ 145.35
Oct-07	Inglewood	\$ 350.00
Sep-07	Glendale	\$ 225.00
Aug-07	Davis	\$ 348.00
Feb-07	Burbank	\$ 235.00
Nov-06	Carson	\$ 500.00
Oct-06	Santa Ana	\$ 635.00
Sep-06	Concord	\$ 160.00
May-06	Riverside	\$ 350.00
Sep-05	Los Angeles	\$ 208.00
Mar-04	Sacramento	\$ 300.00
Feb-04	Pasadena	\$ 211.00