

ORDINANCE NO. 1246

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, AMENDING THE PERRIS MUNICIPAL CODE BY ADDING CHAPTER 5.51 REGARDING THE LICENSURE OF TOBACCO RETAILERS

WHEREAS, the City Council finds that the licensing of tobacco retailers is under-regulated in the City, and as a result, has led to the sale of tobacco and tobacco products to minors in violation of the laws of the State of California; and

WHEREAS, the City Council finds the need to establish stricter regulations and the regulations will serve a legitimate public purpose by reducing the sale of tobacco and tobacco products to minors within the City; and

WHEREAS, the City Council desires to regulate the licensing of tobacco retailers in the City for the public health, safety and welfare;

WHEREAS, the City Council conducted a duly noticed public hearing on July 8, 2008 and at the conclusion of the hearing, recommended adoption of a new Ordinance by the City Council; and

WHEREAS, the City Council conducted a duly noticed public hearing on August 26, 2008 and at the conclusion of the hearing, approved the adoption of Ordinance No. 1246; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred;

THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals Incorporated. The foregoing Recitals are incorporated herein as if set forth in full.

Section 2. Perris Municipal Code Chapter 5.51 entitled, "Tobacco Licensing" is hereby added as shown on "Exhibit A," attached hereto.

Section 3. Effective Date. This Ordinance shall take effect 30 days after its adoption.

Section 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or

portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

Section 5. Certification. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Perris.

ADOPTED, SIGNED and APPROVED this 26th day of August, 2008.

MAYOR, DARYL R. BUSCH

ATTEST:

City Clerk, Judy L. Haughney

EXHIBIT “A”

The following new Chapter 5.51 is hereby added to the Perris Municipal Code.

Chapter 5.51

TOBACCO LICENSING

| | |
|------------------|---|
| Section 5.51.010 | Purpose and Intent |
| Section 5.51.020 | Definitions |
| Section 5.51.030 | Tobacco License Prerequisite; Application Process |
| Section 5.51.040 | License Issuance; Standards |
| Section 5.51.050 | License Nontransferable |
| Section 5.51.060 | Fees for License |
| Section 5.51.070 | Other Requirements and Prohibitions |
| Section 5.51.080 | License Violation |
| Section 5.51.090 | Revocation of License |
| Section 5.51.100 | Enforcement |
| Section 5.51.110 | Severability |

5.51.010 Purpose and Intent.

It is the purpose and intent of this chapter to encourage responsible tobacco retailing, to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, and to protect children from being lured into illegal activity through the misconduct of adults. There is no intent 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.

5.51.020 Definitions.

For the purposes of this ordinance, the following words and terms shall have the following meanings:

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

B. “Department” shall mean: County Health Officer or his or her designee.

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

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

E. “Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories; and in which at least 80% of the square footage of the available retail floor and shelf space is devoted to the sale of tobacco-related products and accessories.

F. “Self-Service Display” shall mean: the open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A Vending Machine is a form of Self-Service Display.

G. “Smoking” shall mean: possessing a lighted Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a lighted pipe, lighted cigar, or lighted cigarette of any kind), the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, or cigarette of any kind).

H. “Tobacco Paraphernalia” shall mean: cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of Tobacco Products.

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

J. “Tobacco Retailer” shall mean: any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia; “Tobacco Retailing” shall mean the 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.

5.51.03 Tobacco License Prerequisite; Application Process.

A. It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this Ordinance for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer’s license shall constitute a public nuisance.

B. A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license, including, for example, a revoked license:

1. Shall keep all Tobacco Products and Tobacco Paraphernalia from public view.

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 would lead a reasonable consumer to believe that such products can be obtained at the Tobacco Retailer's location.

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

D. 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 of the laws affecting the issuance of a Tobacco Retailer's license. A license that is issued in error or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 5.51.090(D) of this ordinance.

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

1. After a first violation for a Person within any sixty-month (60) period, no new license may issue for the Person as a Proprietor until thirty (30) days have passed from the date of last violation.

2. After a second violation for a Person within any sixty-month (60) period, no new license may issue for the Person as a Proprietor until ninety (90) days have passed from the date of last violation.

3. After three or more violations for a Person within any sixty-month (60) period, no new license may issue for the Person as a Proprietor until five (5) years have passed from the date of last violation.

4. Each day that a Person engages in Tobacco Retailing without a valid Tobacco Retailers license shall constitute a separate violation.

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

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

1. The name, address, and telephone number of each Proprietor.
2. The business name, address, and telephone number of the single fixed location for which a Tobacco Retailer's license is sought.
3. The name and mailing address authorized by each Proprietor to receive all license-related communications and notices (the "Authorized Address"). If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph 2 above.
4. Proof that the location for which a Tobacco Retailer's 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 is a Person who has been determined to have violated this ordinance or has been a Proprietor at a location that has been determined to have violated this ordinance and, if so, the dates and locations of all such violations.

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

7. All information required to be submitted to apply for a tobacco retailer's license shall be updated with the department whenever the information changes within ten (10) business days of the change.

5.51.040 License Issuance; Standards.

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

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

1. The application is incomplete or inaccurate.
2. The application seeks authorization for Tobacco Retailing at a location for which a prohibition on issuing licenses is in effect pursuant to Section 5.51.090(B). of this ordinance. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the County with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an Arm's Length Transaction. Clear and convincing evidence can be oral or written and must be the type of evidence upon which a responsible person would rely.
3. The application seeks authorization for Tobacco Retailing for a Proprietor for which a prohibition on issuing licenses is in effect pursuant to Section 5.51.090(B) of this ordinance.
4. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to Section 5.51.040(A) of this ordinance, that is unlawful pursuant to any other County ordinance, or that is unlawful pursuant to any other local, state, or federal law.

5.51.050 Licenses Nontransferable.

A. A tobacco retailer's license is nontransferable. A tobacco retailer's license may not be transferred from one person to another or from one location to another. Whenever a tobacco retailing location has a change in proprietors, a new tobacco retailer's license is required.

B. Notwithstanding any other provision of this ordinance violations accumulated against a location or business shall continue to be counted against the location or business unless the location or business has been transferred to a new Proprietor and the new Proprietor provides the County with documentation demonstrating by clear and convincing evidence that the new Proprietor has acquired or is acquiring the location or business in an Arm's Length Transaction.

5.51.060 Fees For License.

A. A Tobacco Retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a Tobacco Retailer license is one (1) year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license no later than thirty (30) days prior to expiration of the term. The amount of the fee shall be set by resolution of the city council.

5.51.070 Other Requirements and Prohibitions.

A. Display of License. Each license shall be prominently displayed in a publicly and readily visible location at the licensed location.

B. Positive Identification Required. No Person shall engage in Tobacco Retailing without first examining the identification of the purchaser, if the purchaser reasonably appears under the age of twenty-seven (27) years old, and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the Tobacco Product or Tobacco Paraphernalia.

C. 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 any tobacco product shall engage in tobacco retailing.

D. Self-Service Displays Prohibited. No Person shall display Tobacco Products or Tobacco Paraphernalia by means of a Self-Service Display or to engage in Tobacco Retailing by means of a Self-Service Display. A Tobacco Retailer who chooses to display Tobacco Products or Tobacco Paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.

5.51.080 License Violation.

A. Violation of Tobacco-Related Laws. It shall be a violation of a Tobacco Retailer's license for a licensee, including his or her agent or employee, to violate any of the following laws:

1. Any local, state, or federal tobacco-related law.
2. Local, state, or federal sign laws.
3. Local, state, or federal laws restricting the age of purchase for any

product.

B. License Compliance Monitoring.

1. Compliance with this ordinance shall be monitored by the Department.

Any peace officer may enforce the penal provisions of this ordinance.

2. The Department shall check the compliance of each Tobacco Retailer at least three (3) times per twelve (12) month period. Nothing in this paragraph or chapter shall create a right of action in any licensee or other person against the city, its agent(s) or its designee.

3. Compliance checks shall determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with tobacco laws regulating youth access to

tobacco. When appropriate, the compliance checks shall determine compliance with other tobacco-related laws.

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

- i. the Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official; or
- ii. the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through sub-contracting, by the county Department of Health and Human Services or funded in part, either directly or indirectly through sub-contracting, by the California Department of Health Services.

C. No Contest Plea. A plea of "no contest" or its equivalent by a Tobacco Retailer for a violation of any law designated in subsection (a) above shall operate as an admission that this ordinance has been violated for the purposes of license revocation.

5.51.090 Revocation of License.

A. Revocation of License for Violation.

1. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be revoked if the County Hearing Officer finds, after notice to the licensee and opportunity to be heard, that the licensee, including his or her agents or employees, has violated any of the requirements, conditions, or prohibitions of this ordinance (hereinafter "License Violation").

2. For a first or second alleged License Violation within any sixty-month (60) period, the County Counsel may engage in settlement negotiations and may enter into a settlement agreement with a Tobacco Retailer alleged to have violated this ordinance without

approval from the Board of Supervisors. Settlements shall not be confidential and shall contain the following minimum terms:

- i. After an alleged first License Violation at a location within any sixty-month (60) period:
 - a. An agreement to stop acting as a Tobacco Retailer for at least one (1) day;
 - b. A settlement payment to the County of at least one thousand dollars (\$1000); and
 - c. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.
- ii. After an alleged second License Violation at a location within any sixty-month (60) period:
 - a. an agreement to stop acting as a Tobacco Retailer for at least ten (10) days;
 - b. a settlement payment to the County of at least five thousand dollars (\$5000); and
 - c. an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

B. New License after Revocation for Violation.

1. After a first License Violation at a location within any sixty-month (60) period, no new license may issue for the location until ten (10) days have passed from the date of the last revocation or violation, whichever is later.

2. After a second License Violation at a location within any sixty-month (60) period, no new license may issue for the location until thirty (30) days have passed from the date of the last revocation or violation, whichever is later.

3. After of a third License Violation at a location within any sixty-month (60) period, no new license may issue for the location until ninety (90) days have passed from the date of the last revocation or violation, whichever is later.

4. After four or more License Violations at a location within any sixty-month (60) period, no new license may issue for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.

C. Expiration of License. A Tobacco Retailer's license that is not timely renewed pursuant to Section 5.51.070(A). shall expire at the end of its term. To reinstate a license that has expired due to the failure to timely pay the renewal fee, the proprietor must:

1. Submit the renewal fee plus a reinstatement fee of ten percent (10%) of the renewal fee.

2. Submit a signed affidavit affirming that the Proprietor has not sold any Tobacco Product or Tobacco Paraphernalia during any period that the license was expired.

D. Revocation of License Issued In Error. A Tobacco Retailer's license shall be revoked if the Department finds, after notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 5.51.040(B). existed at the time application was made or at anytime before the license issued. The revocation shall be without prejudice to the filing of a new application for a license.

5.51.100 Enforcement.

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

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

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

1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1000) for a first violation in any sixty-month (60) period; or

2. A fine not less than one thousand five hundred dollars (\$1500) and not exceeding two thousand five hundred dollars (\$2,500) for a second violation in any sixty-month (60) period; or

3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten thousand dollars (\$10,000) for a third or subsequent violation in any sixty-month (60) period.

C. Violations of this ordinance may, in the discretion of the District Attorney or County Counsel, be prosecuted as infractions or misdemeanors.

D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation.

E. Violations of this ordinance are hereby declared to be public nuisances.

F. In addition to other remedies provided by this ordinance or by other law, any violation of this ordinance may be remedied by a civil action brought by the City Attorney, or in the discretion of the city attorney, the county counsel, or the district attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

5.51.110 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 of Perris 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.

ADOPTED, SIGNED and ***APPROVED*** this 26th day of August, 2008.

MAYOR, DARYL R. BUSCH

ATTEST:

City Clerk, Judy L. Haughney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF PERRIS)

I, Judy L. Haughney, CITY CLERK OF THE CITY OF PERRIS, DO HEREBY CERTIFY that the foregoing Ordinance Number 1246 was duly adopted by the City Council of the City of Perris at a regular meeting of said Council on the 26th day of August, 2008, and that it was so adopted by the following vote:

AYES: Rogers, Yarbrough, Landers, Busch

NOES:

ABSENT: Motte

City Clerk, Judy L. Haughney