



AGENDA REPORT

Meeting Date: August 31, 2010
Item Number: G-4
To: Honorable Mayor & City Council
From: City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS ESTABLISHING TOBACCO RETAIL PERMITTING REQUIREMENTS AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

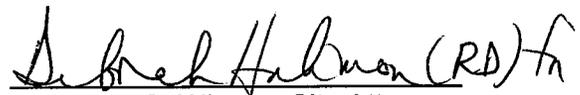
This ordinance will establish a tobacco retailer regulatory permit program, which will require retailers that sell tobacco products to obtain an annual permit from the City.

DISCUSSION

At the City Council meeting of August 17, 2010, the City Council conducted a first reading of this ordinance.

FISCAL IMPACT

The retailer must pay the annual permit fee of \$204. This will offset the cost to administer, process and enforce the permit. City staff will review the permit fee amount as part of the annual review of fees and charges during the budget process.


Laurence S. Wiener, City Attorney

Attachment 1

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
ESTABLISHING TOBACCO RETAIL PERMITTING
REQUIREMENTS AND AMENDING THE BEVERLY HILLS
MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 2 of Title 4 of the Beverly Hills Municipal Code is amended by adding a new Article 21 to read as follows:

“Article 21

Tobacco Retailer Permitting Regulations

4-2-2101. Purpose

In enacting this Article, it is the intent of the City Council to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that discourage the sale or distribution of tobacco and nicotine product to minors. There is no intent, however, to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

4-2-2102. Definitions

For purposes of this Article, the following words and terms shall be defined as follows:

“Permittee” shall mean any proprietor holding a permit issued by the City pursuant to this Article.

“Person” shall mean any individual, partnership, co-partnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

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

“Tobacco paraphernalia” includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

“Tobacco product” shall mean any manufactured substance made from the tobacco plant, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco and smokeless tobacco, or products prepared from tobacco and designed for smoking or ingestion.

“Tobacco retailer” shall mean any person or business that operates a store, stand, booth, concession or other place at which the person or business sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia

“Tobacco retailer permit” shall mean a permit issued by the City authorizing a proprietor to engage in tobacco retailing.

“Tobacco retailing” shall mean the selling, offering for sale or exchanging or offering to exchange for any form of consideration tobacco, tobacco products or tobacco paraphernalia products.

4-2-2103. Tobacco Retailer Permit Required.

A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer permit pursuant to this Article for each location at which that activity is to occur.

B. Notwithstanding the provisions of Article 1 (“General Provisions”) of Chapter 1 of this Title 4, the issuance, suspension, and revocation of a tobacco retailer permit, and all related procedures, shall be governed solely by this Article.

C. Failure to obtain a tobacco retailer permit prior to commencing the sale of tobacco products shall constitute a separate violation of this Section for each day such business is carried on without a permit

4-2-2104. Application Process

A. An application for a tobacco retailer permit shall be submitted in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. An application is required for each location where retail tobacco sales are to occur.

B. All applications shall be submitted to the Administrative Services Department, Finance Division, on a form supplied by the City and shall contain the following information:

1. The name, address, and telephone number of each proprietor;

2. The business name, address, and telephone number of the fixed location for which a tobacco retailer permit is sought;

3. The name and mailing address authorized by each applicant to receive all permit-related communications and notices (the "authorized address"). Failure to supply an authorized address shall be understood to consent to the provision of notice at the business address specified in subsection B.2 of this section;

4. Whether any applicant has previously been issued a permit pursuant to this Article that is or was at any time suspended or revoked and, if so, the dates of the suspension period or the date of revocation;

5. Proof that the location for which a tobacco retailer permit is sought has been issued a valid state tobacco retailer permit by the California Board of Equalization.

6. Such other information as the City deems necessary for the administration or enforcement of this Article.

C. All information required to be submitted in order to apply for a tobacco retailer permit shall be updated whenever the information changes. A tobacco retailer shall provide the City in writing with any updates within ten (10) business days of a change.

4-2-2105 Permit Fees

The annual fee for a tobacco retailer permit shall be established by resolution of the City Council. A tobacco retailer permit is invalid if the appropriate fee has not been timely paid in full.

4-2-2106 Issuance and Renewal of Permit.

A. Upon receipt of both the application for a tobacco retailer permit and the permit fee, the Director of Administrative Services or his or her designee, shall issue a tobacco retailer permit unless:

1. The application is incomplete or the information presented in the application is inaccurate or false;

2. The application seeks authorization for tobacco retailing by a proprietor who has a suspended or revoked tobacco retailer permit;

3. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Article, that is unlawful pursuant to the Municipal Code including without limitation the zoning code, building code and business license code, or that is unlawful pursuant to any other local, state or federal law;

5. The proprietor has not obtained a valid state tobacco retailer permit from the California Board of Equalization.

6. The City has information that the applicant or his or her agents or employee(s) has violated any local, state or federal tobacco control law at the location for which the permit or renewal of the permit is sought within the preceding thirty-day (30) period.

B. A tobacco retailer permit shall be valid for one year and must be renewed not later than thirty (30) days prior to the expiration of the permit, but no earlier than sixty (60) days prior to the expiration of the permit. Unless revoked on an earlier date, all permits shall expire one year after the date of issuance.

C. A tobacco retailer permit that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed, the proprietor must:

1. Submit the permit fee plus a reinstatement fee and the application renewal form; and

2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco paraphernalia after the permit expiration date and before the permit is renewed.

D. Where the permit is not approved or renewed, the Director of Administrative Services shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by mail not later than five calendar days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

4-2-2107. Permits Nontransferable

A tobacco retailer permit is nontransferable and is valid only for the person(s) and location specified in the permit application. If a permittee changes business location, that permittee must obtain a new permit prior to acting as a tobacco retailer at the new location. If a business permitted to conduct tobacco retailing is sold, the new owner must obtain a permit for that location before acting as a tobacco retailer.

4-2-2108. Permit conveys a limited, conditional privilege.

Nothing in this part shall be construed to grant any person obtaining and maintaining a tobacco retailer permit any status or right other than the limited conditional privilege to act as a tobacco retailer at the location identified on the face of the permit. A tobacco retailer permit does not make the retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

4-2-2109. Requirements for Operation.

- A. It is the responsibility of each tobacco retailer to be informed of the laws affecting the issuance of a tobacco retailer's permit
- B. The sale of tobacco products or paraphernalia from other than a fixed location, including but not limited to tobacco retailing by persons on foot or from vehicles is prohibited and no permit shall be issued under this Article for any such activity.
- C. The display of an advertisement relating to tobacco products or 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 product can be obtained at that location without first obtaining and maintaining a valid tobacco retailer's permit pursuant to this Article, is prohibited
- D. The tobacco retailer shall prominently display the tobacco retail permit in a publicly and readily visible location at the permitted location.
- E. No person engaging in tobacco retailing shall sell or transfer a tobacco product or paraphernalia to another person who appears to be under the age of thirty years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and/or possess the tobacco products.
- F. No person who is younger than the minimum age established by state law for the purchase or possession of any tobacco product shall engage in tobacco retailing.
- G. It shall be a violation of the tobacco retailer permit for a permittee or his or her agent or employee to violate any local, state, or federal tobacco-related law.

4-2-2110. Compliance Monitoring.

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: (i) the Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City; or (ii) the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Los Angeles County Health Department or the California Department of Health Services.

4-2-2111 Suspension or Revocation of Tobacco Retailer Permit

A. In addition to any other remedy authorized by law, the following penalties shall be imposed if the City finds that the permittee or his or her agents or employees has or have violated any of the provisions of this Article.

- 1. Upon a finding by the City of a first violation within any five-year period, the permittee shall pay a civil penalty to the City in the amount of \$250.00.

2. Upon a finding by the City of a second violation within any five-year period, the tobacco retailer permit shall be suspended for ninety (90) days and the permittee shall pay a civil penalty to the City in the amount of \$750.00.

3. Upon a finding by the City of a third violation within any five-year period, the tobacco retailer permit shall be revoked and the permittee shall pay a civil penalty to the City in the amount of \$1,000.00

B. A tobacco retailer permit shall be revoked if the City finds that either one or both of the following conditions exist:

1. One or more of the bases for denial of a permit under Section 4-2-2106 existed at the time application was made or at anytime before the permit issued.

2. The information contained in the permit application, including supplemental information, if any, is found to be false in any material respect.

C. In the event the City suspends or revokes a permit, written notice of the suspension or revocation shall be served upon the permittee within five days of the suspension or revocation in the manner prescribed in Section 4-2-2106. The notice shall contain:

1. A brief statement of the specific grounds for such suspension or revocation;

2. A statement that the permittee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 4-2-2112, to the City Clerk, within ten (10) calendar days of the date of service of the notice; and

3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

D. A permittee for whom a permit suspension is in effect must remove all tobacco products, tobacco paraphernalia and tobacco-related advertising from public view at the address that appears on the suspended permit.

4-2-2112 Denial, Suspension and Revocation--Appeals

A. Any applicant or permittee aggrieved by a decision denying, suspending, or revoking a permit, may appeal the decision by submitting a written appeal to the City Clerk within ten (10) calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

3. The signatures of all parties named as appellants and their official mailing addresses; and

4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by an administrative hearing officer appointed pursuant to Section 1-3-317 of this code.

C. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to each appellant by the City either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

D. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

E. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

F. Any suspension or revocation of a permit shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section.

4-2-2113 Hearings-Generally

A. At the time set for hearing, the hearing officer shall proceed to hear the testimony of the City, the appellant, and other competent persons respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The hearing officer may, upon request of the appellant or upon request of the City, grant continuances from time to time for good cause shown, or upon his or her own motion.

D. In any proceedings under this chapter, the hearing officer has the power to administer oaths and affirmations and to certify to official acts. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

4-2-2114 Form and Contents of Decision-Finality of Decision

A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the permit, the hearing examiner shall affirm the City's decision to deny, suspend, or revoke the permit. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. The notice of decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

4-2-2115. Enforcement.

A. In addition to any other remedy, any person violating any provision of this Article shall be guilty of a misdemeanor for each day such violation continues.

B. In addition to other remedies provided by this Article or by other law, any violation of this Article may be enforced by a civil action brought by the City Prosecutor, including for example, administrative or judicial nuisance abatement proceedings; civil or criminal code enforcement proceedings; and suits for injunctive relief. The City may recover reasonable attorneys fees and costs of suit in any civil action brought by the City Prosecutor to remedy any violation of this chapter.

C. Any violation of this Article may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors.

D. Violations of this Article are hereby declared to be public nuisances subject to abatement by the City.

E. In addition to criminal sanctions and other remedies set forth in this Article, administrative penalties may be imposed pursuant to Article 3 of Chapter 3 of Title 1 against any person violating any provision of this Article. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Article 3 of Chapter 3 of Title 1.

F. The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity.

Section 2. Any tobacco retailer in operation on the effective date of this ordinance shall obtain a tobacco retailer permit within 45 days of the effective date of this ordinance.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article, or its application to any person or circumstance, 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 Article, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance, and shall cause this ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 5. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED AND ADOPTED this ____ day of _____ 2010.

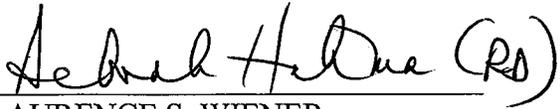
JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

(SEAL)

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY KOLIN
City Manager