

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: 22-01

IN THE MATTER OF AMENDING LANE CODE
CHAPTER 9 TO IMPROVE ENFORCEMENT OF
LAWS AND REGULATIONS THAT GOVERN THE
RETAIL SALE OF TOBACCO PRODUCTS AND
INHALANT DELIVERY SYSTEMS (LC 9.065.005 -
LC 9.975.060)

The Board of County Commissioners of Lane County ORDAINS as follows:

Lane Code Chapter 9 is amended by removing, substituting and adding the following sections:

REMOVE THESE SECTIONS

9.065.005 through 9.075.060

INSERT THESE SECTIONS

9.065.005 through 9.070.020

These sections are attached hereto and incorporated herein by this reference. 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 constitutes a separate, distinct and independent provision, and such holding does not affect the validity of the remaining portions hereof.

Nothing herein is intended to, nor acts to amend, replace, or otherwise conflict with any other ordinances of Lane County or any other Code or statutory provisions unless expressly so stated.

ENACTED this 25th day of January, 2022.

Pat Low

Chair

Lane County Board of Commissioners

Diana Jones

Recording Secretary for this Meeting of the Board

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9.065 – TOBACCO REGULATIONS

9.065.005 - Definitions.

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

~~—“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’ LC 9.700 through LC 9.774 is not an Arm’s Length Transaction.~~

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

“County” or “Lane County” means all of Lane County, including incorporated jurisdictions and unincorporated areas.

“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 LC 9.700 through LC 9.774.

“Electronic Smoking Device” means any device that can be used to deliver aerosolized or vaporized nicotine, cannabinoids, 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 device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. 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.

“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.

~~—“Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.~~

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

~~—“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.~~

~~—“Non-sale 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.~~

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

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~~“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.~~

~~“Self-Service Display” means the open display or storage of Tobacco Products 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.~~

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an Electronic Smoking Device.

“Tobacco Product” means any product that is made from or derived from tobacco, or 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, or snus. Tobacco Product also means an Electronic Smoking Device and any component or accessory used in the preparation or consumption of tobacco products, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. 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.

“Tobacco Retailer” means any Person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, Tobacco Products. “Tobacco Retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)

9.070 — RETAIL SALE OF TOBACCO PRODUCTS AND INHALENT DELIVERY SYSTEMS~~Tobacco Products and Person under Age 21~~

9.070.005 - Purpose and Findings.

~~Pursuant to ORS Chapter 431A, LC 9.700 to LC 9.780 are amended for the purpose of improving enforcement of local ordinances and rules, state laws and rules, and federal laws and regulations that govern the retail sale of tobacco products and inhalant delivery systems. LC 9.700 to LC 9.780 apply to the unincorporated areas of Lane County.~~

~~Lane County desires 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.~~

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~~In addition to Oregon State regulations on the sale, possession, and use of tobacco and tobacco products, LC 9.700 through LC 9.774 are enacted to regulate the sale, possession, and use of Tobacco Products in Lane County and unincorporated Lane County to and by persons under 21 years of age.~~

~~Lane County passes LC 9.700 through LC 9.774 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.~~

~~(Ordinance 14-19, 1.16.15; LC 15-05, 9.25.15; LC 17-01, 4.13.17)~~

9.070.010 – Administration.

~~The administration and enforcement of this sub-chapter will be determined by an intergovernmental agreement with the authorized Department of the State under section 13 of Oregon Laws 2021, chapter 586. The County, acting as the local public health authority, retains the right to investigate and enforce the terms of this ordinance. Existing citation, complaint, violation, or failure to comply procedures applicable to the County may be utilized to prosecute such failures to comply.~~

9.070.015 – Licensure RequirementRequirements and Prohibitions.

~~A person may not make a retail sale of a tobacco product or an inhalant delivery system at or from a premises located in unincorporated Lane County unless the person sells the tobacco product or inhalant delivery system at or from a premises licensed or otherwise authorized under section 5 or 18 of Oregon Laws 2021, chapter 586.~~

- ~~A. Sale to person under age 21 prohibited. All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, a Tobacco Product to a person under 21 years of age in any place within Lane County.~~
- ~~B. Positive identification required. Tobacco Retailers in Lane County are prohibited from selling, giving or furnishing a Tobacco Product to a person who appears to be under 30 years of age without first examining the holder's government-issued photographic identification to confirm that the recipient is at least 21 years of age.~~
- ~~C. Posting of sales age signage required. All Tobacco Retailers in Lane County are required to conspicuously post a notice that is clearly visible to the seller and the purchaser at the location where Tobacco Products are available for purchase. The Department will provide a notice that reads "The sale or provision of tobacco products, tobacco paraphernalia, and electronic smoking devices to persons under the age of 21 is prohibited by law" legibly printed in red letters at least one-half inch high.~~
- ~~D. Self-Service Displays of Tobacco Products are prohibited.~~
- ~~E. Non-sale Distribution Prohibited. All persons are prohibited from the Non-sale Distribution of any Tobacco Products to a Person who is not a Retailer.~~

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(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)

9.070.020 - Adoption of the Oregon Health Authority Rules, Regulations and Statutes Possession, Distribution and Use by Person Under Age 21.

The rules and regulations of the Oregon Health Authority and State statutes relative to the regulation of tobacco and inhalant delivery system sales are adopted as part of this sub-chapter and incorporated herein.

- ~~A. It is unlawful for any person under 21 years of age to possess, receive, purchase, sell, distribute, use or consume Tobacco Products. It is unlawful for any person under 21 years of age to have personal possession of a Tobacco Product, except when such person under 21 years of age is in a private residence accompanied by such person's parent or legal guardian and with the consent of such parent or legal guardian.~~
- ~~B. A Youth Decoy, under the terms of LC 9.752(2), may purchase, attempt to purchase or acquire Tobacco Products for the purpose of testing compliance with local law or Tobacco Retailer management policy limiting or regulating the delivery of Tobacco Products to person under 21 years of age.~~
- ~~C. Notwithstanding the prohibitions of Lane Code 9.715(1) and (2), an individual who is at least 18 years of age may possess, receive, sell, distribute Tobacco Products while lawfully employed as and performing the duties of a Tobacco Retailer.~~

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)

9.070.025 - 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.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15)~~

9.070.030 - Penalties and Enforcement.

- ~~A. The Department or its authorized designee may conduct random, unannounced inspections at locations where Tobacco Products are distributed to test and ensure compliance with LC 9.710 through LC 9.720.~~
- ~~B. A Youth Decoy is exempt from the provisions of LC 9.715(1). A Youth Decoy is a natural person under the age of 21 who:
 - ~~1. Is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the Department to monitor compliance with LC 9.752;~~
 - ~~2. Is acting as an agent of a Person designated by the Department to monitor compliance with LC 9.752; or~~
 - ~~3. Is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the Oregon Health Authority.~~~~

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- ~~C. All penalty and enforcement provisions within this section are cumulative and in addition to any other remedies available at law or in equity.~~
- ~~D. Violations of LC 9.710 and LC 9.720 are punishable by a civil fine per separate violation as follows:~~
- ~~1. Any Person who commits a violation while not in the course of Tobacco Retailing, a fine not exceeding \$50.~~
 - ~~2. Any non-managerial Employee while in the course of Tobacco Retailing who commits a violation, a fine not exceeding \$50.~~
 - ~~3. Any managerial Employee while in the course of Tobacco Retailing, acting within the course and scope of the person's employment, who violates, or the person has supervisory authority over a person described in LC 9.725(4)(b) who violates within a twenty-four month period: after a first or second violation, a fine not exceeding five hundred dollars (\$500); and after a third or subsequent violation, a fine not exceeding one thousand dollars (\$1,000).~~
 - ~~4. Any Employer or owner of a Tobacco Retailing business who violates or where a person described in LC 9.725(4)(b) or (c) who violates within a twenty-four month period: after a first violation, a \$1,650 fine; after a second violation, a \$4,950 fine; after a third or subsequent violation, a \$4,950 fine for Tobacco Retailers who do not hold a license to sell Tobacco Products. Those in violation will be responsible for all costs associated with prosecutions of violations.~~
- ~~E. Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.710 to LC 9.720 constitutes a violation of these sections.~~
- ~~F. In addition to any other penalty, a Tobacco Retailer who holds a license to sell Tobacco Products who violates any provision of LC 9.710 through LC 9.720 may be subject to license suspension or revocation.~~
- ~~G. In addition to other remedies provided by this LC 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.~~
- ~~H. If a peace officer can see the Tobacco Product in plain sight that the person is in violation of LC 9.715(1), the peace officer may confiscate the Tobacco Product.~~
- ~~I. Criminal Prosecution. Nothing in this LC 9.725 will prohibit Lane County from initiating criminal proceedings for any alleged violation of LC 9.710 through LC 9.720.~~
- ~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

9.075 – TOBACCO RETAIL LICENSING AND SALE REGULATIONS ORDINANCE

~~9.075.005 – Requirements and Prohibitions.~~

- ~~A. A person commits a violation of these Tobacco Retail Licensing and Sale Regulations (LC 9.752 to LC 9.774) if the Person knowingly engages in the following conduct:~~
- ~~1. Selling, offering for sale, or exchanging or offering to exchange for any form of consideration, Tobacco Products in unincorporated Lane County without first obtaining and maintaining a valid Tobacco Retailer's license under LC 9.752 to LC 9.774 for each location at which that activity is~~

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- ~~to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.~~
- ~~2. Violating any local, state, or federal law applicable to Tobacco Products 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.~~
 - ~~3. Failing to ensure that Employees know how to comply with tobacco control laws. Tobacco Retailers can be held responsible for violations committed by Employees.~~
 - ~~4. Failing to prominently display a Tobacco Retailer license in a publicly visible location at the licensed location.~~
 - ~~5. Failing to examine the government-issued photographic identification and confirm that the holder is at least 18 years of age, before selling or transferring Tobacco Products to a natural person who appears to be under 30 years of age.~~
 - ~~6. Selling, giving, or furnishing, or causing to be sold, given or furnished, a Tobacco Product to a natural person who is younger than 21 years of age.~~
 - ~~7. Permitting a natural person who is younger than 18 years of age to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products.~~
 - ~~8. Engaging in Tobacco Retailing by means of a Self-Service Display.~~
 - ~~9. Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, failing to keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this subsection constitutes Tobacco Retailing without a valid license under LC 9.772.~~
 - ~~10. Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, displaying any advertisement relating to Tobacco Products 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.~~
 - ~~11. Engaging in the Non-sale Distribution of Tobacco Products.~~
 - ~~12. Failing to conspicuously post a tobacco health warning approved by the Department in an area visible to all customers.~~
 - ~~13. Failing to conspicuously post signage provided by the Department that discloses current referral information about the Oregon Tobacco Quitline 1-800-QUIT-NOW.~~
 - ~~14. Engaging in Tobacco Retailing within 1000 feet of any school, from other than a fixed retail location in violation of 9.754 below.~~
- ~~B. 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.~~
- ~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

9.075.010 - Limits on Eligibility for a Tobacco Retailer License.

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- A. 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 as follows:
1. Except as provided in subsection (b), no Tobacco Retailer license will be issued within one thousand (1,000) feet of a school as measured by a straight line from the nearest point of the property line of the lot or parcel on which the school 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 "school" **is** a public kindergarten, elementary, middle, junior high or high school.
 2. A Tobacco Retailer that has been in operation at a location governed by subsection (1) above consistently since October 21, 2014, is exempt from the requirements of section (1) above. A Tobacco Retailer that has been in operation at a location governed by subsection (1) above consistently since October 21, 2014, that would otherwise be ineligible to receive or renew a Tobacco Retailer license due to the creation or relocation of a school is exempt from the requirements of subsection (1) above.
- B. 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.

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15)

~~9.075.015 – 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.~~

- ~~A. 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.~~
- ~~B. No Proprietor may rely on the issuance of a license as a determination by the Department 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.~~
- ~~C. All applications will be submitted on a form supplied by the Department and will contain the following information:~~
- ~~1. The name, address, and telephone number of each Proprietor of the business seeking a license.~~
 - ~~2. The business name, address, and telephone number of the single fixed location for which a license is sought.~~
 - ~~3. 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 LC 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.~~
 - ~~4. 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 LC 9.774 and, if so, the dates and locations of all such violations within the previous five years.~~

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

~~E.— 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.~~

~~F.— 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.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

~~9.075.020 – 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:~~

~~A.— 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.~~

~~B.— The application seeks authorization for Tobacco Retailing at a location for which LC 9.754 prohibits issuance of Tobacco Retailer licenses.~~

~~C.— The application seeks authorization for Tobacco Retailing for a Proprietor to whom LC 9.752 to LC 9.772 prohibits a license to be issued.~~

~~D.— 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.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15)~~

~~9.075.025 – License Renewal and Expiration.~~

~~A.— 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.~~

~~B.— 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:~~

~~1.— Submit the license fee and application renewal form; and~~

~~2.— Submit a signed affidavit affirming that the Proprietor:~~

~~a.— Has not sold and will not sell or display any Tobacco Product after the license expiration date and before the license is renewed; or~~

~~b.— Has waited the period of time required by LC 9.772 for Tobacco Retailing without a valid license before seeking renewal of the license.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

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~~9.075.030 – Licenses Nontransferable.~~

~~A. — 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).~~

~~B. — Notwithstanding any other provision of LC 9.752 to LC 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:~~

~~1. — The location has been transferred to new Proprietor(s) in an Arm's Length Transaction; and~~

~~2. — The new Proprietor(s) provide the Department with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

~~9.075.035 – License Conveys a Limited, Conditional Privilege.~~

~~Nothing in LC 9.752 to LC 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 unincorporated Lane County identified on the face of the license. Nothing in LC 9.752 to LC 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.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

~~9.075.040 – 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 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.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15)~~

~~9.075.045 – Compliance Monitoring.~~

~~A. — The Department will monitor compliance with LC 9.752 to LC 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 LC 9.774.~~

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~~B. 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, Department or its agents.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

~~9.075.050 – Suspension or Revocation of License.~~

~~A. **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 9.710 to LC 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.~~

~~1. Upon a finding by a court or the Department of a first violation of LC 9.710 to LC 9.772 at a location within any twenty-four month period, the license will be suspended for ten days or a \$1,650 fine imposed.~~

~~2. Upon a finding by a court or the Department of a second violation of LC 9.710 to LC 9.772 at a location within any twenty-four month period, the license will be suspended for thirty days or a \$4,950 fine imposed.~~

~~3. Upon a finding by a court or the Department of a third violation of LC 9.710 to LC 9.772 at a location within any twenty-four month period, the license will be suspended for thirty days.~~

~~4. Upon a finding by a court or the Department of four or more violations of LC 9.710 to LC 9.772 at a location within any twenty-four month period, the license will be revoked.~~

~~B. **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.~~

~~C. **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. Such a revocation will be without prejudice to the filing of a new license application.~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

~~9.075.055 – Tobacco Retailing Without a Valid License.~~

~~A. 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:~~

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- ~~1. After a first violation of this section at a location within any twenty-four 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.~~
- ~~2. After a second violation of this section at a location within any twenty-four 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.~~
- ~~3. After of a third or subsequent violation of this section at a location within any twenty-four 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 two years have passed from the date of the violation.~~
- ~~B. Tobacco Products 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 seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products were not offered for sale or exchange in violation of LC 9.752 to LC 9.772. The decision by the Department may be appealed under LC 9.770. Forfeited Tobacco Products 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.~~
- ~~C. For the purposes of the civil remedies provided in LC 9.774 the following constitute separate violations:
 - ~~1. Each day on which a Tobacco Product is offered for sale in violation of LC 9.752 to LC 9.772; or~~
 - ~~2. Each instance in which an individual retail Tobacco Product distributed, sold, or offered for sale in violation of LC 9.752 to LC 9.772.~~~~

~~(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)~~

~~9.075.060 – Penalties and Additional Remedies.~~

- ~~A. The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.~~
- ~~B. Violations of LC 9.752 to LC 9.772 are punishable by a fine per violation as follows: after a first violation, a \$1,650 fine or suspension of license; after a second violation, a \$4,950 fine or suspension of license; after a third violation, a suspension of license as described in 9.770. Those in violation will be responsible for all costs associated with prosecutions of violations.~~
- ~~C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.752 to LC 9.772 is punishable according to LC 9.772(3) above.~~
- ~~D. Violations of LC 9.752 to LC 9.772 are hereby declared to be public nuisances.~~
- ~~E. In addition to other remedies provided by LC 9.752 to LC 9.772 or by other law, any violation of LC 9.752 to LC 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.~~

9.065 – TOBACCO REGULATIONS

9.065.005 - Definitions.

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

“County” or “Lane County” means all of Lane County, including incorporated jurisdictions and unincorporated areas.

“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 LC 9.700 through LC 9.774.

“Electronic Smoking Device” means any device that can be used to deliver aerosolized or vaporized nicotine, cannabinoids, 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 device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. 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.

“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.

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

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an Electronic Smoking Device.

“Tobacco Product” means any product that is made from or derived from tobacco, or 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, or snus. Tobacco Product also means an Electronic Smoking Device and any component or accessory used in the preparation or consumption of tobacco products, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. 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.

“Tobacco Retailer” means any Person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, Tobacco Products. “Tobacco Retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)

9.070 – RETAIL SALE OF TOBACCO PRODUCTS AND INHALENT DELIVERY SYSTEMS

9.070.005 - Purpose and Findings.

Pursuant to ORS Chapter 431A, LC 9.700 to LC 9.780 are amended for the purpose of improving enforcement of local ordinances and rules, state laws and rules, and federal laws and regulations that govern the retail sale of tobacco products and inhalant delivery systems. LC 9.700 to LC 9.780 apply to the unincorporated areas of Lane County.

Lane County desires 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.

(Ordinance 14-19, 1.16.15; LC 15-05, 9.25.15; LC 17-01, 4.13.17)

9.070.010 – Administration.

The administration and enforcement of this sub-chapter will be determined by an intergovernmental agreement with the authorized Department of the State under section 13 of Oregon Laws 2021, chapter 586. The County, acting as the local public health authority, retains the right to investigate and enforce the terms of this ordinance. Existing citation, complaint, violation, or failure to comply procedures applicable to the County may be utilized to prosecute such failures to comply.

9.070.015 – Licensure Requirement.

A person may not make a retail sale of a tobacco product or an inhalant delivery system at or from a premises located in unincorporated Lane County unless the person sells the tobacco product or inhalant delivery system at or from a premises licensed or otherwise authorized under section 5 or 18 of Oregon Laws 2021, chapter 586.

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)

9.070.020 - Adoption of the Oregon Health Authority Rules, Regulations and Statutes.

The rules and regulations of the Oregon Health Authority and State statutes relative to the regulation of tobacco and inhalant delivery system sales are adopted as part of this sub-chapter and incorporated herein.

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15; Ordinance 17-01, 4.13.17)

9.075 – TOBACCO RETAIL LICENSING AND SALE REGULATIONS ORDINANCE

9.075.010 - Limits on Eligibility for a Tobacco Retailer License.

- A. 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 as follows:

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1. Except as provided in subsection (b), no Tobacco Retailer license will be issued within one thousand (1,000) feet of a school as measured by a straight line from the nearest point of the property line of the lot or parcel on which the school 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 "school" is a public kindergarten, elementary, middle, junior high or high school.
 2. A Tobacco Retailer that has been in operation at a location governed by subsection (1) above consistently since October 21, 2014, is exempt from the requirements of section (1) above. A Tobacco Retailer that has been in operation at a location governed by subsection (1) above consistently since October 21, 2014, that would otherwise be ineligible to receive or renew a Tobacco Retailer license due to the creation or relocation of a school is exempt from the requirements of subsection (1) above.
- B. **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.

(Ordinance 14-19, 1.16.15; Ordinance 15-05, 9.25.15)

9.075.065 - Smoke and Tobacco-free Facilities and Grounds

To promote the long-term health and safety of Lane County employees and the public, except as otherwise allowed by law and Lane Code, smoking and the use of tobacco is not permitted at any time:

- A. within any interior space of facilities owned or occupied by Lane County;
- B. on all outside property or grounds owned or occupied by Lane County, including parks, natural areas, parking areas; and
- C. in vehicles owned by Lane County or in personal vehicles when on County property.

County roads or County-owned rights of way are not subject to any tobacco restrictions contained in this policy. Lane County is committed to providing tobacco use cessation support, and to referring employees, volunteers, clients, visitors and vendors to available cessation resources such as the Oregon Tobacco Quit Line. The County Administrator will establish standards to effectively communicate this policy to employees, vendors, and the public.

(Ordinance 17-05, 12.7.17)