

November 30, 2006

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

RE: Tobacco Retailer Ordinance

As you requested, we have prepared the enclosed ordinance regulating the tobacco establishments. This ordinance is nearly identical to an ordinance adopted by the County of Kern. There are two basic changes. First, references to the county are changed to the "city." Second, the provisions are numbered in accordance with the Municipal Code rather than the County Code.

I have communicated with the County Health Director. It is his intent to enforce this ordinance within the City in his role as *ex officio* City health official. In other words, this ordinance should not result in additional financial burden on the City.

Very truly yours,

LEMIEUX & O'NEILL



Wayne K. Lemieux

WKL/lms
Enclosure

ORDINANCE NO. 06- _____

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF CALIFORNIA CITY AMENDING
THE CALIFORNIA CITY MUNICIPAL CODE
AS IT RELATES TO THE REQUIREMENT FOR
A TOBACCO RETAILER'S PERMIT**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CALIFORNIA
CITY** as follows:

1. Purpose.

This ordinance amends the California City Municipal Code to require tobacco retailers permits.

2. Amendment.

Chapter 8 is hereby added to title 6 of the California City Municipal Code to read as follows:

**"CHAPTER 8.
TOBACCO RETAILER'S PERMIT**

Sec. 6-8.101. Purpose.

This chapter is established to regulate the retail sale of tobacco products.

Sec. 6-8.102. Definitions.

As used in this Chapter:

"Department" means the Kern County Environmental Health Services Department, the *ex officio* health department of the City.

"Director" means the Environmental Health Services Director or his/her designee, the *ex officio* health officer of the City.

"Tobacco product" means (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, hookah 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 United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

"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, preparation, storing, or ingestion of tobacco products.

"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, or who distributes free or low cost samples of tobacco products or tobacco paraphernalia. This definition applies regardless of the quantity of tobacco, tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. "Tobacco retailing" means engaging in any of these things.

"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.

"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 chapter is not an arm's length transaction.

Sec. 6-8.103. Requirements for tobacco retailer's permit.

(a) It shall be a misdemeanor for any person, within the City, 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 not keep any tobacco products or tobacco paraphernalia at the regulated facility. 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 July 1, 2007.

Sec. 6-8.104. Application procedure.

(a) 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 City and shall agree to abide by these conditions by signing the application under penalty of perjury. All applications 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 2.

(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.

(6) Verification that the permittee has undertaken a training program in the laws relating to the sale of tobacco products in California as provided by or approved by the City's Public Health Services Department.

(b) 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. All information submitted as part of the application process shall be updated with the department whenever the information changes. A tobacco retailer shall provide the department with any updates within ten (10) business days of a change.

Sec. 6-8.105. Issuance of permit.

(a) The permit shall state on its face:

- (1) Legal owner,
- (2) Any fictitious business name used by the owner,
- (3) Business address,
- (4) Date permit issued, and
- (5) Permit number.

(b) Upon the receipt of an application for a Tobacco Retailer's Permit, the department shall issue the permit, subject to 6-8.106 and 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 this Code or any other applicable law.

(4) The application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of a permit. However, this subsection shall not constitute a basis for denial of an application if the applicant provides the department 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.

Sec. 6-8.106. Display of permit.

Each permittee shall prominently display the permit at each location where tobacco retailing occurs and according to applicable portions of 6-8.108.

This section shall become operative July 1, 2007.

Sec. 6-8.107. Fees for permit.

A fee shall be charged for a Tobacco Retailer's Permit of \$165 annually. The fee shall be adjusted, no more frequently than annually, to recover the cost of administration of the permit program, 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.

Sec. 6-8.108. Renewal of permit, delinquency.

Renewal of the Tobacco Retailer's Permit shall be subject to the provisions of section 6-8.107 and 6-8.110 of this Code.

Sec. 6-8.109. Permits not transferable.

(a) 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.

(b) 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:

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

(2) the new owner(s) provide the City with clear and convincing evidence that the new owner(s) have acquired or are acquiring the location in an arm's length transaction.

Sec. 6-8.110. 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 6-8.111 .

(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.

(c) 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.

Sec. 6-8.111. 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 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 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 and/or revoked.

(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).

Sec. 6-8.112. 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 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 8.60.100.

(d) The decision of the board of supervisors shall be final.

Sec. 6-8.113. Youth Decoys.

The City 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:

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

(b) the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly, through subcontracting by the Kern County Department of Public Health or the California Department of Health Services."

3. Other.

Except as provided herein, the California City Municipal Code is reaffirmed and readopted.

PASSED, APPROVED AND ADOPTED on _____, 2006, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

(SEAL)