

ORDINANCE 1321

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BALDWIN PARK, CALIFORNIA, ADDING CHAPTER 125 TO TITLE XI OF THE BALDWIN PARK MUNICIPAL CODE RELATING TO LICENSING OF TOBACCO RETAILERS

WHEREAS, based in part on the information contained in this Ordinance, the City Council finds the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City of Baldwin Park; and

WHEREAS, the City Council finds a local licensing system for tobacco retailers is appropriate to ensure retailers comply with tobacco control laws and business standards of the City of Baldwin Park, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 438,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and

WHEREAS, the World Health Organization (WHO) estimates by 2030, tobacco will account for 8.3 million deaths per year, killing 50% more people in 2015 than HIV/AIDS, and will be responsible for 10% of all deaths worldwide; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

The Legislature has declared smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950);

State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308);

State law requires tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952);

State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962);

State law prohibits the sale of "bidis" (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1); and

State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of

“roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and

WHEREAS, State law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the City of Baldwin Park to regulate business activity in order to discourage violations of law; and

WHEREAS, the City Council of the City of Baldwin Park has adopted other land use restrictions pertaining to tobacco use. In June of 2004, the City adopted an ordinance (Ordinance 1232) prohibiting smoking in and around City-owned premises and public parks. That ordinance was then amended in February, 2007, (Ordinance 1299) to prohibit smoking at elevators, outdoor dining areas, outdoor service areas, areas within 20 feet of openings to buildings and areas where the public congregate; and

WHEREAS, despite the State’s and City’s efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

Each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily;

More than 75% of all current smokers in 2001 began smoking before the age of 18;

Among middle school students who were current cigarette users in 2004, 70.6% were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4% were not refused purchase because of their age;

In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue; and

WHEREAS, research demonstrates local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:

A review of thirteen California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of 68% in the youth sales rate;

A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998;

A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youth able to purchase tobacco; and

WHEREAS, over 90% of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco; and

WHEREAS, seventy-eight cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from smoking; and

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

Nearly 11% of all tobacco retailers unlawfully sold to minors in 2007;

Non-traditional tobacco retailers such as deli, meat, and donut shops sold to minors in 2007 at a much higher rate than the statewide average, as high as 16%;

Teens surveyed in 2002 say they bought their cigarettes at: gas stations (58%), liquor stores (45%), and supermarkets and small grocery stores (29% combined);

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City of Baldwin Park to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, the City Council has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City of Baldwin Park and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not 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.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BALDWIN PARK DOES ORDAIN AS FOLLOWS:

SECTION 1. The Baldwin Park Municipal Code is hereby amended by adding a new Chapter 125 thereto to read in its entirety as follows:

Chapter 125

“TOBACCO RETAIL LICENSING”

§ 125.010 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “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.

(b) “Department” means Community Development Department, and any agency or Person designated by the Chief Executive Officer to enforce or administer the provisions of this chapter.

(c) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(d) “Proprietor” means 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 share ultimate control over the day-to-day operations of a business.

(e) “Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

(f) “Smoking” means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind) and means the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

(g) "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, and any other item designed for the Smoking, preparation, storing, or consumption of Tobacco Products.

(h) "Tobacco Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and 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 the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(i) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia.

(j) "Tobacco Retailing" shall mean the doing of any of the activities mentioned in the definition of Tobacco Retailer. This definition is without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

§ 125.020 REQUIREMENTS AND PROHIBITIONS

(a) TOBACCO RETAILER LICENSE REQUIRED. It shall be unlawful for any Person to act as a Tobacco Retailer in the City of Baldwin Park without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.

(b) LAWFUL BUSINESS OPERATION. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(c) DISPLAY OF LICENSE. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(d) POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Tobacco Retailing shall 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 that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

(e) **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** 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.

(f) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.

(g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license, including, for example, a person whose license has been 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 Section 125.010; and
- (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.

§ 125.030 LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

(a) No license may issue to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.

(b) No license may issue to authorize Tobacco Retailing at any location that is exclusively zoned for residential uses (R-1, RG or R3 zones).

(c) No license may be issue to authorize Tobacco Retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control) and no license may issue to authorize Tobacco Retailing at any location offering food for sale for consumption on the premises. For example, and without limitation, Tobacco Retailing is prohibited in bars and restaurants. This provision shall take effect on November 1, 2009, which is one (1) year after the effective date of the ordinance adopting this chapter.

§ 125.040 APPLICATION PROCEDURE.

(a) Application for a Tobacco Retailer's license 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.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the

City the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 125.080 of this chapter. Nothing in this chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

(1) The name, address, and telephone number of each Proprietor of the business seeking a license.

(2) The business name, address, and telephone number of the single fixed location for which a license is sought.

(3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this chapter. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.

(4) Proof the location for which a Tobacco Retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.

(5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years. If Person filing the application for a Tobacco Retailer does not disclose past violations and a license is issued, the license can be revoked as soon as the past violations are discovered pursuant to Section 125.110 below.

(6) Such other information as the Chief Executive Officer deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

(b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days after a change.

(c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to the laws' exemptions.

§ 125.050 ISSUANCE OF LICENSE.

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the Department shall issue a license unless

substantial evidence demonstrates that one or more of the following bases for denial exist:

(a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

(b) The application seeks authorization for Tobacco Retailing at a location for which this chapter prohibits issuance of Tobacco Retailer licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the City with documentation demonstrating by clear and convincing evidence the applicant has acquired or is acquiring the location or business in an Arm's Length Transaction.

(c) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this chapter prohibits a license to be issued.

(d) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to this Code, including, without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law.

§ 125.060 LICENSE RENEWAL AND EXPIRATION.

(a) RENEWAL OF LICENSE. A Tobacco Retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the annual license fee no later than thirty (30) days prior to expiration of the term.

(b) EXPIRATION OF LICENSE. A Tobacco Retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

(1) Submit the license fee and application renewal form; and

(2) Submit a signed affidavit affirming the Proprietor:

(i) has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or

(ii) has waited the appropriate ineligibility period established for Tobacco Retailing without a license, as set forth in Section 125.120(a) of this chapter, before seeking renewal of the license.

§ 125.070 LICENSES NONTRANSFERABLE.

(a) A Tobacco Retailer's license may not be transferred from one Person to another

or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

(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 Proprietor or fully transferred to entirely new Proprietors; and

(2) the new Proprietor(s) provide the City with clear and convincing evidence the new Proprietor(s) have acquired or is acquiring the location in an Arm's Length Transaction.

§ 125.080 LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City of Baldwin Park identified on the face of the permit. For example, nothing in this chapter shall be construed to render inapplicable, supercede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code, including, without limitation, the zoning ordinance, building codes, and business license tax ordinance, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

§ 125.090 FEE FOR LICENSE.

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the City Council. The fee shall be annual and shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

§ 125.100 COMPLIANCE MONITORING.

(a) Compliance with this chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this chapter. The City may designate any number of additional Persons to monitor compliance with this chapter.

(b) The Department or other Person designated to enforce the provisions of this chapter shall check the compliance of each Tobacco Retailer at least as often as established by the Chief Executive Officer which could be as often as three (3) times per a twelve-month (12-month) period. The Department may check the compliance of Tobacco Retailers previously found to be in compliance a fewer number of times so the Department may check the compliance of new licensees and Tobacco Retailers previously found in violation of the licensing law more frequently. Nothing in this paragraph shall create a right of action in any licensee or other Person against the City of Baldwin Park or its agents.

(c) Compliance checks shall be conducted so as to allow the Department to determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco. When the Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.

(d) 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:

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

(2) the Youth Decoy is acting as an agent of a Person designated by the City to monitor compliance with this chapter; or

(3) 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.

§ 125.110 REVOCATION OF LICENSE.

(a) REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 125.020 above.

(b) NEW LICENSE AFTER REVOCATION.

(1) After revocation for a first violation of this chapter at a location within any 5-year period, no new license may issue for the location until ten (10) days have passed from the date of revocation.

(2) After revocation for a second violation of this chapter at a location within any 5-year period, no new license may issue for the location until thirty (30) days have passed from the date of last revocation.

(3) After revocation for a third violation of this chapter at a location within any 5-year period, no new license may issue for the location until ninety (90) days have passed from the date of last revocation.

(4) After revocation for four or more violations of this chapter at a location within any 5-year period, no new license may be issue for the location until five (5) years have passed from the date of the last revocation.

(c) APPEAL OF REVOCATION. A decision of the Department to revoke a license is appealable to the Chief Executive Officer and must be filed with City Clerk within ten (10) days after mailing of the Department's decision. If such an appeal is made, then it shall stay enforcement of the appealed action. An appeal to the Chief Executive Officer is not available for a revocation made pursuant to subsection (d) below. The decision by the Chief Executive Officer shall be the final decision of the City.

(d) REVOCATION OF LICENSE WRONGFULLY ISSUED. A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, one or more of the bases for denial of a license under Section 125.050 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the City. Such a revocation shall be without prejudice to the filing of a new license application.

§ 125.120 TOBACCO RETAILING WITHOUT A LICENSE.

(a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence,

after notice and an opportunity to be heard, any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, then the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailing license as follows:

(1) After a first violation of this section at a location within any 5-year period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty (30) days have passed from the date of the violation.

(2) After a second violation of this section at a location within any 5-year period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety (90) days have passed from the date of the last violation.

(3) After of a third or subsequent violation of this section at a location within any 5-year period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until five (5) years have passed from the date of the last violation.

(b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the Department or peace officer may be appealed pursuant to the procedures set forth in Section 125.110(c). Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(c) For the purposes of the civil remedies provided in this chapter:

(1) each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this chapter; or

(2) each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this chapter;

shall constitute a separate violation of this chapter.

§ 125.130 ENFORCEMENT.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a Person under the age of eighteen (18) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(c) Each violation of this chapter is subject to a civil action brought by the City Attorney, punishable by a civil fine not less than Two Hundred Fifty Dollars (\$250) and not exceeding One Thousand Dollars (\$1,000) per violation.

(d) Each violation of this chapter may, in the discretion of the City Attorney, be prosecuted as an infraction or a misdemeanor when the interests of justice so require.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.

(f) Each violation of this chapter are hereby declared to be public nuisances.

(g) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative citation, judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, 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 Ordinance, or its application to any other person or circumstance. The City Council of the City of Baldwin Park hereby declares 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 3. This ordinance shall go into affect and be in full force and operation from and after thirty (30) days after its final reading and adoption.

SECTION 4. The City Clerk shall certify to the adoption of this ordinance and shall cause a copy of the same to be published or posted in a manner prescribed by law.

PASSED AND APPROVED ON THE 1st day of October 2008

MANUEL LOZANO, MAYOR

ATTEST:

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss:
CITY OF BALDWIN PARK }

I, LAURA M. NIETO, Deputy City Clerk of the City of Baldwin Park, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on September 17, 2008. That there after said Ordinance 1321 was duly approved and adopted at a regular meeting of the City Council on October 1, 2008 by the following vote:

AYES:	COUNCIL MEMBERS:	Marlen Garcia, Monica Garcia, Ricardo Pacheco, Mayor Pro Tem Anthony J. Bejarano, and Mayor Manuel Lozano
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE
ABSTAIN:	COUNCIL MEMBERS:	NONE

LAURA M. NIETO
DEPUTY CITY CLERK