

IN THE BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON
SITTING AS THE LOCAL PUBLIC HEALTH AUTHORITY
OF WASHINGTON COUNTY

ORDINANCE No. 878

**An Ordinance to Limit the Access of Tobacco,
Flavored Products, Synthetic Nicotine and
Inhalant Delivery Systems to Individuals under
21 Years Old and Repealing Ordinance 599**

The Board of County Commissioners of Washington County, Oregon, sitting as the Local Public Health Authority of Washington County (“Board”), ordains:

SECTION 1.

A. The Board finds that youth tobacco use is increasing in Washington County and the tobacco industry continues to use strategies that target children including the advent of new products, like flavored products, synthetic nicotine and inhalant delivery systems (vape products).

B. The Board finds that price discounts attract youth to tobacco products.

C. The Board finds that any tobacco products (flavored or not) cannot be sold to persons under 21.

D. The Board finds that synthetic nicotine and inhalant delivery systems should not be sold to persons under 21.

E. The Board finds that the Oregon legislature recently passed SB 587, that will require tobacco retailers to be licensed.

F. The Board finds that WCC Chapter 8.48 addresses access to tobacco to minors, but the code is substantially out of date and needs to be repealed and replaced.

G. The Board further finds that to protect the public health and safety of the people of

1 Washington County and to make the model work most effectively, this ordinance applies to all of
2 Washington County under the Board of Commissioners authority as the Local Public Health
3 Authority of Washington County.

4 SECTION 2.

5 The Board finds and takes public notice that it is in receipt of all information necessary to
6 consider this Ordinance in an adequate manner, and that this Ordinance complies with the ORS
7 Chapter 431.

8 SECTION 3.

9 The Board of Commissioners hereby repeals Washington County Code Chapter 8.48
10 (Ordinance 599).

11 SECTION 4.

12 The attached Exhibit A is hereby adopted and incorporated herein at Chapter 2 of the
13 Washington County Local Public Health Authority Code.

14 SECTION 5.

15 A. Nothing herein is intended, nor shall it be construed, as amending, replacing or
16 otherwise being in conflict with any other ordinances of Washington County unless expressly so
17 stated.

18 B. If any section, clause, phrase, or word of this Ordinance, including the exhibit, shall
19 for any reason be held invalid, unconstitutional, or unenforceable by a body of competent
20 jurisdiction, the remainder of this Ordinance or its application and all portions not so stricken shall
21 not be affected thereby and shall remain in full force and effect.

1 C. The Office of County Counsel is authorized to codify this Ordinance and to make
2 any technical changes, not affecting its substance, as are reasonably necessary to accomplish
3 codification.

4 SECTION 5.

5 This Ordinance shall take effect thirty (30) days after adoption.

6 ENACTED this _____ day of _____, _____, being the _____ reading
7 and _____ public hearing before the Board of County Commissioners of Washington County,
8 Oregon, sitting as the Local Public Health Authority of Washington County.

9 BOARD OF COUNTY COMMISSIONERS
10 FOR WASHINGTON COUNTY, OREGON

11 _____
12 CHAIR

13 _____
14 RECORDING SECRETARY

15 READING

PUBLIC HEARING

16 First _____
17 Second _____
18 Third _____
19 Fourth _____
20 Fifth _____

First _____
Second _____
Third _____
Fourth _____
Fifth _____

21 VOTE: Aye: _____

Nay: _____

22 Recording Secretary: _____ Date: _____

Local Public Health Authority Chapter 2

Chapter 2 - ACCESS TO TOBACCO, SYNTHETIC NICOTINE AND INHALENT DELIVERY SYSTEMS

2.010 - Findings.

- A. Despite the efforts of federal, state and local governments, together with various private organizations, tobacco use by persons under 21 years of age continues to be a significant issue with negative implications for the health of our youth, in addition to impacting the cost of providing both private and public health care services.
- B. It is illegal to sell tobacco products or inhalant delivery systems to a person under 21 years old. In some cases, employers have not adequately trained salesclerks and other employees or otherwise taken responsibility to ensure that the laws prohibiting sales to persons under 21 years of age are complied with rigorously.
- C. Selling tobacco products, flavored tobacco products, synthetically derived nicotine products or inhalant delivery systems to persons under 21 years old is a detriment to the health, safety and welfare of the residents of Washington County. Local governments retain the authority to enact regulations concerning the sale of tobacco if the local regulations are directed at encouraging compliance with existing laws.
- D. Oregon law requires retailers to post a notice informing the public that selling tobacco products and inhalant delivery systems to individuals under 21 is prohibited. Oregon law also prohibits the sale of inhalant delivery systems packaged in a manner attractive to minors.

2.020 - Definitions.

- A. **Cigarette.** Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists or contains:
 - 1. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
 - 2. Tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by, consumers as a cigarette; or
 - 3. Any roll of tobacco that is wrapped in any substance containing tobacco and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by, consumers as cigarette described in subsection (a) of this section.
- B. **Flavored Product.** Any synthetic nicotine product or tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, molasses, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a synthetic nicotine product or tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements or claims concerning such products, that a synthetic nicotine

product or tobacco product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Flavored product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose if the product is marketed and sold solely for the approved purpose.

- C. **Inhalant delivery system:** A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to an individual inhaling from the device, or a component of such a device or a substance in any form sold for the purpose of being vaporized or aerosolized by such a device, whether the component or substance is sold separately or is not sold separately. Inhalant delivery system includes, but is not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

Inhalant delivery system does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose if the product is marketed and sold solely for the approved purpose.

- D. **Self-service display.** The display of cigarettes or any tobacco products for sale or consumption at a business that allows the public access to the products without the assistance of the owner or an employee of the business. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.
- E. **Synthetic Nicotine product.** Any product designed for human consumption where the nicotine was created and produced in a laboratory and not derived from tobacco.
- F. **Tobacco Product.** (1) Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) Any inhalant delivery system, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains tobacco or nicotine; or (3) Any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

Tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

- G. **Vendor-assisted sale.** The sale of cigarettes or any tobacco products to a retail consumer or buyer wherein only the vendor has access to the product until after the completion of the sale.

2.030 - Prohibitions.

- A. Prohibited sales to persons under the age of 21. No person or entity shall sell, distribute or offer for sale or distribution any tobacco product, synthetic nicotine product or inhalant delivery system to a person under the age of 21.
- B. Flavored products restricted. No person shall sell, offer for sale, or otherwise distribute any flavored tobacco product, synthetic nicotine product or inhalant delivery system in an

establishment accessible to those under the age of 21. The entirety of the establishment must be a 21 and over facility.

- C. Coupon and price promotions prohibited. No person shall accept or redeem any coupon or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any tobacco product, synthetic nicotine product or inhalant delivery system to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.
- D. Minimum package size required. No person shall sell or distribute, or offer for sale or distribution, or permit to be sold or distribution, any container of cigarettes containing fewer than 20 cigarettes. Each sale or distribution or offer to sell or distribute shall be a separate violation.
- E. Vendor-assisted sale of tobacco products required. No person or entity shall offer for sale, sell or permit to be sold any cigarettes, tobacco products, synthetic nicotine product or inhalant delivery system by means of a self-service display or any means other than by a vendor-assisted sale. Each day that the self-service display is accessible shall be a separate violation. Each offer for sale or sale other than vendor-assisted shall be a separate violation.
- F. Moveable Place of Business prohibited. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions of any tobacco product, synthetic nicotine product or inhalant delivery system is prohibited.

2.040 - Exceptions.

The prohibitions set forth in 8.48.030 shall not apply to:

- A. Tobacco vending machines in establishments where persons under 21 are prohibited.
- B. A business establishment primarily engaged in the sale of tobacco products, synthetic nicotine products or inhalant delivery systems and posted as off-limits to persons under the age of 21.
- C. Businesses that are off-limits to persons under 21 years of age and posted as such under the rules of the Oregon Liquor Control Commission.

2.050 - Non-retaliation.

It shall be a violation of this ordinance for any employer to discharge, demote, suspend, refuse to hire, or in any manner retaliate against any employee, applicant for employment or customer because such person reports, testifies, assists or participates in any manner in any investigation, proceeding or hearing regarding an alleged violation of this ordinance. To the extent permitted by law, any person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damage and such other remedies as may be appropriate.

2.060- Conformity with law.

This chapter shall not, in any way, be a substitute for, nor eliminate in any way, the necessity for conformity with any and all laws or rules of the federal government, the state of Oregon or its agencies, nor any ordinances or rules and regulations of the county.

2.070 - Enforcement.

WCC Chapter 1.12 provides the general enforcement mechanism for this chapter, but does not preclude other enforcement options.

2.080 - Civil infraction.

A county enforcement officer, as defined in WCC Chapter 1.12, may issue a Class A civil infraction for failure to comply with this chapter and any rules and regulations adopted pursuant thereto. Civil infractions shall conform to the requirements of the Administrative Enforcement Code, Chapter 1.12. Enforcement of civil infractions shall be through Chapter 1.12. Each day a person is in violation of this chapter shall be deemed a separate violation thereof.

2.090 - Civil infraction—Other enforcement procedures not excluded.

The provisions of this chapter are in addition to and not in lieu of any other procedures and remedies provided by law, including equitable relief and damages.