

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 14-19

IN THE MATTER OF AMENDING LANE
CODE CHAPTER 9 TO ADOPT TOBACCO
LICENSE AND ELECTRONIC
CIGARETTE REGULATIONS

Following a joint meeting and joint hearing before the Board of County Commissioners of Lane County and the Lane County Board of Health, the Board of County Commissioners of Lane County **ORDAINS** as follows:

1. Lane Code Chapter 9 is amended by adding the following sections:

REMOVE THESE SECTIONS

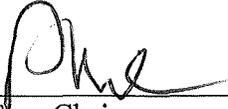
none

INSERT THESE SECTIONS

9.700 through 9.774

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

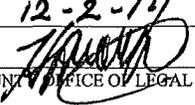
ENACTED this 16th day of December, 2014.



Pat Farr, Chair
Lane County Board of Commissioners



Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 12-2-14


LANE COUNTY OFFICE OF LEGAL COUNSEL

Lane Code
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FOOD AND BEVERAGE SERVICE WORKER'S PERMIT

9.690 Effective Date.

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TOBACCO REGULATIONS

9.700 Definitions.

As used in sections 9.700 through 9.774, the following words or terms have the following meanings:

(1) "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 these regulations' sections 9.700 through 9.774 is not an Arm's Length Transaction.

(2) "Business" means any sole proprietorship, partnership, joint venture, corporation, company, association, or other entity formed for purposes that include profit-making.

(3) "County" or "Lane County," for the purpose of this ordinance, means unincorporated areas of Lane County.

(4) "Department" means the Lane County Health & Human Services Department, and any agency or Person designated by the Department to enforce or administer the provisions of sections 9.700 through 9.774.

(5) "Electronic Smoking Device" means any electronic means any electronic product that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic Smoking Device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(6) "Employee" means any Person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers services for an Employer.

(7) "Employer" means any Business or Nonprofit Entity that retains the service of one or more Employees.

(8) "Independent Contractor" means any Person who is retained with a contract by any Employer in consideration for direct or indirect monetary wages or profit.

(9) "Nominal Cost" means the cost of any item imposed for the transfer from one person to another for less than the total of: (1) twenty-five percent (25%) of the fair market value of the item exclusive of taxes and government fees; plus (2) all taxes and government fees previously paid and all taxes and government fees still due on the item at the time of transfer.

(10) "Nonsale Distribution" means to give, furnish, or cause or allow to be given or furnished, wholly or for sampling, within Lane County, a Tobacco Product at no cost or at Nominal Cost to a Person who is not a Tobacco Retailer.

(11) "Person" means any natural person, Business, employer, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

(12) "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest is 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 is deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

(13) "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 Tobacco Retailer or employee of the Tobacco Retailer and a direct person-to-person transfer between the purchaser and the

Tobacco Retailer or employee of the Tobacco Retailer. A vending machine is a form of Self-Service Display.

(14) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, or other tobacco like product or substance in any manner or in any form. "Smoking" also includes the use of an Electronic Smoking Device which creates an aerosol, in any manner or in any form.

(15) "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, cigarette rolling machines, and any other item specifically designed for the consumption or preparation of Tobacco Products.

(16) "Tobacco Product" means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an Electronic Smoking Device. Tobacco product does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(17) "Tobacco Retailer" means any Person who holds a license to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing" means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange. *(Revised by Ordinance No. ____, Effective ____)*

Electronic Smoking Devices and Minors

9.705 Purpose and Findings.

In addition to Oregon State regulations on the sale, possession, and use of tobacco and tobacco products to and by persons under 18 years of age, LC 9.700 through 9.774 are enacted to regulate the sale, possession, and use of Electronic Smoking Devices in Lane County to and by persons under 18 years of age.

Lane County passes this ordinance out of a desire to promote a wholesome environment where children are encouraged to make healthful choices that allow them to grow up to lead healthy, productive and prosperous lives. Nicotine is a highly addictive toxic substance, the use of which is initiated primarily by young people. Nicotine use is associated with the risk of numerous adverse health consequences, including increased susceptibility of addiction to other drugs of abuse and the use of tobacco, and with serious neurobehavioral problems and nicotine use in children of mothers that use during pregnancy. *(Revised by Ordinance No. ____, Effective ____)*

9.710 Requirements and Prohibitions.

(1) Sale to minors prohibited. All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, an Electronic Smoking Device to a person under 18 years of age in any place within Lane County.

(2) Positive identification required. Tobacco Retailers are prohibited from selling, giving or furnishing an Electronic Smoking Device to a person who appears to be under 27 years of age without first examining identification to confirm that the recipient is at least 18 years of age.

(3) Self-Service Displays of Electronic Smoking Devices are prohibited.

(4) Nonsale Distribution Prohibited. All persons are prohibited from the Nonsale Distribution of any Electronic Smoking Device to a Person who is not a Retailer. *(Revised by Ordinance No. ____, Effective ____)*

9.715 Possession, Distribution and Use by Minors.

(1) It is unlawful for any person under 18 years of age to possess, receive, purchase, sell, distribute, use or consume Electronic Smoking Devices. It is unlawful for any person under 18 years of age to have personal possession of an Electronic Smoking Device, except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian.

(2) A minor acting under the supervision of an authorized adult may purchase, attempt to purchase or acquire Electronic Smoking Devices for the purpose of testing compliance with local law or Tobacco Retailer management policy limiting or regulating the delivery of Electronic Smoking Devices to minors. *(Revised by Ordinance No. ____, Effective ____)*

9.720 Non-Retaliation.

Under the County’s enforcement efforts, Persons, Tobacco Retailers, and Employers are prohibited from intimidating, threatening any reprisal, or effecting any reprisal, for the purpose of retaliating against another Person that seeks to attain compliance with LC 9.710 to 9.725. *(Revised by Ordinance No. ____, Effective ____)*

9.725 Penalties and Enforcement.

(1) The penalty and enforcement provisions are cumulative and in addition to any other remedies available at law or in equity.

(2) Violations of LC 9.710 to 9.720 are subject to a civil action brought by Lane County, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation.

(3) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC9.710 to 9.720 constitutes a violation of those sections.

(4) In addition to other remedies provided by this section 9.725, the county can seek appropriate, equitable relief including but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and injunctive relief. A person who is convicted of a first violation of subsections (1) or (2) of LC 9.715 may be ordered to appear in teen court or participate in a tobacco education program or a tobacco use cessation program. A person who is convicted of a second or subsequent violation of subsections (1) or (2) of LC 9.715 is subject to a civil action brought by Lane County, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation. *(Revised by Ordinance No. ____, Effective ____)*

Tobacco Retail Licensing and Sale Regulations Ordinance

9.752 Requirements and Prohibitions.

(1) A person commits a violation of these Tobacco Retail Licensing and Sale Regulations (LC 9.752 to 9.774) if the Person knowingly engages in the following conduct:

(a) Selling, offering for sale, or exchanging or offering to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia in Lane County without first obtaining and maintaining a valid Tobacco Retailer’s license under

LC 9.752 to 9.774 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) Violating any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing in the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license was issued. Failing to ensure that Employees know how to comply with tobacco control laws. Tobacco Retailers can be held responsible for violations committed by Employees.

(c) Failing to prominently display a Tobacco Retailer license in a publicly visible location at the licensed location.

(d) Failing to examine the identification and confirm that the holder is at least 18 years of age, before selling or transferring Tobacco Products or Tobacco Paraphernalia to a natural person who appears to be under 27 years of age.

(e) Selling, giving, or furnishing, or causing to be sold, given or furnished, a Tobacco Product or Tobacco Paraphernalia to a natural person who is younger than 18 years of age.

(f) Permitting a natural person who is younger than 18 years of age or younger than the minimum age established by state law for the purchase or possession of Tobacco Products to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia.

(g) Engaging in Tobacco Retailing by means of a Self-Service Display.

(h) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, failing to keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this subsection constitutes Tobacco Retailing without a valid license under LC 9.772.

(i) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, displaying 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.

(j) Engaging in the Nonsale Distribution of Tobacco Products or Tobacco Paraphernalia in Lane County.

(k) Honoring or accepting a price reduction instrument in any transaction related to the sale of Tobacco Products or Tobacco Paraphernalia to a consumer.

(l) Selling or offering for sale Tobacco Products or Tobacco Paraphernalia to a consumer through any multi-package discount or otherwise provide to a consumer any Tobacco Products or Tobacco Paraphernalia for less than the listed price in exchange for the purchase of any other Tobacco Products or Tobacco Paraphernalia by the consumer.

(m) Selling, offering for sale, or otherwise providing any product other than Tobacco Products or Tobacco Paraphernalia to a consumer for less than the listed price in exchange for the purchase of Tobacco Products or Tobacco Paraphernalia by the consumer.

(n) Selling, offering for sale, or otherwise providing Tobacco Products or Tobacco Paraphernalia to a consumer for less than the listed price.

(o) Failing to conspicuously post a tobacco health warning approved by the Department in an area visible to all customers.

(p) Failing to conspicuously post signage provided by the Department that discloses current referral information about the Oregon Tobacco Quitline 1-800-QUIT-NOW.

(q) Engaging in Tobacco Retailing within 1000 feet of any school, child care center, or other establishment serving children or from other than a fixed retail location in violation of 9.754 below

(2) Tobacco Retailer’s will be eligible for an incentive program reducing the annual license fee by \$75 if they: 1) have no tobacco retail violations in the previous year and 2) use a cash register that reads the magnetic strip on drivers’ licenses to verify age. (Revised by Ordinance No. ____, Effective ____)

9.754 Limits on Eligibility for a Tobacco Retailer License.

(1) WITHIN 1,000 FEET OF ESTABLISHMENTS SERVING CHILDREN. No license will be issued to a Tobacco Retailer located “within 1,000 feet of any school, child care center, and other establishments that serve children” as follows:

(a) Except as provided in subsection (ii), no Tobacco Retailer license will be issued within one thousand (1,000) feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area 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 this subsection, a “Youth-Populated Area” means a parcel in Lane County that is occupied by:

- (i) a private or public kindergarten, elementary, middle, junior high, or high school;
- (ii) a library open to the public;
- (iii) a playground open to the public;
- (iv) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
- (v) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. “Recreation facility” includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;
- (vi) an arcade open to the public;
- (vii) a park open to the public or to all the residents of a private community;
- (viii) a licensed child-care facility or preschool;

(b) A Tobacco Retailer in operation as of October 21, 2014 is exempt from the requirements of section (1) above.

(2) MOBILE VENDING. Tobacco Retailing is only permitted at a fixed location. For example, Tobacco Retailing by natural persons on foot or from vehicles or mobile units is prohibited. (Revised by Ordinance No. ____, Effective ____)

9.756 Application Procedure.

Application for a Tobacco Retailer’s license must be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and will be signed by each Proprietor or an authorized agent thereof.

(1) 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. The Proprietor will also train all employees in the applicable laws, and is required to provide proof of training with annual recertification.

(2) No Proprietor may rely on the issuance of a license as a determination by the County that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to LC 9.758, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor will be revoked pursuant to LC 9.770. Nothing in LC 9.758 will 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.

(3) All applications will be submitted on a form supplied by the Department and will contain the following information:

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

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

(c) 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 LC 9.752 to 9.774. If an Authorized Address is not supplied, each Proprietor will be understood to consent to the provision of notice at the business address specified in subparagraph (b) above.

(d) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, LC 9.752 to 9.774 and, if so, the dates and locations of all such violations within the previous five years.

(4) Such other information as the Department deems necessary for the administration or enforcement of LC 9.752 to 9.774 as specified on the application form required by this section.

(5) A licensed Tobacco Retailer must 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 of a change.

(6) All information specified in an application pursuant to this section is subject to disclosure under the Oregon Public Records Act or any other applicable law, subject to the laws’ exemptions. *(Revised by Ordinance No. ____, Effective ____)*

9.758 Issuance of License.

Upon the receipt of a complete application for a Tobacco Retailer’s license and the license fee required by LC 9.766, the Department will issue a license to the applicant that demonstrates by substantial evidence that one or more of the following bases for denial does not exist:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information will be a violation punishable under LC 9.774.

(2) The application seeks authorization for Tobacco Retailing at a location for which LC 9.754 prohibits issuance of Tobacco Retailer licenses.

(3) The application seeks authorization for Tobacco Retailing for a Proprietor to whom LC 9.752 to 9.772 prohibits a license to be issued.

(4) The application seeks authorization for Tobacco Retailing that is prohibited or unlawful pursuant to this Code or that is unlawful pursuant to any other law. *(Revised by Ordinance No. ____, Effective ____)*

9.760 License Renewal and Expiration.

(1) 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 will apply for the renewal of his or her Tobacco Retailer’s license and submit the license fee no later than thirty days prior to expiration of the term.

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

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

(b) Submit a signed affidavit affirming that the Proprietor:

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

(ii) Has waited the period of time required by LC 9.772 for Tobacco Retailing without a valid license before seeking renewal of the license. *(Revised by Ordinance No. ____, Effective ____)*

9.762 Licenses Nontransferable.

(1) 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).

(2) Notwithstanding any other provision of LC 9.752 to 9.774, prior violations at a location will continue to be counted against a location and license ineligibility periods will continue to apply to a location unless:

(a) The location has been transferred to new Proprietor(s) in an Arm’s Length Transaction; and

(b) The new Proprietor(s) provide the County with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm’s Length Transaction. *(Revised by Ordinance No. ____, Effective ____)*

9.764 License Conveys a Limited, Conditional Privilege.

Nothing in LC 9.752 to 9.774 grants 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 County identified on the face of the license. Nothing in LC 9.752 to 9.774 renders inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment under ORS 433.847and OAR 333-015-0068 or other federal or local ordinances. Obtaining a Tobacco Retailer’s license does not make the Tobacco Retailer a certified smoke shop under ORS 433.847and OAR 333-015-0068. *(Revised by Ordinance No. ____, Effective ____)*

9.766 Fee for License.

The fee to issue or to renew a Tobacco Retailer’s license will be set annually by Order of the Board of Commissioners. The fee will be calculated so as to recover the cost of both the administration and enforcement of this Code, including the cost of issuing the license, administering the license program, Tobacco Retailer and community education, Tobacco Retailer inspection and compliance checks, documentation of violations, adjudications, convictions, and prosecution of violators. All fees are nonrefundable except as required by law and are permitted to be used exclusively to fund the program. Fees will not be prorated. *(Revised by Ordinance No. ____, Effective ____)*

9.768 Compliance Monitoring.

(1) The Department will monitor compliance with LC 9.752 to 9.774and may designate any number of additional Persons to assist monitoring compliance. In addition, any peace officer may enforce the penal provisions of LC 9.752 to 9.774.

(2) The Department will endeavor to inspect each Tobacco Retailer at least one time per twelve month period. Nothing in this paragraph creates a right of action in any licensee or other Person against the County or its agents.

(3) The County will not enforce any law establishing a minimum age for Tobacco purchases or possession against a natural person serving as a Youth Decoy. A Youth Decoy is a natural person under the age of 18 who:

(a) Is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the County to monitor compliance with LC 9.752;

(b) Is acting as an agent of a Person designated by the County to monitor compliance with LC 9.752; or

(c) Is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the Oregon Health Authority. *(Revised by Ordinance No. ____, Effective ____)*

9.770 Suspension or Revocation of License.

(1) **SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a Tobacco Retailer’s license will be suspended or 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, that the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions of LC 9.752 to 9.774 or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in LC 9.764 above.

(a) Upon a finding by the Department of a first violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for thirty days.

(b) Upon a finding by the Department of a second violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for ninety days.

(c) Upon a finding by the Department of a third violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for one year.

(d) Upon a finding by the Department of four or more violations of LC 9.752 to 9.772 at a location within any sixty-month (60) period, the license will be revoked.

(2) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to the Director of the Department and any appeal must be filed in writing with the Director within ten days of mailing of the Department’s decision. If such an appeal is timely made, it will stay enforcement of the appealed action. An appeal to the Director is not available for a revocation made pursuant to subsection (3) below.

(3) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer’s license will be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 9.758 existed at the time application was made or at any time before the license issued. The decision by the Department will be the final decision of the County. Such a revocation will be without prejudice to the filing of a new license application. *(Revised by Ordinance No. ____, Effective ____)*

9.772 Tobacco Retailing Without a Valid License.

(1) 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, that 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, the Person will be ineligible to apply for, or to be issued, a Tobacco Retailer’s license as follows:

(a) After a first violation of this section at a location within any sixty-month 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 days have passed from the date of the violation.

(b) After a second violation of this section at a location within any sixty-month 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 days have passed from the date of the violation.

(c) After of a third or subsequent violation of this section at a location within any sixty-month 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 years have passed from the date of the violation.

(2) 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 will 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 that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of LC 9.752 to 9.772. The decision by the Department may be appealed under LC 9.770. Forfeited Tobacco Products and Tobacco Paraphernalia will be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to Oregon law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(3) For the purposes of the civil remedies provided in LC 9.774 the following constitute separate violations:

(a) Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of LC 9.752 to 9.772; or

(b) Each instance in which an individual retail Tobacco Product or item of Tobacco Paraphernalia distributed, sold, or offered for sale in violation of LC 9.752 to 9.772. *(Revised by Ordinance No. ____, Effective ____)*

9.774 Penalties and Additional Remedies.

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

(2) Violations of LC 9.752 to 9.772 are punishable by a fine per violation as follows: after a first violation, a \$500 fine; after a second violation, a \$1,000 fine; after a third violation, a \$1,500 fine. Those in violation will be responsible for all costs associated with prosecutions of violations.

(3) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.752 to 9.772 is punishable according to subsection (3) above.

(4) Violations of LC 9.752 to 9.772 are hereby declared to be public nuisances.

(5) In addition to other remedies provided by LC 9.752 to 9.772 or by other law, any violation of LC 9.752 to 9.772 may be remedied by a civil action including, for example, through administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. *(Revised by Ordinance No. ____, Effective ____)*

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As used in sections 9.700 through 9.774, the following words or terms have the following meanings:

(1) “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 these regulations’ sections 9.700 through 9.774 is not an Arm’s Length Transaction.

(2) “Business” means any sole proprietorship, partnership, joint venture, corporation, company, association, or other entity formed for purposes that include profit-making.

(3) “County” or “Lane County,” for the purpose of this ordinance, means unincorporated areas of Lane County.

(4) “Department” means the Lane County Health & Human Services Department, and any agency or Person designated by the Department to enforce or administer the provisions of sections 9.700 through 9.774.

(5) “Electronic Smoking Device” means any electronic means any electronic product that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic Smoking Device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(6) “Employee” means any Person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers services for an Employer.

(7) “Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.

(8) “Independent Contractor” means any Person who is retained with a contract by any Employer in consideration for direct or indirect monetary wages or profit.

(9) “Nominal Cost” means the cost of any item imposed for the transfer from one person to another for less than the total of: (1) twenty-five percent (25%) of the fair market value of the item exclusive of taxes and government fees; plus (2) all taxes and government fees previously paid and all taxes and government fees still due on the item at the time of transfer.

(10) “Nonsale Distribution” means to give, furnish, or cause or allow to be given or furnished, wholly or for sampling, within Lane County, a Tobacco Product at no cost or at Nominal Cost to a Person who is not a Tobacco Retailer.

(11) “Person” means any natural person, Business, employer, nonprofit entity, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

(12) “Proprietor” means a Person with an ownership or managerial interest in a business. An ownership interest is deemed to exist when a Person has a

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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 is deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

(13) “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 Tobacco Retailer or employee of the Tobacco Retailer and a direct person-to-person transfer between the purchaser and the Tobacco Retailer or employee of the Tobacco Retailer. A vending machine is a form of Self-Service Display.

(14) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, or other tobacco like product or substance in any manner or in any form. “Smoking” also includes the use of an Electronic Smoking Device which creates an aerosol, in any manner or in any form.

(15) “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, cigarette rolling machines, and any other item specifically designed for the consumption or preparation of Tobacco Products.

(16) “Tobacco Product” means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an Electronic Smoking Device. Tobacco product does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(17) “Tobacco Retailer” means any Person who holds a license to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange. *(Revised by Ordinance No. ____, Effective ____)*

Electronic Smoking Devices and Minors

9.705 Purpose and Findings.

In addition to Oregon State regulations on the sale, possession, and use of tobacco and tobacco products to and by persons under 18 years of age, LC 9.700 through 9.774 are enacted to regulate the sale, possession, and use of Electronic Smoking Devices in Lane County to and by persons under 18 years of age.

Lane County passes this ordinance out of a desire to promote a wholesome environment where children are encouraged to make healthful choices that allow them to grow up to lead healthy, productive and prosperous lives. Nicotine is a highly addictive toxic substance, the use of which is initiated primarily by young people. Nicotine use is associated with the risk of numerous adverse health consequences, including increased susceptibility of addiction to other drugs of abuse and the use of tobacco, and with serious neurobehavioral problems and nicotine use in children of mothers that use during pregnancy. *(Revised by Ordinance No. ____, Effective ____)*

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9.710 Requirements and Prohibitions.

(1) **Sale to minors prohibited.** All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, an Electronic Smoking Device to a person under 18 years of age in any place within Lane County.

(2) **Positive identification required.** Tobacco Retailers are prohibited from selling, giving or furnishing an Electronic Smoking Device to a person who appears to be under 27 years of age without first examining identification to confirm that the recipient is at least 18 years of age.

(3) **Self-Service Displays of Electronic Smoking Devices are prohibited.**

(4) **Nonsale Distribution Prohibited.** All persons are prohibited from the Nonsale Distribution of any Electronic Smoking Device to a Person who is not a Retailer. *(Revised by Ordinance No. ____, Effective ____)*

9.715 Possession, Distribution and Use by Minors.

(1) **It is unlawful for any person under 18 years of age to possess, receive, purchase, sell, distribute, use or consume Electronic Smoking Devices.** It is unlawful for any person under 18 years of age to have personal possession of an Electronic Smoking Device, except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian.

(2) **A minor acting under the supervision of an authorized adult may purchase, attempt to purchase or acquire Electronic Smoking Devices for the purpose of testing compliance with local law or Tobacco Retailer management policy limiting or regulating the delivery of Electronic Smoking Devices to minors.** *(Revised by Ordinance No. ____, Effective ____)*

9.720 Non-Retaliation.

Under the County's enforcement efforts, Persons, Tobacco Retailers, and Employers are prohibited from intimidating, threatening any reprisal, or effecting any reprisal, for the purpose of retaliating against another Person that seeks to attain compliance with LC 9.710 to 9.725. *(Revised by Ordinance No. ____, Effective ____)*

9.725 Penalties and Enforcement.

(1) **The penalty and enforcement provisions are cumulative and in addition to any other remedies available at law or in equity.**

(2) **Violations of LC 9.710 to 9.720 are subject to a civil action brought by Lane County, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation.**

(3) **Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC9.710 to 9.720 constitutes a violation of those sections.**

(4) **In addition to other remedies provided by this section 9.725, the county can seek appropriate, equitable relief including but not limited to,**

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administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and injunctive relief. A person who is convicted of a first violation of subsections (1) or (2) of LC 9.715 may be ordered to appear in teen court or participate in a tobacco education program or a tobacco use cessation program. A person who is convicted of a second or subsequent violation of subsections (1) or (2) of LC 9.715 is subject to a civil action brought by Lane County, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation. (*Revised by Ordinance No. _____, Effective _____*)

Tobacco Retail Licensing and Sale Regulations Ordinance

9.752 Requirements and Prohibitions.

(1) A person commits a violation of these Tobacco Retail Licensing and Sale Regulations (LC 9.752 to 9.774) if the Person knowingly engages in the following conduct:

(a) Selling, offering for sale, or exchanging or offering to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia in Lane County without first obtaining and maintaining a valid Tobacco Retailer's license under LC 9.752 to 9.774 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) Violating any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing in the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license was issued. Failing to ensure that Employees know how to comply with tobacco control laws. Tobacco Retailers can be held responsible for violations committed by Employees.

(c) Failing to prominently display a Tobacco Retailer license in a publicly visible location at the licensed location.

(d) Failing to examine the identification and confirm that the holder is at least 18 years of age, before selling or transferring Tobacco Products or Tobacco Paraphernalia to a natural person who appears to be under 27 years of age.

(e) Selling, giving, or furnishing, or causing to be sold, given or furnished, a Tobacco Product or Tobacco Paraphernalia to a natural person who is younger than 18 years of age.

(f) Permitting a natural person who is younger than 18 years of age or younger than the minimum age established by state law for the purchase or possession of Tobacco Products to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products or Tobacco Paraphernalia.

(g) Engaging in Tobacco Retailing by means of a Self-Service Display.

(h) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, failing to keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products

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or Tobacco Paraphernalia in violation of this subsection constitutes Tobacco Retailing without a valid license under LC 9.772.

(i) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, displaying 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.

(j) Engaging in the Nonsale Distribution of Tobacco Products or Tobacco Paraphernalia in Lane County.

(k) Honoring or accepting a price reduction instrument in any transaction related to the sale of Tobacco Products or Tobacco Paraphernalia to a consumer.

(l) Selling or offering for sale Tobacco Products or Tobacco Paraphernalia to a consumer through any multi-package discount or otherwise provide to a consumer any Tobacco Products or Tobacco Paraphernalia for less than the listed price in exchange for the purchase of any other Tobacco Products or Tobacco Paraphernalia by the consumer.

(m) Selling, offering for sale, or otherwise providing any product other than Tobacco Products or Tobacco Paraphernalia to a consumer for less than the listed price in exchange for the purchase of Tobacco Products or Tobacco Paraphernalia by the consumer.

(n) Selling, offering for sale, or otherwise providing Tobacco Products or Tobacco Paraphernalia to a consumer for less than the listed price.

(o) Failing to conspicuously post a tobacco health warning approved by the Department in an area visible to all customers.

(p) Failing to conspicuously post signage provided by the Department that discloses current referral information about the Oregon Tobacco Quitline 1-800-QUIT-NOW.

(q) Engaging in Tobacco Retailing within 1000 feet of any school, child care center, or other establishment serving children or from other than a fixed retail location in violation of 9.754 below

(2) Tobacco Retailer's will be eligible for an incentive program reducing the annual license fee by \$75 if they: 1) have no tobacco retail violations in the previous year and 2) use a cash register that reads the magnetic strip on drivers' licenses to verify age.

9.754 Limits on Eligibility for a Tobacco Retailer License.

(1) **WITHIN 1,000 FEET OF ESTABLISHMENTS SERVING CHILDREN.** No license will be issued to a Tobacco Retailer located "within 1,000 feet of any school, child care center, and other establishments that serve children" as follows:

(a) Except as provided in subsection (ii), no Tobacco Retailer license will be issued within one thousand (1,000) feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area 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 this subsection, a "Youth-Populated Area" means a parcel in Lane County that is occupied by:

(i) a private or public kindergarten, elementary, middle, junior high, or high school;

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(ii) a library open to the public;
(iii) a playground open to the public;
(iv) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
(v) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. "Recreation facility" includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;
(vi) an arcade open to the public;
(vii) a park open to the public or to all the residents of a private community;
(viii) a licensed child-care facility or preschool;
(b) A Tobacco Retailer in operation as of October 21, 2014 is exempt from the requirements of section (1i) above.

(2) **MOBILE VENDING.** Tobacco Retailing is only permitted at a fixed location. For example, Tobacco Retailing by natural persons on foot or from vehicles or mobile units is prohibited.

9.756 Application Procedure.

Application for a Tobacco Retailer's license must be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and will be signed by each Proprietor or an authorized agent thereof.

(1) 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. The Proprietor will also train all employees in the applicable laws, and is required to provide proof of training with annual recertification.

(2) No Proprietor may rely on the issuance of a license as a determination by the County that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to LC 9.758, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor will be revoked pursuant to LC 9.770. Nothing in LC 9.758 will 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.

(3) All applications will be submitted on a form supplied by the Department and will contain the following information:

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

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

(c) 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 LC 9.752 to 9.774. If an Authorized Address is not supplied, each Proprietor will be understood to consent to the provision of notice at the business address specified in subparagraph (b) above.

(d) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, LC 9.752 to 9.774 and, if so, the dates and locations of all such violations within the previous five years.

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(4) Such other information as the Department deems necessary for the administration or enforcement of LC 9.752 to 9.774 as specified on the application form required by this section.

(5) A licensed Tobacco Retailer must 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 of a change.

(6) All information specified in an application pursuant to this section is subject to disclosure under the Oregon Public Records Act or any other applicable law, subject to the laws' exemptions. *(Revised by Ordinance No. ____, Effective ____)*

9.758 Issuance of License.

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by LC 9.766, the Department will issue a license to the applicant that demonstrates by substantial evidence that one or more of the following bases for denial does not exist:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information will be a violation punishable under LC 9.774.

(2) The application seeks authorization for Tobacco Retailing at a location for which LC 9.754 prohibits issuance of Tobacco Retailer licenses.

(3) The application seeks authorization for Tobacco Retailing for a Proprietor to whom LC 9.752 to 9.772 prohibits a license to be issued.

(4) The application seeks authorization for Tobacco Retailing that is prohibited or unlawful pursuant to this Code or that is unlawful pursuant to any other law. *(Revised by Ordinance No. ____, Effective ____)*

9.760 License Renewal and Expiration.

(1) **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 will apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

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

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

(b) Submit a signed affidavit affirming that the Proprietor:

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

(ii) Has waited the period of time required by LC 9.772 for Tobacco Retailing without a valid license before seeking renewal of the license. *(Revised by Ordinance No. ____, Effective ____)*

9.762 Licenses Nontransferable.

(1) 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).

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(2) Notwithstanding any other provision of LC 9.752 to 9.774, prior violations at a location will continue to be counted against a location and license ineligibility periods will continue to apply to a location unless:

(a) The location has been transferred to new Proprietor(s) in an Arm's Length Transaction; and

(b) The new Proprietor(s) provide the County with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction. *(Revised by Ordinance No. ____, Effective ____)*

9.764 License Conveys a Limited, Conditional Privilege.

Nothing in LC 9.752 to 9.774 grants 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 County identified on the face of the license. Nothing in LC 9.752 to 9.774 renders inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment under ORS 433.847 and OAR 333-015-0068 or other federal or local ordinances. Obtaining a Tobacco Retailer's license does not make the Tobacco Retailer a certified smoke shop under ORS 433.847 and OAR 333-015-0068.

9.766 Fee for License.

The fee to issue or to renew a Tobacco Retailer's license will be set annually by Order of the Board of Commissioners. The fee will be calculated so as to recover the cost of both the administration and enforcement of this Code, including the cost of issuing the license, administering the license program, Tobacco Retailer and community education, Tobacco Retailer inspection and compliance checks, documentation of violations, adjudications, convictions, and prosecution of violators. All fees are nonrefundable except as required by law and are permitted to be used exclusively to fund the program. Fees will not be prorated. *(Revised by Ordinance No. ____, Effective ____)*

9.768 Compliance Monitoring.

(1) The Department will monitor compliance with LC 9.752 to 9.774 and may designate any number of additional Persons to assist monitoring compliance. In addition, any peace officer may enforce the penal provisions of LC 9.752 to 9.774.

(2) The Department will endeavor to inspect each Tobacco Retailer at least one time per twelve month period. Nothing in this paragraph creates a right of action in any licensee or other Person against the County or its agents.

(3) The County will not enforce any law establishing a minimum age for Tobacco purchases or possession against a natural person serving as a Youth Decoy. A Youth Decoy is a natural person under the age of 18 who:

(a) Is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the County to monitor compliance with LC 9.752;

(b) Is acting as an agent of a Person designated by the County to monitor compliance with LC 9.752; or

(c) Is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the Oregon Health Authority. *(Revised by Ordinance No. ____, Effective ____)*

9.770 Suspension or Revocation of License.

(1) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.

In addition to any other penalty authorized by law, a Tobacco Retailer's license will be suspended or 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, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of LC 9.752 to 9.774 or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in LC 9.764 above.

(a) Upon a finding by the Department of a first violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for thirty days.

(b) Upon a finding by the Department of a second violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for ninety days.

(c) Upon a finding by the Department of a third violation of LC 9.752 to 9.772 at a location within any sixty-month period, the license will be suspended for one year.

(d) Upon a finding by the Department of four or more violations of LC 9.752 to 9.772 at a location within any sixty-month (60) period, the license will be revoked.

(2) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to the Director of the Department and any appeal must be filed in writing with the Director within ten days of mailing of the Department's decision. If such an appeal is timely made, it will stay enforcement of the appealed action. An appeal to the Director is not available for a revocation made pursuant to subsection (3) below.

(3) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer's license will be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 9.758 existed at the time application was made or at any time before the license issued. The decision by the Department will be the final decision of the County. Such a revocation will be without prejudice to the filing of a new license application. *(Revised by Ordinance No. ____, Effective ____)*

9.772 Tobacco Retailing Without a Valid License.

(1) 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, that 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, the Person will be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

(a) After a first violation of this section at a location within any sixty-month 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 days have passed from the date of the violation.

(b) After a second violation of this section at a location within any sixty-month 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 days have passed from the date of the violation.

(c) After of a third or subsequent violation of this section at a location within any sixty-month 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 years have passed from the date of the violation.

(2) 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 will 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 that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of LC 9.752 to 9.772. The decision by the Department may be appealed under LC 9.770. Forfeited Tobacco Products and Tobacco Paraphernalia will be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to Oregon law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(3) For the purposes of the civil remedies provided in LC 9.774 the following constitute separate violations:

(a) Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of LC 9.752 to 9.772; or

(b) Each instance in which an individual retail Tobacco Product or item of Tobacco Paraphernalia distributed, sold, or offered for sale in violation of LC 9.752 to 9.772. (*Revised by Ordinance No. _____, Effective _____*)

9.774 Penalties and Additional Remedies.

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

(2) Violations of LC 9.752 to 9.772 are punishable by a fine per violation as follows: after a first violation, a \$500 fine; after a second violation, a \$1,000 fine; after a third violation, a \$1,500 fine. Those in violation will be responsible for all costs associated with prosecutions of violations.

(3) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.752 to 9.772 is punishable according to subsection (3) above.

(4) Violations of LC 9.752 to 9.772 are hereby declared to be public nuisances.

(5) In addition to other remedies provided by LC 9.752 to 9.772 or by other law, any violation of LC 9.752 to 9.772 may be remedied by a civil action including, for example, through administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. (*Revised by Ordinance No. _____, Effective _____*)