

Kern County Administrative Office



County Administrative Center

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RONALD M. ERREA
County Administrative Officer

March 23, 2006

Mr. William W. Way, City Manager
City of California City
21000 Hacienda Blvd.
California City, CA 93505

Dear Mr. Way:

On March 7, 2006, the Kern County Board of Supervisors directed County staff to prepare a Tobacco Retail License ordinance for adoption by the Board with the aim of strengthening County enforcement of State laws prohibiting the sale of tobacco products to minors under the age of 18.

The Board of Supervisors intends to adopt the attached draft ordinance, which will take effect in all unincorporated areas of Kern County. In order to promote uniform enforcement of prohibitions against tobacco sales to minors in all communities in Kern County, the City of California City may also wish to consider adopting a similar ordinance.

Please contact me if you have any questions regarding the Tobacco Retail License ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald M. Errea", is written over a horizontal line.

Ronald M. Errea
County Administrative Officer

RME:ADK\KRAUTER\tobaccoordinancecitiescao.doc

Attachment

cc: Members, Board of Supervisors
County Counsel
Environmental Health Services
Public Health
Sheriff

NB5.

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF KERN, STATE OF CALIFORNIA
ADDING CHAPTER 5.82 TO THE KERN COUNTY
ORDINANCE CODE RELATED TO THE REQUIREMENT
FOR A TOBACCO RETAILER'S PERMIT

The following ordinance, consisting of three (3) sections, was duly and regularly
passed and adopted by the Board of Supervisors of the County of Kern, State of
California, at a regular meeting of the Board of Supervisors held on the _____ day of
, 2006, by the following vote, to wit:

AYES:

NOES:

ABSENT:

DRAFT

Chairman of the Board of Supervisors of
the County of Kern, State of California

(SEAL)

ATTEST:

DENISE PENNELL
Clerk of the Board of Supervisors

By _____, Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS
FOLLOWS:

Section 1. This ordinance shall take effect and be in full force on and after the
day of _____, 2006, and shall be published once
in _____, a newspaper of general
circulation, published in the County of Kern, State of California, together with the
names of the members of the Board of Supervisors voting for and against the same.

Book No. _____
Ord. No. _____

Section 2. Chapter 5.82 is hereby added to the Kern County Ordinance Code to read as follows:

Chapter 5.82
TOBACCO RETAILER'S PERMIT

5.82.010 Definitions.

As used in this Chapter:

- A. "Department" means the [name of enforcing department].
- B. "Director" means the director of the department or his or her designee.
- C. "Person" means any natural person, partnership, cooperative association, domestic or foreign corporation, receiver, trustee, assignee, or any other legal entity.
- D. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.
- E. "Tobacco paraphernalia" means cigarette papers or wrappers, pipe holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.
- F. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco products or tobacco paraphernalia; "tobacco retailing" means engaging in any of these things.
- G. "Newly established business" means a business which was not engaged in tobacco retailing within the County of Kern during the immediately preceding permit renewal period. A business to which a valid existing permit is transferred, pursuant to the exception in section 5.82.080, is not a newly established business and shall be treated as if the ownership had not changed.

5.82.020 Requirements for tobacco retailer's permit.

- A. It shall be a misdemeanor for any person, within the county, to act as a tobacco retailer without first obtaining and maintaining a valid Tobacco Retailer's Permit, pursuant to this chapter, for each location at which that activity is to occur. No permit will be issued to authorize tobacco retailing at any place other than a fixed location; peripatetic tobacco retailing and tobacco retailing from vehicles are prohibited.
- B. Each day that a person offers tobacco, tobacco products or tobacco paraphernalia for sale or exchange without a valid permit shall constitute a separate violation.
- C. A tobacco retailer without a valid Tobacco Retailer's Permit, including a person whose permit has been suspended or 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 this Section.

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.

D. This section shall become operative _____, 2006.

5.82.030 Application procedure.

Application for a Tobacco Retailer's Permit shall be submitted to the department in the name of the person proposing to conduct retail tobacco sales and shall be signed by each person or an authorized agent thereof. Each person shall be responsible for reviewing the conditions of conducting retail tobacco sales within the county and shall agree to abide by these conditions by signing the application under penalty of perjury. All application shall be submitted on a form supplied by the department and shall contain the following information:

1. The name, mailing address and telephone number of the applicant;
2. The business name, address and telephone number of each location for which a Tobacco Retailer's Permit is sought.
3. A single name and mailing address to receive all communications and notices required by or authorized by this chapter. If such address is not provided, each permittee shall be understood to consent to the provision of notice at the business address specified in subparagraph
4. Proof that the location for which a Tobacco Retailer's Permit is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
5. Such other information as the department deems necessary for the administration or enforcement of this chapter.

An application for a Tobacco retailer's permit must be obtained by a newly established business on or before the last day of the month following the month in which the business started.

5.82.040 Issuance of permit.

- A. The permit shall state on its face:
1. Legal owner,
 2. Any fictitious business name used by the owner,
 3. Kern County Ordinance Code section regulating tobacco sales

permits,

4. Business and mailing addresses,
5. Date permit issued,
6. Account number.

B. Upon the receipt of an application for a Tobacco Retailer's Permit, the department shall issue the permit, subject to verification by the department that there is no substantial record of evidence that demonstrates one of the following bases for denial:

1. The information presented in the application is incomplete, inaccurate or false; or
2. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect; or
3. The application seeks authorization for tobacco retailing that is unlawful pursuant to Section 5.82.020.

5.82.050 Display of permit.

Each permittee shall prominently display the permit at each location where tobacco retailing occurs.

This section shall become operative _____, 2006.

5.82.060 Fees for permit.

A fee shall be charged for a Tobacco Retailer's Permit of \$_____ annually. The fee shall be calculated annually to recover the cost of both the administration and enforcement of the permit, including the cost of issuing the permit, renewing the permit, administering the retailer permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and other related actions. All fees are non-refundable, except where required by law and shall be used exclusively to fund the program. Fees shall not be prorated.

A \$___ dollar charge shall be imposed for the issuance of a duplicate permit upon the permittee or an authorized representative stating, in a properly executed affidavit of loss, that the original permit has been lost or destroyed.

5.82.070 Renewal of permit, delinquency.

Renewal statement shall be due the first day of November of each year and shall be delinquent by the first day of January of the next year. Delinquent renewals shall be charged an additional sum equal to twenty five percent (25%) of the required permit fee.

5.82.080 Permits not transferable.

A Tobacco Retailer's Permit is non-transferable. If a new person acquired a business engaged in tobacco retailing, that person must apply for a new permit on or before the last day of the month following the month in which the tobacco retailing business is acquired. The transferee of the permit must apply for a permit in the transferee's name before acting as a tobacco retailer.

A permit shall be transferable, whether by sale or otherwise, if the person in which the real or ultimate ownership of the business after the transfer is substantially similar to the real or ultimate ownership existing before the transfer. Any permit reissued pursuant to this section shall expire on the date the previous permit for the person would have otherwise expired.

5.82.090 Administrative violations.

A. The violations set forth in this section are cumulative to, and in addition to, any other violations of state or local law and shall be punished as specified in Section 5.82.100.

B. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a permit is issued, it shall be a violation of this chapter for a permittee, or any of the permittee's agents or employees, to:

1. Violate any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.
2. 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 the recipient is at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.

5.82.100 Administrative penalties.

A. Upon a determination by the director that a person has engaged in any conduct that violates the provisions of this chapter, the director may suspend a Tobacco Retailer's Permit, impose administrative penalties, or both suspend the permit and impose administrative penalties.

B. The department shall notify the offender that there has been an initial determination of violation under the provisions of this chapter, and shall specify the violation and the sanction imposed, including the effective date of the suspension, if any. The notice shall further state that the offender may, within fifteen (15) days, submit to the department any written or documentary evidence to contest the initial determination of violation. After receiving such evidence as may be provided, the

department shall prepare a final written decision and shall serve this decision upon the tobacco retailer. Upon written request, the offender shall have the right to receive copies of any records or files upon which the administrative decision is based. This final determination shall be served within thirty (30) days of the initial determination.

C. When this chapter permits the director to suspend a permit, the following sanction may be imposed:

1. For the first violation in any five (5) year period, the tobacco retailer shall receive a letter of reprimand from the department.

2. For the second violation in any five (5) year period, the person's Tobacco Retailer's Permit shall be suspended for up to thirty (30) days.

3. For a third violation in any five (5) year period, the person's Tobacco Retailer's Permit shall be suspended for up to ninety (90) days.

4. For a fourth or subsequent violation in any five (5) year period, the person's Tobacco Retailer's Permit shall be suspended for up to one hundred eighty (180) days.

D. When this chapter allows the director to impose an administrative penalty, the following penalty may be imposed:

1. For the first violation, a penalty not to exceed one hundred dollars (\$100);

2. For the second violation within one year from the date of the first violation, a penalty not to exceed two hundred dollars (\$200);

3. For the third and each subsequent violation within one year from the date of the first violation, a penalty not to exceed five hundred dollars (\$500).

5.82.110 Right to administrative review and procedures.

A. The tobacco retailer shall have the right to appeal the decision of the department to the board of supervisors. To obtain a review of the final determination, the tobacco retailer must file with the Clerk of the Board of Supervisors within fifteen (15) days of the date of the final determination, a written request for a hearing. The timely filing of a request for hearing shall hold in abeyance any license suspension until the administrative review is heard and decided.

B. If a review is requested, the Clerk of the Board of Supervisors shall provide written notice, within thirty (30) days of its receipt of the request, to the tobacco retailer of the date, time and place of the hearing on the appeal.

C. At the time fixed in the notice, the board of supervisors shall proceed to hear testimony from any interested person regarding the specified violation deemed by the [enforcing department] to be the basis for the proposed administrative penalty, and any other matter which the board of supervisors may deem pertinent thereto.

D. Upon the conclusion of the hearing the board of supervisors will make a determination based on the evidence presented at the hearing, and may impose a suspension penalty without regard to the limits in Section 5.82.100.

E. The decision of the board of supervisors shall be final.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance 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. The Board of Supervisors hereby declares that it would have adopted independently each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

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