



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: MARCH 9, 2021**

FROM: POLICE DEPARTMENT **WARDS: ALL**

SUBJECT: PROPOSED ORDINANCE AMENDING RIVERSIDE MUNICIPAL CODE CHAPTER 6.24 REGULATING TOBACCO RETAIL ESTABLISHMENTS TO BE CONSISTENT WITH STATE LAW

ISSUE:

Introduce and subsequently adopt an ordinance amending Riverside Municipal Code Chapter 6.24 regulating tobacco retail establishments to be consistent with state law.

RECOMMENDATION:

That the City Council introduce and subsequently adopt an ordinance amending Riverside Municipal Code Chapter 6.24 regulating tobacco retail establishments to be consistent with state law.

LEGISLATIVE HISTORY:

On May 4, 2016, Governor Jerry Brown signed California Senate Bill 7 into law as an act to amend Sections 17537.3, 22951, 22952, 22956, 22958, and 22963 of, and to add Section 22964 to, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

Senate Bill 7, among several notable changes, increased the minimum age to purchase tobacco products or tobacco paraphernalia from 18 to 21 years of age. The additional changes expanded the definition of tobacco products to include electronic cigarettes or devices that vaporize liquids containing nicotine, as well as identifying other items that qualify as tobacco products or tobacco paraphernalia. The age restriction went into effect on June 9, 2016, with the remaining changes becoming effective on January 1, 2017.

BACKGROUND:

Senate Bill 7 modified existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, which established various requirements for tobacco distributors and retailers relating to tobacco sales to minors. The bill also provided that the STAKE Act does not invalidate existing local government ordinances or prohibit adoption of local government ordinances requiring more restrictive requirements to purchase or possess tobacco products.

The California Department of Tax and Fee Administration (CDTFA) is the current tobacco retailer licensing entity for the State of California. The CDTFA does not provide any administrative remedy for tobacco retail licensees that are found to have violated California Penal Code sections relating to tobacco sales and distribution.

The California Department of Public Health (CDPH) currently operates as the primary enforcing agency for violations of the STAKE Act. The STAKE Act affords enforcing agencies the ability to assess civil penalties for violations of the Act, as well as makes provisions for tobacco retail license suspensions and revocations for violations of the Act. CDPH is the only enforcing agency capable of submitting tobacco retail license suspension or revocation recommendations to the CDTFA for review.

In 2019, the Riverside Police Department was awarded a 3-year grant by the CDTFA. The purpose of the grant was to fund enforcement of tobacco retail laws and ordinances, as well as educating tobacco retailers with regard to sales and distribution of tobacco products. The City of Riverside currently has approximately 243 state licensed tobacco retailers.

From May 7, 2019 through January 1, 2021, the Riverside Police Department has identified 34 tobacco retailers that have sold or furnished tobacco products to persons under 21 years of age. The enforcement efforts of the Riverside Police Department have resulted in 37 arrests for misdemeanor violations of California Penal Code section 308 (Sell/Furnish Tobacco Product/s to a Minor). The efforts of the Riverside Police Department directly impact the individuals responsible for the unlawful sale/furnishing of tobacco products to minors, but has no impact on the license status of the tobacco retail business.

DISCUSSION:

The existing Riverside Municipal Code (RMC) Chapter 6.24 was adopted in the year 2006. The proposed changes to RMC Chapter 6.24 would update the existing RMC Chapter 6.24 to be consistent with state law.

It should be noted that the primary scope for RMC Chapter 6.24 has changed from “Tobacco Retailer License” to “Tobacco Retail Establishment Permit.” As such, any previous reference to the term “license” has been changed to reflect the term “permit”.

The substantive amendments to RMC Chapter 6.24 include the following:

1. 6.25.020(C) – The amended section would remove “Riverside County Department of Health and Human Service or other County department” from the definition of “Department.”
2. 6.24.020(D) - This new section would define “minor” as any person under the age of twenty-one (21) years old, with an exemption for active duty military at least 18 years old with a valid identification card issued by the United States Armed Forces.
3. 6.24.020(L) – This new section defines “Tobacco Retail Establishment Permit” as the certificate issued by the City of Riverside, which allows a facility to sell tobacco, tobacco products, and tobacco paraphernalia.
4. 6.24.030(C) – The amended section changes the age restriction for tobacco sales from eighteen (18) to twenty-one (21) years of age.

5. 6.24.080(D) – This new section would establish “permitted hours for tobacco sales.” Currently, there are no restrictions to the hours of operation for any tobacco retail establishment in the City of Riverside (including Hookah Lounges). The “permitted hours for tobacco sales” would require all businesses that generate more than 60 percent of their gross annual sales from the sale of tobacco products, to cease any and all tobacco sales during the hours of 02:00 am through 06:00 am. An example of a business that would be exempt from this restriction would be gas stations or grocery stores.
6. 6.24.100 – This section, previously 6.24.110, outlines penalties and restrictions for businesses operating as a tobacco retail establishment without a valid city permit.
7. 6.24.110 – This section, previously 6.24.120, was amended to remove “County Counsel” and a civil action bail schedule for offenses occurring within a 60-month period.
8. 6.24.120 – This section, previously 6.24.100, expanded upon remedies available for tobacco retail establishments having been found, through the course of inspection or investigation, to have violated this chapter or state law concerning the retail sales of tobacco. This section allows for the Chief of Police to revoke or suspend a tobacco retail establishment permit, if the cited violation is determined to be non-correctable. In the event a violation is capable of correction, the Chief of Police can exercise discretion and allow for an inspection to ensure the violation was in fact corrected prior to executing other disciplinary actions. This section also outlines the process for tobacco retail establishments to request an appeal hearing with the Chief of Police upon proper notification of an impending tobacco retail establishment permit denial, suspension or revocation.
9. 6.24.130 – This new section outlines the appeal process once the Chief of Police decides to deny, suspend or revoke a tobacco retail establishment permit. The process utilizes an Administrative Hearing Officer to review all relevant evidence and hear the testimony of all competent persons desiring to testify regarding the incident or alleged violation that resulted in a denial, suspension or revocation of a tobacco retail establishment permit.

FISCAL IMPACT:

There is no fiscal impact resulting from the proposed action.

Prepared by: Larry V. Gonzalez, Chief of Police
Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/Treasurer
Approved by: Lea Deesing, Assistant City Manager
Approved as to form: Kristi J. Smith, Interim City Attorney

Attachment: Ordinance amending Riverside Municipal Code Chapter 6.24