

ORDINANCE NO. 1050

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORCO ADDING CHAPTER 3.70 TO THE NORCO MUNICIPAL CODE ESTABLISHING REGULATIONS FOR THE USE OF CITY TRADEMARKS UNDER THE "TRADEMARK AND LICENSING PROGRAM." CODE AMENDMENT 2019-02

WHEREAS, the City of Norco initiated Code Amendment 2019-02 to amend Norco Municipal Code Chapter 3.70, to establish the "City of Norco Trademark and Licensing Program;" and

WHEREAS, the Code Amendment was duly submitted to said City's City Council for decision at a public meeting for which proper notice was given; and

WHEREAS, the Code Amendment was scheduled on May 1, 2019 on or about 7 p.m. in the Council Chambers at 2820 Clark Avenue, Norco, California 92860; and

WHEREAS, at the time set, the City Council received both oral and written testimony pertaining to the Code Amendment; and

WHEREAS, the "Horsetown USA" trademark was registered with the United States Patent and Trademark Office on July 3, 2007 (Registration No. 3,257,952), serving as the signature of a community branding effort initiated by the City Council and the stated intent of the trademark registration was to promote public awareness of the City of Norco and enhance its economic development opportunities; and

WHEREAS, the mark has been effectively utilized in positioning the City of Norco as a desirable Southern California tourist destination, emphasizing the community's Western-inspired qualities conveyed through its culture, architecture and equestrian lifestyle. Because "Horsetown USA" truly captures the essence of Norco, its use in promotional materials is potentially compelling; and

WHEREAS, after registration in 2007, licensing agreements were prepared and wide range of businesses, from real estate offices to souvenir shops, immediately took advantage of the opportunity to co-brand their diverse products with "Horsetown USA." However, no monetary value was attached to the newly-minted trademark and the conditions regulating its use lacked sufficient specificity to fully protect the City's interests; and

WHEREAS, the City of Norco Trademark and Licensing Program will protect and promote the indicia (name, logos, graphics, marks, etc.) owned by the City of Norco; and

WHEREAS, the goal is to ensure proper use and application of City of Norco trademarks, to strengthen relationships with retailers, licensees, community organizations,

and residents, and to generate revenue that funds community promotion initiatives and programs.

NOW, THEREFORE, the City Council of the City of Norco does hereby find as follows:

- A. In order to comply with and assure protection under federal, state, and international trademark laws, the City of Norco is required to monitor and control all uses of its trademarks.

NOW, THEREFORE, the City Council of the City of Norco does hereby approve as follows:

- A. The City Manager is authorized to sign and administer revised Administrative Policy No. 108 related to the Trademark and Licensing Program.

SECTION 1: The City of Norco hereby establishes the Trademark and Licensing Program and is added to the Norco Municipal Code as follows:

Chapter 3.70 TRADEMARK AND LICENSING PROGRAM

Sections:

- 3.70.010 Intent and purpose.**
- 3.70.020 Administration of chapter.**
- 3.70.030 Custody of trademarks.**
- 3.70.040 Definitions.**
- 3.70.050 Types of license agreements.**
- 3.70.060 Insurance Requirements**
- 3.70.070 Licensing terms and renewal.**
- 3.70.080 Licensing process.**
- 3.70.090 Use of trademarks.**
- 3.70.100 Trademark violations.**

3.70.010 Intent and purpose.

The intent and purpose of the Trademark and Licensing Program is to promote and protect the use of City trademarks. The City of Norco Trademark and Licensing Program will protect and promote the indicia (name, logos, graphics, marks, etc.) owned by the City of Norco. The Program ensures proper use and application of City of Norco trademarks, to strengthen relationships with retailers, licensees, community organizations, and residents, and to generate revenue that funds community promotion initiatives and programs.

3.70.020 Administration of chapter.

The City of Norco hereby establishes a Trademark and Licensing Program. The City of Norco hereby reserves all rights and privileges to City trademarks as outlined and approved by the Norco City Council.

A. The City Manager is responsible for management and administration of the provisions relating to all City trademarks including:

1. The supervision of the use of trademarks;
2. The design, issuance, and control of trademarks;
3. The enforcement of Sections 3.70.090 and 3.70.100.

B. The City Council shall establish forms and fees for the applications and agreements to be used or issued for use of City trademarks under this Chapter.

C. The City of Norco is responsible for maintaining the rights and privileges associated with the Trademark and Licensing Program.

3.70.030 Custody of trademarks.

The City Clerk shall have official custody of official trademarks of the City.

3.70.040 Definitions.

A. Trademark: As defined by the United States Patents & Trademarks Office, “a trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.”

B. Licensee: A person or an organization that has been granted the legal right by the City of Norco, under a trademark license, to use the City’s trademark(s). Anyone or any business/organization wishing to use the City’s trademarks on any product must have a license before any products are manufactured, sold, distributed or marketed.

C. Trademark License: A written legal agreement between the owner of the trademark (licensor) and a retailer/manufacturer/vendor (licensee). The licensor grants permission to the licensee to affix the licensor’s trademark(s) on a product(s). This license must be in place before any products with a City trademark are manufactured, sold, distributed or marketed.

3.70.050 Types of license agreements.

Any person, business, or organization desiring to use a City trademark in any manner and for any purpose must be licensed to do so. Before an individual or business may use the City of Norco’s trademarks, formal permission must be granted by the City of Norco

through a license agreement before any products are manufactured, sold, distributed or marketed. There are several types of licensing agreements to accommodate different licensee needs.

A. One-Time Use License

A One-Time Use License is for individuals, businesses or organizations that wish to use a City trademark on a custom-made product. The product must be customized and cannot be purchased from an existing licensee. The specific product will be manufactured only once for personal, non-commercial use by one member of the Norco community and will not be resold. Approval to use a trademark for a one-time application only does not constitute approval to use the trademark again, or in connection with any other item, or to change the design in any way. The licensee, as well as all products and designs, must be pre-approved before any products are manufactured, sold, distributed or marketed.

Example of a One-Time Use Licensee: A community organization that requests to order a single product (i.e., a flag) for a community event, a local business that requests to order one item (i.e., window sticker, monument sign) to show community pride on its storefront, etc.

B. Crafter License

The Crafter License is for use of City trademarks on domestic handcrafted items sold to individual consumers via events or direct sales. The Crafter License is designed to provide small, home-based entrepreneurs with an opportunity to partner their creativity with the brand recognition of the City of Norco in creating unique items incorporating City trademarks. Under a Crafter License, anticipated sales may not exceed 100 units or sales revenue may not exceed \$2,500 in one contract year, whichever is lower. A Crafter License allows for sales to individual consumers only, not via wholesale or a third party retailer. Items must be hand-made, as no commercially manufactured items are permitted under this license. Sales may only be conducted through retail stores located in the City of Norco. The Crafter License is annually renewable as long as products, designs and distribution plans do not change. The licensee, as well as all products and designs, must be pre-approved before any products are manufactured, sold, distributed or marketed.

Example of a Crafter Licensee: An individual producing domestic handcrafted items in the home with City trademarks and selling/distributing to individual consumers via events or direct sales, such as craft fairs, holiday events, street festivals, farmers markets or local retailers.

C. Local License

The Local License is for production of emblematic merchandise to be sold strictly by a local individual or company located in the City of Norco and for community pride or décor inside local businesses. The Local License is annually renewable as long as products, designs and distribution plans do not change. The licensee, as well as all products and

designs, must be pre-approved before any products are manufactured, sold, distributed or marketed.

Example of Local Licensee: Retailer/manufacturer located in the City of Norco with a valid City business license that requests to mass produce approved commercial item(s) (i.e., stickers) and distribute/sell through channels within the City of Norco; local business that requests to display a saleable product on/in a separate (nonsalable) item that bears a City trademark (i.e., glassware that is used to serve beverages, however the glassware is not actually for sale), etc.

D. Standard License

The Standard License is for production of emblematic merchandise to be resold through various retail distribution channels, such as items for sale in local, regional and national retail outlets. This license is intended for companies that are capable of extensive production and retail distribution of their products. The Standard License is annually renewable as long as products, designs and distribution plans do not change. The licensee, as well as all products and designs, must be pre-approved before any products are manufactured, sold, distributed or marketed.

Example of Standard Licensee: Retailer/manufacturer outside of the City of Norco that requests to mass produce approved commercial item(s) (i.e., stickers) and distribute/sell across multiple distribution channels outside of the City of Norco.

E. Partnership License

The Partnership License is for the use of City trademarks by a third party to promote or advertise that party's business (commercial or charitable) in a way that directly implies association with the City of Norco. A Partnership License is granted to entities with official sponsorship relationships with the City and is limited to initiatives, materials, events or other community activities that are co-sponsored (i.e., monetarily) by the City of Norco. The Partnership License is annually renewable contingent upon 1) a formal sponsorship/partnership agreement with the City of Norco and 2) products, designs and distribution plans do not change. The licensee, as well as all products and designs, must be pre-approved before any products are manufactured, sold, distributed or marketed.

Example of a Partnership Licensee: A local community organization promoting its legitimate agreement/partnership with the City of Norco by including a City trademark on event or program promotional/informational materials.

F. Promotional License

The Promotional License is for companies or manufacturers that wish to produce products used as promotional items. A product bearing a City trademark is considered a promotional item when it is used to increase the sales of another product, increase a company's brand recognition or further a company's association with the City without a formal partnership/sponsorship agreement. Promotional items are not commercial products, as they are not directly sold for profit. The Promotional License is annually

renewable as long as products, designs and distribution plans do not change. The licensee, as well as all products and designs, must be pre-approved before any products are manufactured, sold, distributed or marketed. Promotional items may or may not be co-branded and include, but are not limited to, the following:

1. Products being given away in conjunction with a consumer promotion
2. Products co-branded with corporate and City trademarks
3. Products used as rewards/gifts
4. Products used as dealer loaders

Example of a Promotional Licensee: A business using a City trademark solely to bring attention to a product, product display or service to increase sales, but not to sell the actual item bearing a City trademark. This could include a realtor's advertising, open house signage or promotional materials; a vehicle with a corporate logo and a City trademark; free giveaway items bearing a City trademark and a corporate logo, etc.

3.70.060 Insurance requirements.

Licensees are required to carry minimum \$1,000,000 general liability insurance per incident and to list the City of Norco as an additional insured. The licensee is required to bear all risk in respect of the articles and hold the City of Norco harmless. The City reserves the right, for cases in which the trademark is applied to potentially dangerous merchandise (e.g. steak knives, floatation devices), to require the licensee to obtain an additional product liability insurance policy, with a minimum coverage of \$1,000,000 per incident.

3.70.070 Licensing terms and renewal.

The City Manager's Office may extend the term of Agreement in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement. At time of renewal, the licensee must submit a new application but will not be required to pay the non-refundable application fee as long as there are no changes to the products, designs, materials or distribution plans listed in the original application.

3.70.080 Licensing process.

The process to obtain a license is separated into three phases:

A. Phase I

Applicants will be required to:

1. Complete the Trademark License Application (Exhibit G), including a Product Information Form for each requested product the applicant wishes to license
2. Provide a sample for review showing how the City of Norco trademark would appear on the requested product if the application were approved

3. Pay the non-refundable Application Fee
4. Provide an example of how the applicant's name will be applied to product (company label)
5. Review insurance information and obtain a quote from an agent/carrier

The City Manager's Office will thoroughly evaluate the application to either approve or deny the request. Upon approval, the City Manager's Office will determine the license type the applicant best qualifies under.

Any applicant that is aggrieved by the decision of the City Manager's Office may make a written appeal to the City Manager within fourteen (14) days of the decision. After conducting an administrative appeal hearing, the City Manager shall make a decision which shall be final.

B. Phase II

Approved applicants will be required to:

1. Obtain and provide proof of insurance
2. Submit final product designs

C. Phase III

Approved applicants will be required to:

1. Review and sign the License Agreement
2. Pay annual fee

The City will then deliver trademarked image(s) and "Officially Licensed City of Norco Trademark Product" Certificate to licensee.

3.70.090 Use of trademarks.

The City of Norco reserves the right to disapprove any use of its trademarks, even if such use is not explicitly prohibited by this policy or these guidelines. In instances where there is uncertainty regarding the appropriate use of any City trademarks, the City Manager will consult with the City Attorney.

A. Sole Ownership/Copyright: No one other than the City of Norco may claim copyright or trademark rights in or seek to register any design that uses City trademarks.

B. Approvals: Each use of a City of Norco trademark requires approval. The licensee, as well as all products and designs, must be pre-approved before any products are manufactured, sold, distributed or marketed. The Licensee must provide a sample for review showing how the City of Norco trademark would appear on the requested product before the product is manufactured, sold, distributed or marketed. Approval to use a

trademark in one capacity does not constitute approval to use the trademark again, or in connection with any other item, or to change the design in any way.

C. No Alterations: To maintain brand integrity and to ensure current and future protections under state and federal trademark law, City of Norco trademarks may not be altered in any way, including color, proportions, spelling, punctuation, etc., without the express written approval of the City Manager's Office. Altering a mark would dilute the integrity, strength and value of the mark. Products produced with altered logos, where the express permission of the City of Norco was not provided, may be considered counterfeit and subject to all available legal remedies, including the seizure of products. City trademarks are the intellectual property of the City of Norco and must be properly maintained (i.e., cannot appear damaged or low quality).

D. Co-Branding: City of Norco trademarks may not be used in conjunction with the name or trademark(s) of any other entity without the prior written permission of that entity. If permission is granted by the City Manager's Office to use both City trademark and another party's trademark in a design, the trademarks must be distinct and separate from each other, and the City's trademarks must not be overshadowed or diminished in any way in comparison to the other entity's trademark. Approval of any such dual use of City trademarks will be limited to instances where there is a compelling institutional priority in allowing such a use.

E. No Endorsement: City of Norco trademarks may not be used in any manner that suggests or implies the City's endorsement of other organizations, companies, products, services, political parties or views, or religious organizations or beliefs.

F. Non-Discrimination: City of Norco trademarks may not be used in any way that discriminates or implies discrimination against any persons or groups based on race, color, creed, religion, national origin, citizenship, sex, age, marital status, sexual orientation, disability or military status or in any other way that would be a violation of the City's non-discrimination policies or practices.

G. Designation Symbols: All uses of City trademarks on products will incorporate the appropriate trademark designation symbols, either ® or ™. In rare instances, omission of the symbols may be granted due complications with production processes or when inclusion of the symbols interferes with the integrity of the design or significantly reduces consumer appeal. Generally, a trademark endorsement statement is included instead on the back of such items or on the package, label or hangtag. Registration marks are not required when trademarks are used by City departments in printed materials. Exemptions to this policy on other City items will be made on a case-by-case basis.

H. Use of Trademarks on Commercial Products: The City has the right to decline any item and will not approve the use of its trademarks on certain types of products. These include, but are not limited to the following:

1. Business Supplies—stationary, letterhead, business cards, uniforms, receipts, product labels, email signatures
 2. Alcoholic beverages (unless produced by an official corporate sponsor of the City of Norco, per contract agreement)
 3. Tobacco products (unless produced by an official corporate sponsor of the City of Norco, per contract agreement)
 4. Inherently dangerous products—firearms, weapons, explosives, fuels
 5. Illegal drug-related products
 6. Goods related to gambling, lotteries, sweepstakes
 7. Healthcare products and toiletries
 8. Personal bank checks and address labels
 9. Religious or burial goods
 10. Products in "poor taste," including bathroom products
 11. Products of a political nature
 12. Obscene or disparaging products—nude photographs, caricature poster art or designs that would tend to damage the reputation or degrade the goodwill of the City of Norco as represented by the trademarks, or that may disparage the City of Norco, its Mayor, Council Members, employees, agents and others acting on its behalf.
 13. Sexually suggestive products—inappropriate slogans imprinted on clothing and the configuration of certain novelty items
 14. Products that present an unacceptable risk of liability
 15. Products that are harmful to the mission or image of the City of Norco
- I. Allowable commercial products may include:
1. Apparel
 - a. Athletic Style Garments, Running shorts, T-Shirts, Hats, Socks, Walking Shorts, Jackets, Sweatpants, Windbreakers, Jerseys, Sweatshirts, Polo Shirts, Tank Tops
 2. Other Items
 - a. Athletic Bags, Cufflinks, Pencils, Auto Mats, Cushions, Pennants, Baby Bottles, Decals, Pens, Backpacks, Figurines, Picnic Sets, Badges, Flying Disks, Pins, Basketballs, Floor Mats, Plaques/Picture Frames, Beach Mats, Footballs, Plush and Stuffed Animals, Belts, Garment Bags, Postcards, Belt Buckles, Glassware, Posters, Bibs, Golf Balls/Bags, Scarves, Blankets, Golf Clubs & Covers, Snack Trays, Book Bags, Handkerchiefs, Sport Shoes, Bookmarks, Hats, Stools, Bumper Stickers, Ice Buckets, Sunglasses, Calendars, Jewelry, Tennis Racket Covers,

Community Maps, Key Chains, Thermos Bottles, Community Photos, Key Holders, Towels, Card Holders, Lamps, Visors, Carry-All Bags, Letter Openers, Volleyballs, Casual Shoes, License Plate Frames, Wall Hangings, Ceramic Plates, Loose Leaf Binders, Wallets, Ceramic Cups/Mugs, Memo Pads, Wastebaskets, Chairs, Mirrors, Watches, Rings, Neckties, Wrapping Paper, Clocks, Notebooks, Coin Purses, Paper Holders, Magnets

J. Artwork/Design Restrictions: Certain artwork or designs will not be approved for use in conjunction with City of Norco trademarks. These include, but are not limited to:

1. Art depicting or implying the use or endorsement of
 - a. Alcoholic beverages (unless produced by an official corporate sponsor of the City of Norco, per contract agreement)
 - b. Tobacco products (unless produced by an official corporate sponsor of the City of Norco, per contract agreement)
 - c. Illegal drugs
 - d. Firearms or other weapons
 - e. Racist, sexist, hateful, demeaning or degrading language or statements
 - f. Political Campaigns
 - g. Profanity
 - h. Sexual acts
 - i. Statements impugning other municipalities
2. Art or a design which gives the impression of being the official City of Norco seal.
3. Art or a design incorporating trademarks or copyrights not owned by the City of Norco, unless written permission for such use, satisfactory in form and substance to the City, is obtained from the trademark holder or copyright owner and approved in advance by the City of Norco.

K. Use of Trademarks in Publications

1. City of Norco trademarks may be used on the cover or within the text of a publication when there is an article about the City of Norco, its City Council Members, commission members or employees.
2. City of Norco has the right to require publications to include the following disclaimer in the publication: "Not an Official Publication of the City of Norco"
3. City of Norco trademarks may be used in literary works that generally provide historical information about and promote the goodwill of the City. Trademarks may be licensed for such use by permission letter after review by the City Manager's Office.

4. Articles that include the City of Norco's name, but no logos or slogans, are not subject to licensing fees and are considered for informational use.

L. Use of Trademarks in Advertising: Use of City of Norco trademarks in advertising requires prior approval (except as otherwise noted) from the City Manager's Office. City trademarks may, with approval, be used in the following kinds of advertising:

1. By a commercial entity that is a licensee of the City of Norco, but only when there is an underlying related product that is licensed and only when the licensed product is being advertised (approval granted through license agreement). Retailers or licensed manufacturers may use pictures in advertisements showing licensed products with City indicia for sale.

2. By a commercial entity in ads that are of an informational, congratulatory or community pride nature. These ads may not contain solicitation for the sale of their products or services, but the company name/logo may appear.

3. In corporate advertisements in official programs sold or distributed at community events, subject to terms of a Partnership License.

4. In promotional activities pursuant to the terms of a Promotional License. Promotional activities are activities such as advertising or offering promotional products to further the growth, development, acceptance and/or sale of goods or services.

5. By companies that have done work for the City of Norco. The company may list the City name with other customers. These companies may include photographs of the actual work area, provided the City department who contracted the work approves of such use.

M. Use of Trademarks by Other Municipalities/Public Agencies: Use of City trademarks by neighboring municipalities and public agencies will be considered on a case-by-case basis. In these instances, the City Manager's Office will determine when it is appropriate to use the official City seal or a City trademark.

N. Use of Trademarks by Non-City Entities: Use of City trademarks by organizations that are not affiliated with the City of Norco will be reviewed on a case-by-case basis and may require a license agreement. The following guidelines generally apply:

1. Businesses/organizations may use City trademarks in a non-permanent fixture (e.g., window painting, removable lettering on marquees) supporting a City event or showing community pride. Such displays may not contain solicitation for the sale of their products or services, but the company name/logo may appear.

2. Businesses/organizations may not establish a permanent statue or mural that includes City trademarks or likeness without written permission from the City Manager's Office.

3. Businesses, individuals or organizations may not use the trademarks of the City on websites or social media sites without written permission from the City Manager's Office.
4. Individuals or organizations may not use the City's trademarks in conjunction with a candidate for political office or policy/legislative issue.
5. With the exception of certain businesses that were established prior to the Trademark and Licensing program, private and/or corporate businesses may not use City trademarks in their business name.

3.70.100 Trademark violations.

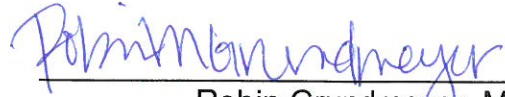
Trademark infringement is a violation of the exclusive rights attached to a trademark without the authorization of the trademark owner or any licensees (provided that such authorization was within the scope of the license). Infringement may occur when one party, the "infringer," uses a trademark that is identical or confusingly similar to a trademark owned by another party in relation to products or services that are identical or similar to the products or services that the registration covers. An owner of a trademark may commence legal proceedings against a party that infringes its registration. The City is prepared to enforce trademark infringements in order to protect its residents and to protect the City's assets against the possibility of dilution of its trademarks and their value. Failure to obtain a license or approval from the City of Norco would be grounds for the seizure of all non-approved products bearing the City's marks. The City of Norco reserves the right to pursue any and all legal remedies against infringement of its trademarks. If the City engages the services of an agent, the agent is authorized to pursue enforcement actions on the City's behalf.

SECTION 2: EFFECTIVE DATE: This Ordinance shall become effective 30 days after final passage thereof.

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

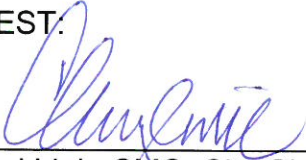
SECTION 4: POSTING: The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall cause the same within 15 days of its passage to be posted at no less than five public places within the City of Norco.

PASSED AND ADOPTED by the City Council of the City of Norco at a regular meeting held on May 15, 2019.



Robin Grundmeyer, Mayor
City of Norco, California

ATTEST:



Cheryl Link, CMC, City Clerk
City of Norco, California

APPROVED AS TO FORM:

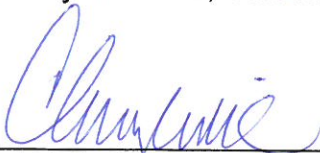


John R. Harper, City Attorney
City of Norco, California

I, CHERYL LINK, CMC, City Clerk of the City of Norco, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Norco, California, duly held on May 1, 2019 and thereafter at a regular meeting of said City Council duly held on May 15, 2019, it was duly passed and adopted by the following vote of the City Council:

AYES:	GRUNDMEYER, HANNA, BASH, HOFFMAN, NEWTON
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Norco, California, on May 15, 2019.



Cheryl Link, CMC, City Clerk
City of Norco, California