

**ORDINANCE NO. 5-06 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
AMENDING CHAPTER 7.104 OF THE CITY OF RICHMOND MUNICIPAL  
CODE TO IMPOSE AN ANNUAL LICENSE REQUIREMENT ON THE RETAIL  
SALES OF TOBACCO**

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WHEREAS, the City of Richmond imposes a tobacco retailer license requirement on persons and businesses which have violated local, state or federal laws governing the sale and distribution of tobacco products.

WHEREAS, due to the danger to the public health and safety posed by tobacco usage, it is necessary to expand the tobacco retailer license requirement to all retail sellers of tobacco, not merely those which have violated local, state or federal laws governing the sale and distribution of tobacco products.

Now, therefore, the City Council of the City of Richmond do ordain as follows:

SECTION 1. Chapter 7.104 of the City of Richmond Municipal Code is hereby amended to read as follows:

7.104.010 Purpose.

The purpose of this Chapter is to impose a licensing requirement on tobacco retailers ~~who have been found to be in violation of local, state, or federal laws governing the sale and distribution of tobacco products.~~

7.104.020 Findings.

The Council of the City finds and declares:

(1) The United States Surgeon General has declared nicotine, a key ingredient of cigarettes and tobacco products, as addictive as cocaine or heroin; yet no other addictive product or drug is as accessible to minors or as heavily advertised and promoted to minors as tobacco products. Once addicted, minors necessarily have great difficulty in complying with laws regulating access by minors to tobacco.

(2) Since 1971, federal law has banned the advertising of tobacco products on radio and television, in part, because of substantial evidence showing that the most persuasive advertising was being conducted on radio and television, and these broadcasts were particularly effective in reaching a large audience of young people.

(3) State laws prohibit the sale or furnishing of cigarettes and tobacco products to minors, as well as the purchase, receipt, or possession of tobacco products for minors. (Penal Code Section 308.) ~~State law also prohibits public school students from smoking or using tobacco products while on campus or attending school-sponsored activities or under the supervision or control of school district employees. (Education Code, Section 48901, subdivision (a).)~~ State law also regulates the sale and display of tobacco products. (Business & Professions Code §§ 22952, 22962).

(4) Despite these restrictions, minors continue to be exposed to and influenced by tobacco advertising, and to purchase or steal or otherwise obtain cigarettes and other tobacco products at alarming rates. Studies show that nearly one-quarter of all teenagers in this country are smokers.

(5) Most smokers start smoking before they are old enough to purchase tobacco legally. Approximately 60 percent of all current adult smokers started smoking by the age of 13, and 90 percent of current adult smokers

started by the age of 18. In addition, children are starting to use tobacco at an earlier age. The average age of first use is now 11 to 15 years. A study done by the University of Michigan Survey Research Center shows that smoking rates among American teenagers are rising and teens increasingly find smoking acceptable .

(6) More than three million minors consume more than 947 million packs of cigarettes annually in the United States and over 29 million packs of cigarettes are sold to California children annually.

(7) The average child smoker started at age 13 and was smoking daily by 14 1/2.

(8) The average age of initiation for smokeless tobacco use is approximately 9 years of age.

(9) Studies show an association between tobacco use and use of alcohol and illicit drugs. The National Institute on Drug Abuse found that teenagers who smoke are 14 times more likely to abuse alcohol, 100 times more likely to smoke marijuana and 32 times more likely to use cocaine, than their nonsmoking peers.

(10) Although the tobacco industry insists the sole purpose of advertising is to convince current smokers to switch brands, it spends over \$15 billion a year (\$18.5 million in Contra Costa County), in advertising and promotion costs, to aggressively recruit new smokers. To replace smokers who quit or die prematurely (some 3,000 smokers a day) the tobacco industry must attract approximately two million new smokers each year. Most new smokers are children and adolescents. It is estimated that nationally 34,000 youth, statewide 394,204 youth, and locally 11 Contra Costa County youth starting smoking tobacco every day. The tobacco industry sells \$1.26 billion in tobacco products (over 947,924 million packs of cigarettes and twenty-six million containers of smokeless tobacco) each year to children under 18. Thus, the tobacco industry earns \$1.5 billion 480 million annually from the illegal sale of tobacco to children.

(11) Minors are particularly susceptible to tobacco advertising. In 1994, the Surgeon General reported that adolescents consistently smoke the most advertised brands of cigarettes, both in the United States and elsewhere. Moreover, following the introduction of advertisements that appeal to young people, the use of those brands increases. A number of studies show a causal relationship between cigarette advertising and teen choice of cigarettes, including one study showing that eighty-four percent of adolescent smokers who bought their own cigarettes chose one of the three most heavily advertised brands. The Surgeon General suggests there is a link between tobacco advertising and teens initiating of smoking. Even young children are influenced by tobacco advertising as evidenced by the fact that Joe Camel, the cartoon camel used to advertise Camel cigarettes, is as familiar as Mickey Mouse to six year olds.

(12) Wherever they go in the County, minors are exposed to extensive advertising of tobacco products on billboards and other outdoor display signs in publicly visible locations. Because of its pervasive nature and visual impact, such publicly visible advertising conveys the message loud and clear that the viewer, regardless of age, can and should be buying that particular cigarette or tobacco product. In addition, such advertising undercuts Federal and State anti-smoking campaigns and radio and television advertising bans designed to discourage youth from smoking.

(13) Stores, restaurants and commercial establishments that sell tobacco products often display extensive advertising and promotions for these products. Attractive advertising and promotion of tobacco products on billboards and other display signs in publicly visible locations may trigger

impulse buying and undermine the resolve of minors not to use tobacco products. Such advertising and promotions encourage and induce minors to buy or steal and consume cigarettes and other tobacco products in violation of State law.

(14) Based upon the foregoing facts and findings, the City has a substantial interest in promoting compliance with State laws prohibiting sales of cigarettes and tobacco products to minors, in promoting compliance with Federal, State and local laws intended to discourage the purchase of tobacco products by minors, and in protecting children from being lured into illegal activity through the misconduct or illegal acts of adults.

~~(15) The imposition of a requirement of a tobacco retailer license for persons who have violated local, State or Federal laws governing the sale and distribution of tobacco products will not unduly burden legitimate business activities of retailers of tobacco to sell cigarettes or distribute tobacco products. The imposition of such a requirement will, however, allow the County to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of local, State or Federal laws related to tobacco products.~~

#### 7.104.030 License requirement.

~~It is unlawful for any retailer, individual, or entity who has been found to be in violation of one or more of the provisions of any applicable local, State or Federal laws governing the sale and distribution of tobacco within the last twelve months, to sell or offer for sale any tobacco products within the City without first obtaining and maintaining a valid tobacco retailer's license from the City for each location where such sales are conducted. Licenses are valid for one (1) year and licensees must apply for renewal annually for a total of five years. If there are no further violations of the provisions of the applicable local, State or Federal laws regulating the sale and distribution of tobacco in that five-year period, a tobacco retailer's license will no longer be required in order to sell tobacco products within the City.~~

#### 7.104.040 Enforcement of State law.

If a Clerk or employee sells a tobacco product to a minor, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code Section 308 for enforcement under that statute.

#### 7.104.050 Application procedure.

~~An application for a tobacco retailer's license shall be submitted in the name of the retailer, individual or entity, who, following a finding of violation as specified in Section 7.104.030, proposes to conduct s retail tobacco sales on the business premises and shall be signed by such retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form supplied by the Richmond Police Department and shall contain the following information:~~

- (1) The name, address, and telephone number of the applicant;
- (2) The business name, address, and telephone number of each establishment where tobacco is to be sold; and
- (3) Such other information as the Chief of Police of the City determines is necessary for implementation of this Chapter. For the purposes of this Chapter, the term "Chief of Police" means the Chief of Police of the City or the Chief's designee.

7.104.060 Issuance and display of license.

Upon receipt of a completed application for a tobacco retailer's license, including payment of the license fee, the Chief of Police, or his or her designee will issue a license, which each licensee must prominently display at the location where tobacco retail sales are conducted.

7.104.070 Fees for license.

The fee for a tobacco retailer's license shall reflect the actual cost of processing the license, including inspection of the tobacco retailer's business premises and implementation and enforcement of the licensing program ~~and shall not exceed five hundred dollars (\$500) annually as determined by the Council of the City.~~

7.104.080 License is nontransferable.

The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retail license will be issued for the new address upon receipt of an application for change of location. The new license will retain the same expiration date as the previous one.

7.104.090 Suspension of license.

(a) Grounds for Suspension. A tobacco retailer's license ~~may~~ shall be suspended, as set forth in subsection (b) of this section, by the Chief of Police upon a finding, after giving the licensee notice and opportunity to be heard, that the licensee or his or her employee, ~~following the issuance of a tobacco retailer's license,~~ has violated any of the provisions of this division chapter or any applicable local, State or Federal laws. During any period of license suspension, the retailer must remove all tobacco products from public view.

(b) Time Period of Suspension of License.

(1) Upon the first time that the Chief of Police makes a finding as set forth in subsection (a) of this section, the license to sell tobacco products may be suspended for up to sixty (60) days;

(2) Upon the second time that the Chief of Police makes a finding as set forth in subsection (a) of this section within ~~twelve~~ twenty-four months of the first determination, the license to sell tobacco products may be suspended for up to one hundred twenty (120) days;

(3) Upon the third and each subsequent time that the Chief of Police makes a finding as set forth in subsection (a) of this section within ~~twelve~~ twenty-four months of the prior determination, the license to sell tobacco products may be suspended for up to one year.

(c) Appeal of Suspension. The decision of the Chief of Police to suspend a tobacco retailer's license is appealable to the City Manager as follows:

(1) Upon deciding to suspend the tobacco retailer's license, the Chief of Police shall give the tobacco retailer written notice of his or her decision to suspend the license. The notice shall set forth the ground or grounds for the Chief of Police's decision and shall inform the tobacco retailer that he or she has ten days from the date of receipt of the notice to file a written request for a hearing.

(2) Within ten days of the written notice by the Chief of Police of his or her decision to suspend the tobacco retailer's license, the tobacco retailer may appeal by submitting a request to the Chief of Police for a hearing before the City Manager, or the City Manager's designee. Such request must be in writing and must set forth the specific grounds for the appeal. If the

tobacco retailer files a timely hearing request, the City Manager, or the City Manager's designee, shall set a time and place for the hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be represented by counsel and to confront and cross-examine any witnesses against them. The decision of the City Manager, or the City Manager's designee, whether or not to uphold suspension of the license shall be the final administrative decision.

(3) If no timely appeal is taken, the license may be suspended by the decision of the Chief of Police and such decision shall be deemed final. If a timely appeal is made by the tobacco retailer, the tobacco retailer license shall remain in force and effect until a decision on appeal has been made by the City Manager, or the City Manager's designee.

7.104.100 Penalty.

(a) Grounds for Penalty. If the Chief of Police or City Manager, after giving notice and an opportunity to be heard to the person who is the owner of a tobacco retail establishment, finds that such person ~~is required to have a tobacco retailer's license and~~ does not have a valid tobacco retailer's license and is selling or offering tobacco products for sale, the owner of the retail establishment shall be deemed in violation of this Chapter.

(b) Penalty. Violation of any provision of this Chapter shall be an infraction or misdemeanor in the discretion of the prosecuting authority and shall be subject to the penalties set forth in Section 1.04.100 of this Municipal Code.

SECTION 2. Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, or phrase 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 the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be effective 30 days after passage and adoption.

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I certify that the foregoing ordinance was passed and adopted by the Council of the City of Richmond, California, at regular meeting held on January 17, 2006 by the following vote:

AYES: Councilmember Bates, Butt, Griffin, Marquez, McLaughlin, Rogers, Thurmond, Viramontes, and Mayor Anderson  
NOES: None  
ABSTENTIONS: None  
ABSENT: None

DIANE HOLMES  
Clerk of the City of Richmond

(SEAL)

Approved:

IRMA L. ANDERSON  
Mayor

Approved as to form:

JOHN EASTMAN  
City Attorney

State of California            }  
County of Contra Costa    : ss.  
City of Richmond            }

I certify that the foregoing is a true copy of Ordinance No. 05-06 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting held on January 17, 2006, and published in accordance with law.