

1 **ORDINANCE NO. 838**

2 **(AS AMENDED THROUGH 838.2)**

3 **AN ORDINANCE OF THE COUNTY OF RIVERSIDE**

4 **REGARDING THE PERMITTING OF TOBACCO RETAILERS**

5  
6 The Board of Supervisors of the County of Riverside ordains as follows:

7 **Section 1.** **PURPOSE AND INTENT.** Riverside County has a substantial interest in  
8 promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in  
9 discouraging the illegal purchase of tobacco products by a person under 21 years of age; in promoting  
10 compliance with laws prohibiting sales of cigarettes and tobacco products to a person under 21 years of  
11 age; in protecting youth from being lured into illegal activity through the misconduct of adults; and in  
12 reducing the incidence of tobacco related disease. It is the intent of this Ordinance to encourage  
13 responsible tobacco retailing and to discourage violations of tobacco related laws, especially those that  
14 prohibit or discourage the sale or distribution of tobacco products to a person under 21 years of age, but  
15 not to expand or reduce the degree to which the acts regulated by federal or state law are criminally  
16 proscribed or to alter the penalty provided therefore.

17 **Section 2.** **DEFINITIONS.** For the purposes of this Ordinance, the following words and  
18 terms shall have the following meanings:

- 19 a. “Arm’s Length Transaction” shall mean: a sale in good faith and for valuable  
20 consideration that reflects the fair market value in the open market between two  
21 informed and willing parties, neither under any compulsion to participate in the  
22 transaction. A sale between relatives, related companies or partners, or a sale for  
23 the primary purpose of avoiding the effect of the violations of this Ordinance is  
24 presumed not to be an arm’s length transaction.
- 25 b. “Department” shall mean: the County of Riverside Department of Environmental  
26 Health, including the Director of the Department of Environmental Health or his or  
27 her designee.
- 28 c. “Enforcement officer” shall mean: the Director of Environmental Health or his or

1 her designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 a. Upon the receipt of an application for a tobacco retailer's permit and the permit  
6 fee, the Department shall issue a permit unless substantial record evidence  
7 demonstrates that one of the following bases for denial exists:

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

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

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

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

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

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

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

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

- 17 a. VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a  
18 tobacco retailer's permit for a proprietor, including his or her agent or employee, to  
19 violate any local, state, or federal tobacco-related law including, but not limited to:  
20 1. MINIMUM AGE FOR PERSONS BUYING TOBACCO. It is unlawful for  
21 any person, firm, tobacco retailer, or corporation to sell, give, or in any way  
22 furnish to a person any tobacco product or tobacco paraphernalia if that  
23 person, firm, or corporation knows or should have grounds to know that the  
24 recipient is a person who is not at least the minimum age required by state  
25 law to purchase or possess any tobacco product. Proof that a retailer, or his  
26 or her employee or agent, demanded, was shown, and reasonably relied  
27 upon evidence of legal age (such as identification) shall be a defense to any  
28 action.

- 1                   2.     **POSITIVE IDENTIFICATION REQUIRED.** No tobacco retailer shall  
2                   engage in tobacco retailing without first examining the identification of the  
3                   purchaser, if the purchaser reasonably appears underage, and confirming  
4                   that the proposed sale is to a purchaser who is at least the minimum age in  
5                   state law for being sold the tobacco product or tobacco paraphernalia.
- 6                   3.     **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No tobacco  
7                   retailer shall engage in tobacco retailing if the person is younger than the  
8                   minimum age in state law for being sold or for possessing any tobacco  
9                   product.
- 10                  4.     **DISPLAY OF TOBACCO RELATED LICENSES/PERMITS.** Each  
11                  tobacco retailer must maintain a license from the California State Board of  
12                  Equalization as well as a tobacco retailer’s permit allowing the sale of  
13                  tobacco products for each tobacco retail location. Both permits shall be  
14                  prominently displayed in a publicly and readily visible location at the  
15                  permitted location.
- 16                  5.     **SELF-SERVICE DISPLAYS PROHIBITED.** No tobacco retailer shall  
17                  display tobacco products or tobacco paraphernalia by means of a self-  
18                  service display or to engage in tobacco retailing by means of a self-service  
19                  display. A tobacco retailer who chooses to display tobacco products or  
20                  tobacco paraphernalia in a locked cabinet, case or similar structure must  
21                  post a clear and conspicuous sign on or within five feet of the display  
22                  stating that the cabinet, case or structure is locked at all times.
- 23                  6.     **TOBACCO SALES PUBLIC NOTIFICATION SIGNS POSTED.** Every  
24                  store that sells tobacco must post a boldly printed, contrasting color sign in  
25                  a conspicuous place at each point of purchase saying that tobacco products  
26                  may not be sold to minors. The sign must contain the following words:  
27                  “The Sale of Tobacco Products to Persons Under 21 Years of Age Is  
28                  Prohibited by Law and Subject to Penalties. Valid Identification May Be

1 Required. To Report an Unlawful Tobacco Sale Call 1-800-5 ASK-4-ID.  
2 Business and Professions Code Section 22952.” The sign must be square  
3 (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5  
4 inches), and the required notice must meet specified font sizes.

5 8. SALE OF BIDIS. No tobacco retailer shall sell, offer for sale, distribute, or  
6 import any tobacco product commonly referred to as "bidis" or "beedies,"  
7 unless that tobacco product is sold, offered for sale, or intended to be sold  
8 in a business establishment that prohibits the presence of persons under  
9 twenty-one (21) years of age on its premises.

10 9. TOBACCO SALES AT NON-FIXED SITES. It is unlawful for any  
11 person, agent, tobacco retailer, or employee of a person in the business of  
12 selling or distributing tobacco products to engage in tobacco retailing at  
13 other than a fixed, permitted location. For example, tobacco retailing by  
14 persons on foot and tobacco retailing from vehicles are prohibited.

15 10. TOBACCO COUPONS AND SAMPLES. It is unlawful for any person,  
16 agent, tobacco retailer, or employee of a person in the business of selling or  
17 distributing tobacco products, including but not limited to smokeless  
18 tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale  
19 distribution of any tobacco products to any person on any private property  
20 that is open to the general public. "Non-sale distribution" means to give  
21 tobacco products or tobacco paraphernalia to the general public at no cost,  
22 or at nominal cost, or to give coupons, coupon offers, gift certificates, gift  
23 cards, or other similar offers, or rebate offers for tobacco products to the  
24 general public at no cost or at nominal cost.

25 11. SINGLE SALE OF CIGARETTES. No tobacco retailer may sell one or  
26 more cigarettes, other than in a sealed and properly labeled package. A  
27 sealed and properly labeled package means the original packaging of the  
28 manufacturer or importer which meets federal labeling requirements,

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

6 b. PERMIT COMPLIANCE MONITORING.

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

- 1 c. NO CONTEST PLEA. A plea of “no contest” or its equivalent by a tobacco  
2 retailer for a violation of any law designated in Section 7.a. above shall operate as  
3 an admission that this Ordinance has been violated for the purposes of permit  
4 revocation.

5 **Section 8. REVOCATION OF PERMIT.**

6 a. REVOCATION OF PERMIT FOR VIOLATION.

- 7 1. In addition to any other penalty authorized by law, a tobacco retailer’s  
8 permit may be revoked if the Department finds that the proprietor,  
9 including his or her agents or employees, has violated any of the  
10 requirements, conditions, or prohibitions of this Ordinance (hereinafter  
11 “Permit Violation”).
- 12 2. A tobacco retail proprietor may appeal the Department’s determination to  
13 revoke its tobacco retail permit in the same manner and in conjunction with  
14 an appeal of an administrative citation as provided by Section 9.h. of this  
15 Ordinance.
- 16 3. A proprietor or tobacco retailer without a valid tobacco retail permit,  
17 including, for example, a revoked permit:
- 18 i. Shall keep all tobacco products and tobacco paraphernalia from  
19 public view. The public display of tobacco products or tobacco  
20 paraphernalia in violation of this provision shall constitute an “offer  
21 for sale.”
- 22 ii. Shall not display any advertisement relating to tobacco products or  
23 tobacco paraphernalia that promotes the sale or distribution of such  
24 products from the tobacco retailer’s location or that would lead a  
25 reasonable consumer to believe that such products can be obtained  
26 at the tobacco retailer’s location.
- 27 iii. Tobacco products and tobacco paraphernalia offered for sale or  
28 exchange in violation of this Ordinance may be destroyed.

1           b.     NEW TOBACCO RETAILER’S PERMIT AFTER REVOCATION FOR  
2           VIOLATION.

- 3           1.     After a first permit violation at a location no new tobacco retailer’s permit  
4           may be issued for the location until a minimum of one (1) day has passed  
5           from the date of the last revocation or violation, whichever is later.  
6           2.     After a second permit violation at a location within any sixty month (60)  
7           period, no new tobacco retailer’s permit may be issued for the location until  
8           a minimum of thirty (30) days have passed from the date of the last  
9           revocation or violation, whichever is later.  
10          3.     After a third permit violation at a location within any sixty month (60)  
11          period, no new tobacco retailer’s permit may be issued for the location until  
12          a minimum of ninety (90) days have passed from the date of the last  
13          revocation or violation, whichever is later.  
14          4.     After four or more permit violations at a location within any sixty-month  
15          (60) period, no new tobacco retailer’s permit may be issued for the location  
16          until five (5) years have passed from the date of the last revocation or  
17          violation, whichever is later.

18          c.     REVOCATION OF PERMIT ISSUED IN ERROR. A tobacco retailer’s permit  
19          may be revoked if the Department finds, after notice and opportunity to be heard,  
20          that one or more of the bases for denial of a permit under Section 4.a existed at the  
21          time application was made or at any time before the permit issued. The revocation  
22          shall be without prejudice to the filing of a new application for a permit.

23           **Section 9.**    **ENFORCEMENT.** The remedies provided by this Ordinance are cumulative and  
24    in addition to any other remedies available at law or in equity.

- 25          a.     Violators who operate without the necessary tobacco retailer’s permit shall be  
26          subject to closure of the tobacco retail facility.  
27          b.     Whenever evidence of a violation of this Ordinance is obtained in part through the  
28          participation of a person under the age of twenty one (21) years old, such a person

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

- 5 c. Violations of this Ordinance are subject to a civil action brought by the District  
6 Attorney or County Counsel, punishable by:
- 7 1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one  
8 thousand dollars (\$1,000) for a first violation in any sixty-month (60)  
9 period; or
  - 10 2. A fine not less than one thousand five hundred dollars (\$1,500) and not  
11 exceeding two thousand five hundred dollars (\$2,500) for a second  
12 violation in any sixty-month (60) period; or
  - 13 3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten  
14 thousand dollars (\$10,000) for a third or subsequent violation in any sixty  
15 month (60) period.
- 16 d. Violations of this Ordinance may, in the discretion of the District Attorney or  
17 County Counsel, be prosecuted as infractions or misdemeanors.
- 18 e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of  
19 this Ordinance shall constitute a violation.
- 20 f. Violations of this Ordinance are hereby declared to be public nuisances.
- 21 g. In addition to other remedies provided by this Ordinance or by other law, any  
22 violation of this Ordinance may be remedied by a civil action brought by the  
23 County Counsel, including, but not limited to, administrative or judicial nuisance  
24 abatement proceedings, civil or criminal code enforcement proceedings, and suits  
25 for injunctive relief.
- 26 h. ADMINISTRATIVE CITATIONS AND PENALTIES. In addition to the remedies  
27 and penalties contained in this Ordinance, and in accordance with Government  
28 Code Section 53069.4, an enforcement officer may issue an administrative citation

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

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

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

17 2. Service of Citation.

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

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

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

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

13 3. Administrative Penalties.

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

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

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

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

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

27 4. Administrative Appeal

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

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

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

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

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

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

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

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

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

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

- 4 i. Notice of Appeal. Within twenty (20) days of the date of the  
5 delivery or mailing of the hearing officer's decision, a person may  
6 contest that decision by filing an appeal to be heard by the Superior  
7 Court. The failure to file the written appeal and to pay the court  
8 filing fee within this period shall constitute a waiver of the right to  
9 an appeal and the decision shall be deemed confirmed. A copy of  
10 the notice of appeal shall be served in person or by first class mail  
11 upon the issuing agency by the contestant.
- 12 ii. Conduct of Hearing. The conduct of the appeal is a subordinate  
13 judicial duty and may be performed by traffic trial commissioners  
14 and other subordinate judicial officials at the direction of the  
15 presiding judge of the court. The appeal shall be heard de novo,  
16 except that the contents of the issuing agency's file in the case shall  
17 be received in evidence. A copy of the document or instrument of  
18 the issuing agency providing notice of the violation and imposition  
19 of the administrative penalty shall be admitted into evidence as  
20 prima facie evidence of the facts stated therein. The court shall  
21 request that the issuing agency's file on the case be forwarded to the  
22 court, to be received within fifteen (15) days of the request.
- 23 iii. Judgment. The court shall retain the court's filing fee regardless of  
24 the outcome of the appeal. If the court finds in favor of the  
25 contestant, the amount of the fine or penalty shall be reimbursed to  
26 the contestant by the local agency. Any deposit of the fine or  
27 penalty shall be refunded by the issuing agency in accordance with  
28 the judgment of the court. If the fine or penalty has not been

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

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

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

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

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