



BOARD OF COMMISSIONERS

Agenda Item Summary

Agenda Category: Public Hearing	Item No:
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Meeting Date: May 9, 2023

Time Certain: 1:15 p.m.

Department: Board of County Commissioners

Issue: First hearing on proposed Ordinance # 90.02

Background: Proposed changes have been made due to public health concerns on the high amount of tobacco use in youth and their ability to purchase tobacco illegally. New language has been added to clarify the definition of child care facility and changes to the proximity of a new tobacco retailing business to the location of a school or child care facility. The proposed Ordinance is attached.

Recommended Motion: Hold the first hearing for discussion and the taking of public testimony (if any) on the proposed Ordinance. The second and final hearing is scheduled for May 23, 2023 @ 1:15 p.m. Fiscal impact: Publication costs to the Herald and News for the hearings - \$128.46 from the BOCC legal notice publish budget 1000-1050-1051-1000-62030

DONE AND DATED this 9th Day of May, 2023.

Chair
Approved
Denied

Vice-Chair
Approved
Denied

Commissioner
Approved
Denied

CHAPTER 412 CONTENTS

CHAPTER 412
TOBACCO RETAIL LICENSING

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Ordinance No. 90.00 - 5/2/2017
Ordinance No. 90.01 - 2/19/2018
Ordinance No. 90.02 -

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 and per~~ ORS 431A.175.

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

(5) Tobacco Products: Any product, substance or device meeting the definition of "Tobacco Products" in Oregon ~~Senate Bill 754 and per~~ ORS 431A.175.

(a) 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.

(6) Tobacco Retailer: Any person or entity, as they are 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 systems, 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.

(7) School: Any real property comprising a public or private elementary, secondary, or career school attended primarily by persons under the age of 18.

(8) Child Care facility: A licensed child care facility preschool other than family day care home as defined in ORS 329A.250

(9) Measurement of proximity: As measured by a straight line from the nearest point of the property line of the parcel on which the facility is located to the nearest point of the property line of the parcel on which the applicant's business is located. For the purposes of computing the distances for the buffers, businesses and facilities within the City limits of any municipality shall be included. These conditions shall also apply within the unincorporated areas of Klamath County.

Commented [SC1]: Proposed new language

Commented [SC2]: This sentence suggested by Klamath Falls City Attorney.

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) The Tobacco Retailer must post signage at the point of sale that discloses information about the Oregon Tobacco Quitline, 1-800-QUIT-NOW or 1-877-2NO-FUME and <https://www.quitnow.net/oregon/>.

(7) 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.~~

(8) No license may be issued to authorize tobacco retailing at any location within ¼ mile (1320 feet) of a school or youth-oriented child care facility, as measured by the shortest distance traveled from any entrance of the proposed

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location for tobacco retailing to the parcel boundary of the school or ~~youth-oriented~~child care facility, provided, however, that the prohibition contained in this subsection shall not apply to any tobacco retailer operating lawfully on the date immediately prior to this ordinance becoming effective.

Commented [SC3]:

(9) No license may be issued to authorize tobacco retailing at a location that is within 1,000 feet of a location occupied by another tobacco retailer, as measured by the shortest distance traveled from any entrance of the proposed location to any entrance of the existing location, provided, however, that the prohibition contained in this subsection shall not apply to existing tobacco retailers operating lawfully on the date immediately prior to this ordinance becoming effective.

Commented [SC4]: Proposed new language

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 21, 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

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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 will take effect ninety (90) days from the date of its adoption.

DONE and DATED this _____ day of _____, 20172023.

KLAMATH COUNTY BOARD OF COMMISSIONERS

Chair Commissioner Commissioner

APPROVED FOR LEGAL SUFFICIENCY:

ATTEST:

~~David P. Groff~~ Marcus M. Henderson Recording Secretary
Klamath County Counsel

DRAFT