



BOARD OF COMMISSIONERS  
Agenda Item Summary

Agenda Category: Ordinance

Item No: 10.2.2.1

Date: October 31, 2023

Originating Department: Board of County Commissioners

Issue: Ordinance # 90.03 – Tobacco Retail Licensing

**Background:** Proposed changes have been made at the request of the Klamath County Public Health Director that further defines "Tobacco Retailer" together with adding penalties for first, second and third violations. The Board of County Commissioners held two public hearings and received public input on the proposed changes.

**Recommended Motion:** The Board of Commissioners adopts and signs final Ordinance #90.03. Fiscal impact: None

DONE AND DATED this 31st DAY OF OCTOBER, 2023.

Chair

Approved

Denied

Vice-Chair

Approved

Denied

Commissioner

Approved

Denied

BOARD OF COUNTY COMMISSIONERS  
KLAMATH COUNTY, OREGON

IN THE MATTER OF SCHEDULING PUBLIC )  
HEARINGS REGARDING PROPOSED )  
ORDINANCE NO. 90.03, TOBACCO RETAIL ) ORDINANCE NO. 90.03  
LICENSING )

WHEREAS, At the request of the Klamath County Public Health Director, proposed changes to the Klamath County Code, Chapter 412, Section 412.001 (6) to further define "Tobacco Retailer"; and

WHEREAS, Proposed changes to Chapter 412, Section 412.080 "Penalties", have been added for first, second and third violations; and

WHEREAS, the Board of County Commissioners held two public hearings for the taking of testimony and consideration. The first hearing was held on October 17, 2023 and the final hearing was held on October 31, 2023.

NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDAINS:

Chapter 412, *Tobacco Retail Licensing*, is hereby adopted to read as follows:

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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 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 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 in

adult-only facilities. The retailer must have a mailing address, business name, federal tax identification number for the business, and a premise as defined by OAR 333-015-0207 (b) (10) that is fixed and permanent. 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.

#### **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 1<sup>st</sup> to December 31<sup>st</sup> 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 31<sup>st</sup>.

(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)

(8) No license may be issued to authorize tobacco retailing at any location within  $\frac{1}{4}$  mile (1320 feet) of a school or child care facility, as measured by the shortest distance traveled from any entrance of the proposed location for tobacco retailing to the parcel boundary of the school or 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.

(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.

#### **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 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, OAR 333-015-0262 and this section, civil penalties under this ordinance shall be as follows:

- First Violation- \$1,000 fine which may be waived if the violator is required to successfully complete a diversion program as determined by a court of competent jurisdiction, together with a warning of license suspension;
- Second Violation - \$2,000 fine and a thirty (30) day license suspension;
- Third Violation - \$3,500 and license revocation.

The above penalties may be adjusted, no more than annually, 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

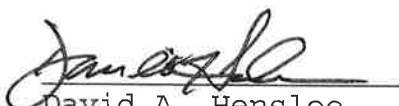
subcontracting, by Klamath County Public Health or the Oregon Health Authority.

**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 31<sup>st</sup> day of October, 2023.

KLAMATH COUNTY BOARD OF COMMISSIONERS

  
David A. Henslee

  
Kelley Minty

  
Derrick DeGroot

APPROVED FOR LEGAL SUFFICIENCY:

**Out of Office Today**

\_\_\_\_\_

Marcus M. Henderson  
Klamath County Counsel

ATTEST:

  
\_\_\_\_\_

Recording Secretary