

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF ORDINANCE NO. 90.00)
ESTABLISHING TOBACCO RETAIL LICENSING IN) ORDINANCE NO. 90.00
KLAMATH COUNTY AND AMENDING KLAMATH)
COUNTY CODE)

WHEREAS, businesses in Klamath County that sell tobacco products currently do not have to obtain a license in exchange for the privilege of selling tobacco; and

WHEREAS, research shows a tobacco retail license is an effective way to reduce youth access to tobacco products; and

WHEREAS, thirty-five (35%) percent of youth were able to successfully purchase tobacco products during the 2014-2015 Food and Drug Administration inspections; and

WHEREAS, twenty-eight (28%) percent of 11th graders in Klamath County reported regular tobacco use; and

WHEREAS, ninety percent (90%) of smokers start before age 18.

NOW THEREFORE, it is the intent of the Board of County Commissioners, in enacting this ordinance, to provide for the public health, safety, and welfare of youth by amending Klamath County Code to require a license to sell tobacco, resulting in a restriction of tobacco sales to those younger than the minimum age established by state law for the purchase or possession of tobacco products. Klamath County Code is hereby amended to add Chapter 412, Tobacco Retail Licensing, as set forth below:

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CHAPTER 412
TOBACCO RETAIL LICENSING

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412.001 DEFINITIONS.

(1) **Arm's Length Transaction:** A sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, none 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 ordinance is not an Arm's Length Transaction.

(2) **Department:** Klamath County Health Department

(3) **Inhalant Delivery System:**

Any device or component of a device meeting the definition of "inhalant delivery system" in Oregon House Bill 2546.

(a) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or

(b) A component of a device described in this definition or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this definition, whether the component or substance is sold separately or is not sold separately.

(4) **Inhalant Delivery System Retail Store:** A retail store utilized primarily for the sale of inhalant delivery system products and accessories, and in which the sale of other products is merely incidental.

(5) **Retail Sale:** Any transfer, conditional or otherwise, of title or possession of Tobacco Products.

(6) **Tobacco Products:**

(a) Any substance containing, made, or derived from tobacco that is intended for human consumption by any means including, but not limited to, cigarettes, cigars, little cigars, pipe tobacco, shisha, hookah tobacco, snuff, chewing tobacco, dipping tobacco, orbs, strips, sticks, or any other preparation of tobacco.

(b) Electronic cigarettes or any inhalant delivery system containing or delivering nicotine.

- (c) Vape juice or e-liquid defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing product, in any amount or concentration, including tobacco plant extract, tobacco dust, or synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, pre-filled cartridges, or as part of a kit.
- (d) This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

(7) Tobacco Retailer: Any person or entity, as defined in ORS 60.001, that owns a business that sells, offers for retail sale, exchanges or offers to exchange tobacco products, including inhalant delivery system retail stores, or that distributes free or low cost samples of tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

412.010 LICENSE REQUIREMENTS.

(1) A Tobacco Retail License is required for each address at which tobacco products are available from a Tobacco Retailer.

(2) Application for a Tobacco Retail License issued under this ordinance shall be made on forms provided by the Department.

(3) To obtain a Tobacco Retail License, each applicant must meet all requirements of this ordinance, the rules adopted pursuant to this ordinance, and federal, state, and local laws relating to the retail sale of tobacco products.

(4) A Tobacco Retail License fee shall be submitted with the license application.

(5) The Tobacco Retail License shall be displayed in a prominent and conspicuous place at the location licensed.

(6) Each Tobacco Retail License shall be valid from January 1st to December 31st of a calendar year, or for a prorated portion of the year if the license is for a new location.

(a) The Tobacco Retail License must be renewed annually on or before December 31st.

(b) The application for renewal is considered late if submitted after December 31 and is subject to a late fee as recommended by the department and adopted by the Board of County Commissioners.

(c) Tobacco Retail Licenses for 2017, the first year of adoption of this ordinance, do not have to be obtained. Tobacco Retail Licenses are required beginning January 1, 2018.

412.020 LICENSE NON-TRANSFERABLE.

(1) A Tobacco Retail License may not be transferred from one Tobacco Retailer to another or from one location to another.

(2) Prior violation of this ordinance at a location will continue to be counted against a location, and license ineligibility and suspension periods will continue to apply to a location unless 100 percent of the interest in stock, assets or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners. The new owner must provide the Department with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

(3) Prior violation of this ordinance may be considered in subsequent enforcement actions and application for additional Tobacco Retail Licenses.

412.030 PROHIBITED ACTIVITIES.

(1) It is a violation of this ordinance for a Tobacco Retailer to make available tobacco products:

- (a) Without a Tobacco Retail License;
- (b) From a motor vehicle;
- (c) Outside original packaging containing health warnings satisfying the requirements of federal law;
- (d) To a person who is younger than the minimum age established by state law for the purchase or possession of tobacco products.

(e) To a person who appears to be under the age of 27 years without first examining the recipient's identification to confirm that the recipient is at least the minimum age under federal, state, or local law to purchase and possess tobacco products, as required by the Oregon Health Authority.

(2) It is a violation of this ordinance to fail to comply with license terms, the rules adopted pursuant to this

ordinance, and federal, state, and local laws relating to the retail sale of tobacco products.

412.040 INSPECTIONS.

(1) The Department Director, or designee, shall have authority to inspect and investigate potential violations of this ordinance in accordance with the tobacco retail licensing policies and procedures.

(2) The provisions of this ordinance will not be deemed to restrict the right of the county to inspect any property pursuant to any applicable federal, state, or local law regulation.

412.050 ENFORCEMENT.

(1) The Department Director, or designee, shall enforce the provisions of this ordinance and the policies and procedures adopted pursuant to this ordinance.

(2) The Department Director, or designee, may issue civil penalties, impose restrictions, and deny, suspend, or revoke a Tobacco Retail License based upon a finding that a Tobacco Retailer is in violation of the rules adopted pursuant to this ordinance, and federal, state, or local laws relating to the retail sale of tobacco products.

412.060 FEES.

(1) License fees under this ordinance will be set by the Department and adopted by the Board of County Commissioners.

(2) All license fees imposed for a Tobacco Retail License shall be remitted to the Klamath County Treasurer for deposit into the tobacco retail licensing enforcement fund.

412.070 APPEALS AND HEARINGS.

(1) Any person receiving a written notice of violation of this ordinance may request a hearing in accordance with Chapter 800, Uniform Civil Violation Procedure of the Klamath County Code.

412.080 PENALTIES

(1) Notwithstanding 412.070 and Chapter 800, alternative civil penalties under this ordinance may be set by the Department and adopted by the Board of County Commissioners.

(2) In addition to any civil penalty imposed, the Department Director, or designee, may impose restrictions, and deny,

suspend, or revoke a Tobacco Retail License based upon a finding that a Tobacco Retailer is in violation of the rules adopted pursuant to this ordinance, or federal, state, or local laws relating to the retail sale of tobacco products.

(3) Surplus funds generated from civil penalties shall be remitted to the Klamath County Treasurer for deposit into the tobacco education and cessation fund.

412.090 YOUTH DECOY PARTICIPATION

(1) Klamath County shall not enforce any law establishing a minimum age for tobacco product 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:

(a) The Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the person designated by the County to monitor compliance with this ordinance.

(b) The Youth Decoy is acting as an agent of a Person designated by Klamath County.

(c) The Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by Klamath County Public Health or the Oregon Health Authority.

412.100 Severability. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Chapter.

This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DONE and DATED this 2nd day of May, 2017.

KLAMATH COUNTY BOARD OF COMMISSIONERS



Chair



Commissioner



Commissioner

APPROVED FOR LEGAL SUFFICIENCY:



David P. Groff
Klamath County Counsel

ATTEST:



Recording Secretary