



July 2017

Deschutes County

# TOBACCO RETAIL LICENSE

Fiscal Impact Report



## Acknowledgments

### July 2017

This report was produced by the Rede Group for Deschutes County Health Services (DCHS).

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Penny Pritchard, MPH

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# Background

This report was created for the Deschutes County Health Services (DCHS) Tobacco Prevention & Education Program. It is a summary of the tobacco retail environment work accomplished between July 2016-June 2017, utilizing SPArC grant funds. There are three main sections to this report: 1) The introductory section provides background information on youth tobacco use/initiation as a public health issue and the evidence base for enacting policies in the retail environment. Local efforts to address youth tobacco use, up to this point in time, are also discussed in the introductory section of this report. 2) The second section of this report covers the detailed findings of the tobacco retailer assessment conducted across Deschutes County in the fall of 2016. 3) The last section of the report describes the work of the Deschutes County Tobacco Retail Licensure Fiscal Impact Committee. A detailed description of five possible ways to implement and enforce Tobacco Retail Licensure across Deschutes County is provided along with program cost estimates and Committee recommendations for moving this policy initiative forward.

Tobacco use still remains the number one preventable cause of death and disease in Oregon. In Deschutes County one in five adults use tobacco<sup>1</sup> and over \$50 million are spent annually on tobacco-related medical care costs.<sup>2</sup>

Tobacco addiction starts in adolescence with nine of ten adults who smoke reporting that they started before the legal smoking age of 18, and almost 100 percent starting before they turn 26.<sup>3</sup> Deschutes County youth currently use most types of tobacco products at a higher rate than their peers around the state. And although youth smoking rates in the state of Oregon have declined by over 60% since the inception of the statewide Tobacco Prevention Program, youth use of other tobacco and nicotine products (e-cigarette/vaping products, large and small cigars, hookah, snuff, dip and chew) is on the rise. Nearly one in four 11th graders in Deschutes County report using tobacco products other than cigarettes.<sup>4</sup>

Many factors contribute to a youth's decision to use tobacco, including the availability, placement, and marketing of tobacco products in our communities. In Oregon, the tobacco industry spends over \$111

million a year advertising its products with 91% of this money spent on in-store, point of sale activities including price promotions and product placement designed to appeal to all audiences, including youth.<sup>5,6</sup> Higher levels of tobacco marketing at the retail space, lower tobacco prices, and greater availability of tobacco coupons and promotions are associated with product uptake among middle and high school youth.<sup>7</sup> Retail marketing prompts initiation, promotes daily consumption, and discourages attempts to quit.

Emerging research shows that another big contributor to youth tobacco use initiation is the exploding market of flavored tobacco products. Nationwide, 80% of kids who have ever used a tobacco product started with a flavored product.<sup>8</sup> Kid-friendly candy flavorings including fruit, bubble gum, cotton candy, and chocolate mask the harsh taste of commercial tobacco products. In an attempt to reduce youth tobacco use initiation, in 2009 the Federal Government banned flavorings, other than menthol, in cigarettes. Big and little cigars, chew and other oral tobacco products, and electronic nicotine delivery systems are not currently covered by this rule. Approximately a third of Deschutes County 11th graders report having used a flavored tobacco product.<sup>9</sup>

Currently Oregon is one of only nine states that do not require tobacco retailers to hold a license. Without tobacco retail licensure, there is little the state or local government can do to influence a change in behavior among those businesses that knowingly or carelessly sell tobacco to underage youth. Minor decoy inspections of tobacco retailers in Deschutes County indicate varying levels of compliance with "no tobacco sales to minors" laws depending upon the inspection methodology and year. In 2014 more than a quarter (26.7%) of the tobacco retailers tested in Deschutes County sold tobacco to an underage youth during inspections conducted by the Oregon Health Authority (OHA). It should be noted that roughly 50% of tobacco retailers are randomly chosen for an inspection by the OHA on an annual basis and adult-only establishments and vaping shops have not historically been included in these inspections.

# Introduction

Deschutes County Health Services staff and community partners have, for many years, been working to reduce youth tobacco use initiation through tobacco policy, systems, and environmental changes in the community. In 2015, several tobacco policy goals that focused on the retail environment were included in the Central Oregon Health Council's 2016-2019 Regional Health Improvement Plan (RHIP). The RHIP includes measurable health indicators for several priority health improvement areas, which were identified by medical professionals and community stakeholders during a six-month, strategic planning process throughout Crook, Deschutes, and Jefferson Counties. At the completion of this planning process, the Central Oregon Health Council Board of Directors reviewed and approved the RHIP, committing to pursue the priorities, goals and strategies described in the plan.

## 2016 Central Oregon Health Council Board of Directors

### **Tammy Baney**

Chair Commissioner, Deschutes County

### **Mike Shirtcliff**

DMD, Vice Chair President, Advantage Dental

### **Mike Ahern**

Commissioner, Jefferson County

### **Ken Fahlgren**

Commissioner, Crook County

### **Megan Haase, FNP**

CEO, Mosaic Medical

### **Greg Hagfors**

Chair Finance Committee, CEO, Bend Memorial Clinic

### **Stephen Mann, DO**

Chair, Provider Engagement Panel

Central Oregon IPA Representative

### **Linda McCoy**

Chair, Community Advisory Council

### **Joseph Sluka**

CEO, St. Charles Health System

### **Dan Stevens**

Executive VP, PacificSource Health Plans

The RHIP priority areas include: Behavioral Health, Cardiovascular Health, Diabetes, Oral Health, Reproductive and Maternal/Child Health, and Social Determinants of Health. Under the

Cardiovascular Disease priority health area there are two measurable health indicators relating to tobacco use:

1. Decrease the prevalence of cigarette smoking among adults from 18% to 16%
2. Decrease the prevalence of smoking among 11th and 8th graders from 12% and 6%, respectively to 9% and 3% respectively

The tobacco retail environment policy action identified to help achieve the 2019 health indicator goals reads as follows:

**Implement a tobacco retail licensing program that will eliminate illegal sales to minors, prevent retailers from selling tobacco within 1,000 feet of schools, raise the age of purchase for tobacco to 21, and eliminate sales of flavored tobacco products.**

To aid in advancing the RHIP tobacco policy goal, Deschutes County Public Health applied for and won competitive Tobacco Master Settlement Agreement Funding (also known as the SPArC grant) from the OHA in the spring of 2016. Deschutes County's SPArC grant program plan outlined a three-pronged community engagement approach to move the concept of tobacco retail licensing and the other three identified companion policies forward:

1. Convene a work group of city (Bend, LaPine, Redmond, Sisters) and county staff to conduct a fiscal impact analysis for implementing and enforcing a Tobacco Retail Licensure (TRL) program throughout Deschutes County.
2. Through one-on-one interviews with tobacco retail store owners/managers, learn more about their current efforts to keep tobacco out of the hands of youth and gain an understanding of if/how the tobacco policies in the RHIP would impact their businesses.
3. Report the key findings from the retailer interviews and the tobacco retail licensure fiscal impact study and committee recommendations to the Deschutes County Board of Commissioners and City Councils in Bend, Redmond, Sisters, and LaPine.

# Introduction

This report summarizes the key findings of outreach efforts to the tobacco retail business community and the cost estimates for countywide (all cities and unincorporated areas) TRL implementation along with the policy recommendations of the TRL Fiscal Impact Committee members listed below.

## Deschutes County Tobacco Retail Licensure Fiscal Impact Committee

### **Erik Kropp**

Deputy Administrator, Deschutes County

### **Susanna Julber**

Senior Project & Policy Analyst, City of Bend

### **Jodi Burch**

Deputy Director of Central Services, City of Redmond

### **Dr. Nathan Boddie**

Physician and Bend City Councilor

### **Eric Mone**

Environmental Health Supervisor, Deschutes County Health Services

### **Thomas Kuhn**

Public Health Program Manager, Deschutes County Health Services

### **Penny Pritchard**

Tobacco Prevention Coordinator, Deschutes County Health Services

*Note: Kathy Agan, former City Councilor of LaPine, served on the committee for a short time. DCHS was unable to find a replacement for her when she left the Committee in December of 2016. Additionally, due to time constraints, the City of Sisters opted out from participating in the Committee.*

## Evidence-Based Policy in the Tobacco Retail Environment

In consideration of the role the tobacco retail environment plays in influencing youth tobacco use, an increasing number of local communities nationally and in Oregon have begun to develop and implement evidence-based policy strategies for impacting the problem (See “How Other Jurisdictions are Tackling the Problem” on page 22 for information on TRL policies recently passed in Lane, Multnomah, and Klamath Counties. The county ordinances are located in Appendix B-H).

The tobacco retail environment policy action items chosen for the Central Oregon Health Council RHIP were selected based on need as determined by local data, and on a review of the science of tobacco retail environment policy.

Requiring tobacco retailers to be licensed and to meet certain requirements in order to maintain their license is a straight-forward method for reducing sales of tobacco to minors. Although tobacco sales to youth are already prohibited by state law, 17% of Oregon 11th graders who used tobacco reported obtaining it from a store or a gas station in 2013.<sup>10</sup> Since high rates of illegal sales to minors are linked with low retailer perception of being caught and penalized,<sup>11</sup> it is important to find local solutions that prioritize enforcement, even when state and federal authorities are unable to do so. By identifying and licensing stores that sell tobacco at the local level, licensure programs facilitate merchant education regarding new and existing rules and regulations and provide communities with a powerful tool for garnering compliance with “no sales to minors laws” and all other tobacco-related regulations.

Additionally, municipalities may choose to use tobacco retail licensure as the vehicle to set limits on the location, number, and type of tobacco retailers or to further restrict the sale of some types of tobacco (candy flavors) and set new age restrictions for the sale of tobacco (raise purchase age to 21). For example, some communities, including Lane County, Oregon, are prohibiting the issuance of licenses to new tobacco retailers near schools, citing research indicating that when there are more tobacco retailers near schools, students are more likely to smoke.<sup>12</sup> While other states and local jurisdictions are utilizing their tobacco retail licensure systems to enforce new laws regulating a minimum tobacco purchase age of 21, a prevention strategy that the Institute of Medicine predicts will drop the number of 15-17 year olds who start to smoke by 25%.<sup>13</sup> Please see Appendix I for a matrix of example tobacco retail environment policies and enforcement plans from innovative communities in Oregon and California.

It should be mentioned that not all Tobacco Retail Licensure policies and enforcement plans are created equal. A number of Oregon jurisdictions have TRL ordinances on the books from the early 90's

that have not lead to a reduction in tobacco sales to minors, primarily because the license fees assessed did not cover the cost of program implementation and adequate enforcement.

## Basic Components of Effective Tobacco Retail Licensure\*

- **Require retailers to obtain a license, renewable annually, to sell tobacco products**
- **Expand the definition of “tobacco product” so the law restrictions encompass new and emerging tobacco products popular with youth such as dissolvable products and e-cigarettes or vaping devices**
- **Set the license fee at an amount sufficient to fund adequate implementation and enforcement of the law**
- **Include monetary fines and suspension as penalties for license violations**
- **Ensure that the license is nontransferable (if a licensee changes ownership or its place of business, it must reapply for a license)**
- **Require licensees to comply with all existing federal, state, and local tobacco laws**



\*Adapted from Public Health Law Center 2012/ [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)

# Retailer Survey Findings

In the summer of 2016, Deschutes County Health Services hired the Rede Group, an Oregon-based consulting firm that specializes in advancing community health improvement initiatives, to assist in implementing the SPArC grant workplan. In addition to facilitating the work of the TRL fiscal impact committee, Rede Group worked collaboratively with Deschutes County Health Services to design and conduct an assessment of local tobacco retailer’s knowledge, attitudes, and beliefs with respect to youth tobacco use initiation and the tobacco retail policies proposed in the RHIP to help bring down youth tobacco use rates in Deschutes County.

The 15-question tobacco retailer survey instrument was developed based on the following parameters:

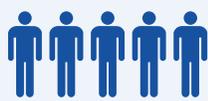
- » Ask critical questions pertaining to TRL policy issues that are supported by local data and highlighted in the SPArC grant workplan;
- » Respect retailers time by limiting the interview to no longer than 30 minutes while still allowing time for them to share their perspective through several open-ended questions;
- » Assure that a wide variety of local tobacco retailers from across Deschutes County are represented in the survey sample and guarantee

anonymity to those retailers who agree to participate.

In October of 2016 Rede Group recruited tobacco retailers to participate in the survey using a comprehensive list of known tobacco retailers supplied by Deschutes County Health Services. Phone calls were made to sixty-five businesses, requesting a phone or in-person interview about tobacco sales issues with the owner or manager of the store. Potential survey participants were informed that they would be compensated for their time with a \$25 VISA gift card. Of the sixty-five stores contacted 19 agreed to participate in the survey while 13 declined to participate. Five large scale national stores indicated they could not participate unless corporate headquarters gave them permission. Four stores known to sell tobacco denied that they were tobacco retailers, and the remaining stores were out of business, closed for the season, or did not respond to messages left by the Rede Group.

The results from 8 phone and 11 in-person interviews with Deschutes County tobacco retailers conducted in November of 2016 follow. The survey instrument can be found in Appendix J of this report.

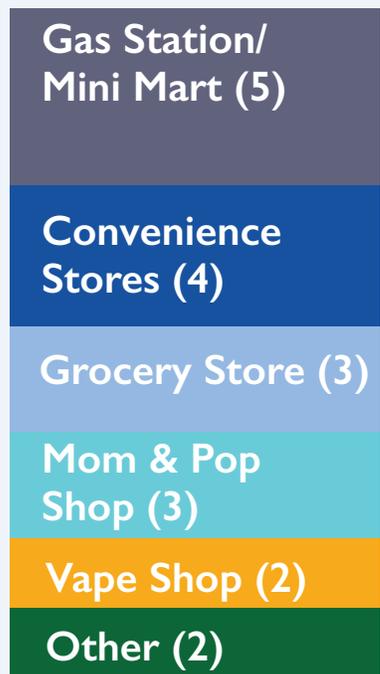
## Retailer Locations, Types of Retail Outlets, and Types of Employees Interviewed



Store Owners x5



Store Managers x14

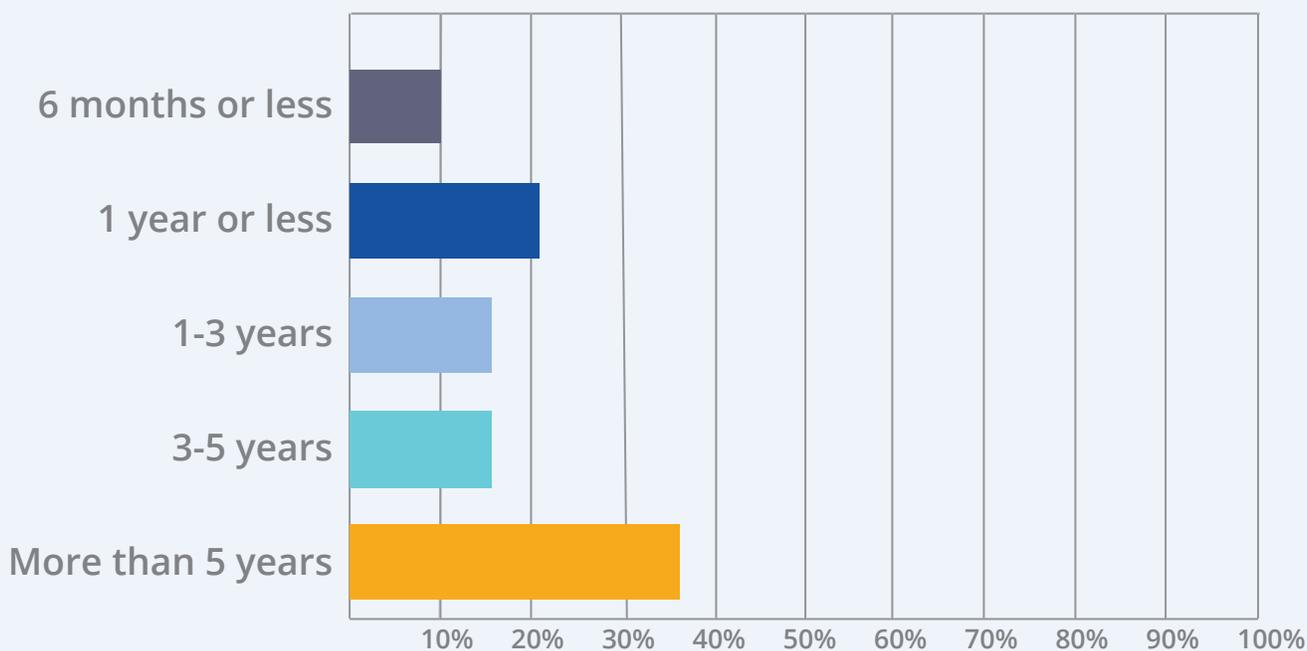


# Retailer Survey Findings

## Key Findings:

- + Approximately half of tobacco retailers interviewed do very little to train frontline staff on how to prevent illegal tobacco sales to youth from occurring.
- + Owners/managers have varied ways of dealing with staff who sell tobacco to minors.
- + The majority of tobacco retail outlet owners/managers interviewed for this survey would support TRL if it helps prevent kids from initiating use.
- + The majority of interviewees also support license revocation for businesses who are found to repeatedly sell to minors.
- + The majority of interviewees said their business would not be impacted if TRL was put into place.
- + More than half of the interviewees were opposed to eliminating the sale of flavored tobacco products. Vape shops, in particular, were strongly opposed as flavored vaping products are predominately what they sell.
- + The majority of interviewees support banning the sale of tobacco products within 1,000 feet of schools, however, retailers currently located near schools were opposed to this policy concept.
- + The majority of interviewees oppose raising the legal smoking age from 18 to 21.

## Employment History of Interviewees



## Findings: Training and Protocol

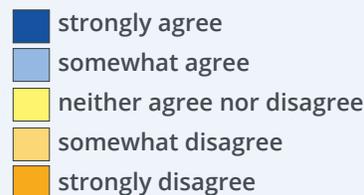
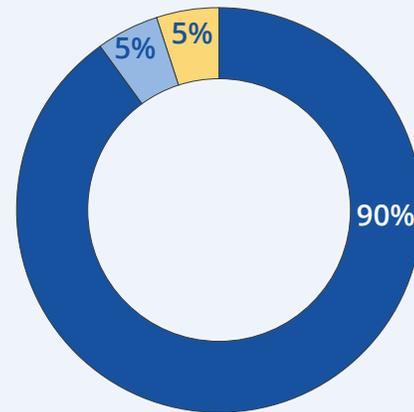
### Training policies used to educate employees on preventing the sale of tobacco to minors:

- » 9 of 19 stores have no training protocol
- » Most of these stores simply tell clerks to card anyone who looks to be under a certain age (40, 35, 27)
- » A few stated they have a rule “no ID, no sale, no matter how old the customer looks.”
- » 10 stores indicated they require clerks to participate in some type of training, typically using Oregon Liquor Control Commission (OLCC) or We Card program materials

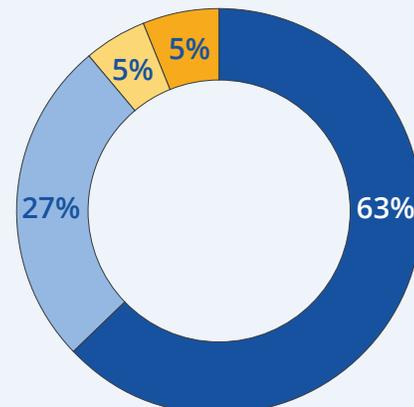
“Our clerks are required to watch a video we have on tape called Alcohol & Tobacco Sales Training. Cashier may not make any tobacco sales by themselves without another person with them their first 4 shifts. They are taught how to card properly and how to use the scanner to check ID. We try to stay up with OLCC meetings and make people aware of new policies for the state of Oregon. We were not this strict in the past, but we’ve had tobacco sales to minors before, so we want to ensure that doesn’t happen again.”

—Store Manager  
Mom & Pop Shop

### Do you feel your current training policies and programs are successful in limiting sales of tobacco and electronic nicotine delivery systems to



### Do employees at your store experience minors attempting to purchase tobacco or electronic nicotine delivery products illegally?



## Findings: Training and Protocol

### Protocol used for employees selling tobacco to minors:

- » Seven interviewees said there would be an immediate dismissal of the offending employee
- » Seven interviewees said the employee would be reprimanded on a first offense
- » Four interviewees said it's never happened/we don't have a protocol
- » One interviewee said the employee would need to go over training materials again

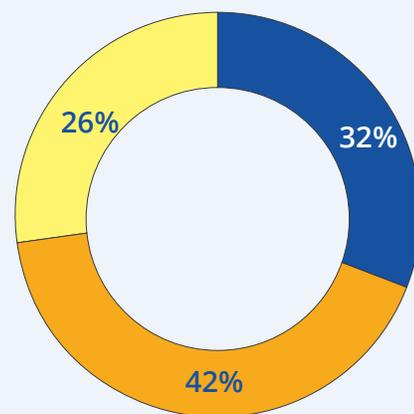
**“They will be fined by the inspecting agency and fired by us. Two years ago one of our clerks was caught selling during an FDA inspection. At that time she got off on a very strong warning, but since that incident our owners have indicated anyone caught selling tobacco to minors will be let go.”**

**—Manager  
Mom & Pop Shop**

**“First time verbal warning, 2nd time written warning, 3rd time let them go.”**

**—Owner  
Gas Station/Mini Mart**

**Is there anything that the Deschutes County Health Dept. could do to support your education and training efforts focused on reducing sales of tobacco and nicotine delivery systems to minors?**



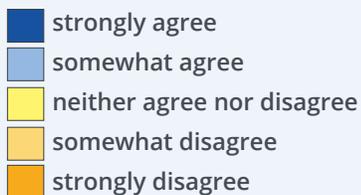
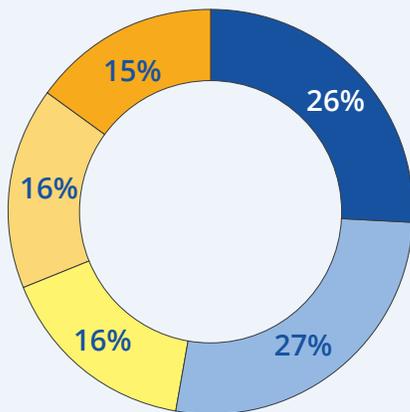
■ yes  
■ no  
■ unsure

**“Updated training videos or an onsite training for our staff might be nice.”**

**—Manager  
Grocery Store**

## Findings: Tobacco Retail License Support

If a tobacco retail license system would help prevent youth from starting to use tobacco or vaping products, would you support a licensing program?



“We used to be known as ‘easy to buy from’, proper training has changed this and I do understand that when you have to pay a license fee it makes you do a better job.”

—Manager  
Mom & Pop Shop

“I don’t feel like having a license in place would help the problem because of my experience with OLCC alcohol licensing. My 18 year-old son bought alcohol from a store despite the fact that the store had an OLCC license.”

—Manager  
Gas Station/Mini Mart

“I strongly agree. I own three stores in Bend and one in Redmond. We don’t want to sell tobacco to kids, no matter what.”

—Owner  
Convenience Store

“I strongly disagree. I pay the city \$35 so I can sell beer, and \$250 to OLCC. A tobacco license would cause retailers to sell more tobacco to minors in order to make ends meet.”

—Owner  
Gas Station/Mini Mart

## Findings: Penalties & Business Impact

### Type of penalty for retailers who continually sell tobacco products to minors:

- » Ten interviewees said the license should be revoked/they should not be allowed to sell tobacco
- » Five interviewees said there should be a fine
- » Three interviewees said the penalty should be similar to alcohol rules

### Business impact of a tobacco retail license:

- » Ten interviewees said their business would not be impacted if they were required to pay a fee and obtain a license in order to sell tobacco
- » Four interviewees said they would need to know the details of the TRL system in order to determine what, if any, impact it would have on their business
- » Two interviewees said a TRL system would negatively impact their business
- » Three interviewees did not directly answer the question

**“They should be fined. Money talks. People need to think ‘is it really worth it to make this one sale when there is a lot to lose?’ Hit them in the pocket-book where it counts.”**

**—Manager  
Mom & Pop Shop**

**“Take away their license. If the business sells more than three times, they shouldn’t be able to sell tobacco.”**

**—Manager  
Gas Station/Mini Mart**

**“It depends, if they would impose a tax using the licensing system that would have a great impact. Basic TRL would not be a big issue.”**

**—Manager, Vape Shop**

**“Sounds like more money for the government. The employees are the problem, not corporate.”**

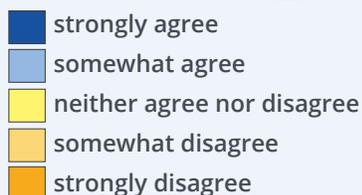
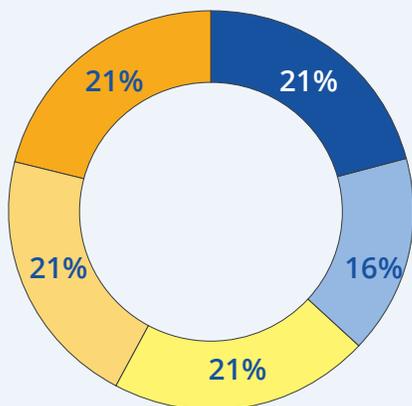
**—Manager, Mom & Pop Chain**

**“It would impact us a little bit because we don’t have a high profit margin or markup fee on tobacco.”**

**—Manager, Grocery Store**

## Findings: Flavor Ban

If you knew it would reduce or prevent youth from using tobacco, would you consider discontinuing the sale of flavored tobacco and/or vaping products?



“On a personal level, I somewhat agree but the higher-ups might feel differently. We only sell mint/wintergreen chew, no vaping products.”

—Manager  
Gas Station/Mini Mart

“I strongly agree, we only sell flavored cigars.”

—Manager  
Grocery Store

“I’m here to make money.”

—Manager  
Mom & Pop Shop

“Our cherry flavored e-cigarettes are a best seller and we shouldn’t penalize adults who want to use flavored products.”

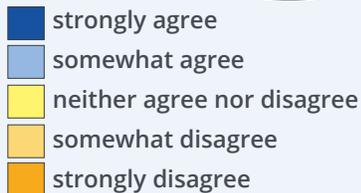
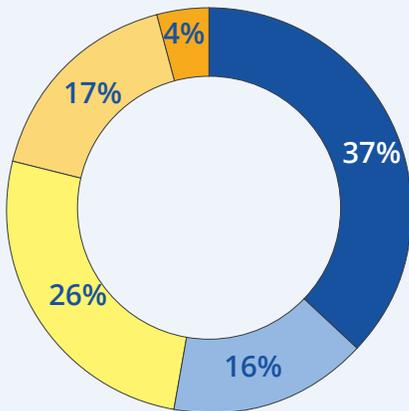
—Owner  
Gas Station/Mini Mart

“I strongly disagree, and it wouldn’t do any good anyway. When people start vaping, they use tobacco flavored vapor, not fruit/candy flavors.”

—Manager  
Vape Shop

## Findings: Tobacco Retail License Restrictions

If you knew it would reduce or prevent youth from using tobacco, would you support a policy that prohibits retailers from selling tobacco within 1,000 feet of schools?



**“I agree 100%. Definitely.”**

**—Manager  
Grocery Store**

**“I neither agree nor disagree. I know there have been issues with new schools popping up in locations where marijuana dispensaries were already established.”**

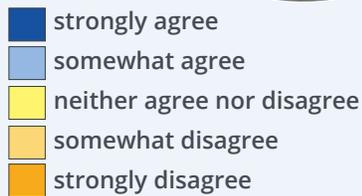
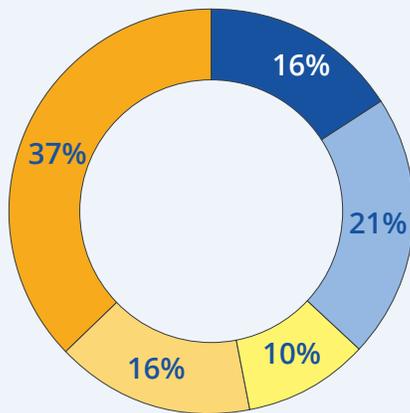
**—Manager  
Vape Shop**

**“I strongly disagree. There is a charter school across the street from us and I think kids will find a way to get the products regardless of whether they are sold near schools.”**

**—Owner  
Vape Shop**

## Findings: Raise Purchase Age for Tobacco Products to 21

Would you support increasing the purchase age for tobacco and vaping products from 18 to 21, like the purchase age for alcohol and recreational marijuana?



“Kids are still going to get a hold of it no matter if the age is 18 or 21”

—Manager, Grocery Store

“I don’t think raising the age would make a difference. Most young kids who use tobacco get it at home. If you are old enough to be in the armed forces, you are old enough to buy tobacco.”

—Manager, Mom & Pop Shop

“I strongly agree 100%. I started chewing at the age of 13 when my grandpa gave it to me. Then when I was on the rodeo circuit as a 15 year old, Skoal would supply the riders with chew and encourage us to use it during competitions.”

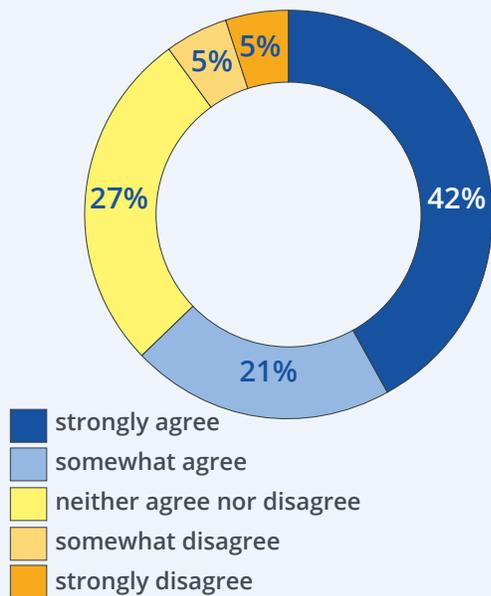
—Manager  
Grocery Store

“I strongly agree with this. I caught one of my 18 year old employees giving tobacco to a 16 year old. Of any of the policies you have mentioned this is the one I support the most.”

—Manager  
Mom & Pop Chain

## Findings: Posting Quit Line & Other Comments

Would your store be willing to post Oregon Tobacco Quit Line information in order to support tobacco users who are interested in quitting?



“I somewhat disagree. I say this because of my business owner side, but then I am also a part of humanity. Do we want people to get sick and die from cancer? I would never want my own child to start smoking. I guess I am a seller of death.”

—Owner  
Mom & Pop Shop

Other comments for Deschutes County Health Services:

“If everyone had a good training plan in place it would help this problem. I have worked in other stores that didn’t train clerks to card before selling tobacco.”

—Manager  
Gas Station/Mini Mart

“It’s not all kids who are using vaping products. The average age of our customers is 40. These are hard working, good people. We have some 18-25 year old customers but 50-60% are over the age of 40 and trying to quit tobacco.”

—Manager  
Vape Shop

“If we quit selling poison to make a profit people would be more likely to quit and health-care costs would go down.”

—Manager  
Mom & Pop Chain

# Estimation of TRL Implementation & Enforcement Costs

The Deschutes County Fiscal Impact Committee was charged with exploring how best to implement a Tobacco Retail Licensure system across Deschutes County, should elected officials in one or more of the local jurisdictions pursue such a policy and program. The Committee, made up of City of Bend, Deschutes, and Redmond county staff and one elected official met a total of five times between September 2016 and June 2017. During this time, the Committee determined that the most plausible way to implement TRL across the county would be to approach the elected bodies of each of the cities and ask them to sign a resolution allowing Deschutes County Health Services to act as the licensing and enforcement agent should the Board of County Commissioners choose to enact an ordinance requiring all retailers who sell tobacco in Deschutes County cities and unincorporated areas to obtain a license to do so. This section of the report details five different options for staffing, implementing, and enforcing a countywide TRL program through Deschutes County Health Services, along with estimated annual license fees for the approximately 130 businesses in Deschutes County who currently sell tobacco products.

## Technical notes:

1. Hourly rates with fringe benefits for FY 2018 were provided by DCHS finance office.
2. The FTE for the administration secretary, TPEP staff person, and environmental health inspector is informed by other counties like Lane and Multnomah who have implemented TRL.
3. Minor decoy inspection information is based on a combination of the Synar Program inspection, Reward and Reminder Program, and time it took TPEP staff person to conduct environmental scans in tobacco retail stores.
4. Some implementation costs such as purchased media and marketing materials and the tobacco module addition to HealthSpace will be paid for by grant dollars.
5. The committee recommends assessing businesses who fail minor decoy checks a reinspection fee of \$200 (not included in current estimate) unless the intent is to direct money received from penalties back into the TRL enforcement fund.

*Disclaimer: This analysis is only an estimate based on the information available at the time at the time this report was completed in May/June 2017.*

## TRL Fee Options At-a-Glance

Option Number	Compliance Inspections	Minor Decoy Inspections	Total FTE Required	Total License Program Cost	Individual License Fee
1	Yes, all stores annually	Yes, all stores twice a year	.6	\$64,023.52	\$492.49
2	Yes, all stores annually	Yes, all stores once a year	.425	\$43,760.99	\$336.62
3	No	Yes, all stores once a year	.325	\$34,551.35	\$265.77
4	No	Yes, 50% of stores, annually	.252	\$25,388	\$195.29
5	No	No	.095	\$8,744.34	\$67.26

Table Note: Options 1-5 are listed in descending order of effectiveness relating to reducing sales of tobacco to minors.

## Option I: Annual Fee \$492.49

(For 130 stores receiving one compliance & two minor decoy inspections annually)

Title	FTE/Hours	Pay Rate	Expense	Description
Tobacco Prevention Coordinator	.1 FTE 4 hours per week	\$44.8 hr, includes benefits	\$8,601.60	<ul style="list-style-type: none"> <li>helps with implementation, enforcement, and overall evaluation efforts of the TRL program</li> <li>coordinates with the environmental health program and other departments</li> <li>writes or assists with writing grants for program needs</li> <li>helps inform EH's tobacco retailer database</li> <li>coordinates education efforts for businesses and general public</li> <li>prepares Q &amp; A for website about licensing</li> <li>helps draft TRL application and inspections forms</li> <li>recruits minors for the EH department to train</li> <li>arranges minor decoy incentives</li> <li>assist with minor decoy program planning</li> <li><b>conducts annual tobacco product inspection for every tobacco retailer</b></li> <li>documents inspections and reports information to EH admin secretary or enters it in HealthSpace</li> <li>files remediation plan if violation occurs and conducts a 30 day follow up inspection with person in charge</li> </ul>
Environmental Health Administration Secretary	.25 FTE 10 hours per week	\$42.89 hr, includes benefits	\$20,587.20	<ul style="list-style-type: none"> <li>helps with implementation and enforcement of the TRL program</li> <li>coordinates with IT to set up the tobacco module in HealthSpace</li> <li>enters tobacco retailer data in HealthSpace</li> <li>helps TPEP with educating tobacco retailers and the public about TRL requirements</li> <li>disseminates license renewal instructions on an annual basis</li> <li>contacts businesses out of compliance, and processes licensing fees</li> <li>communicates with EH inspectors and TPEP coordinator to capture inspection data</li> <li>processes violations and enters suspensions in HealthSpace</li> <li>processes minor decoy reimbursements</li> <li>orders program materials and office supplies</li> </ul>
Environmental Health Inspector	.25 FTE 10 hours per week	\$44.03 hr, includes benefits	\$21,134.40	<ul style="list-style-type: none"> <li><b>conducts two minor decoy inspections for each store</b></li> <li>trained by OLCC or Synar to conduct minor decoy inspections</li> <li>possibly deputized to give citations to businesses who are in violation</li> <li>trains minors to conduct inspections</li> <li>communicates with other departments to help draft TRL application and inspection forms</li> <li>accompanies minors to stores and waits in the car while purchase is attempted</li> <li>completes inspection forms and gathers evidence of violation</li> <li>reports violations to administration secretary</li> <li>prepares and delivers violation notices</li> <li>attends hearings if businesses wish to appeal citation</li> <li>coordinates follow-up minor decoy inspection of businesses that failed first inspection within 60 days of first violation</li> <li>collaborates with other departments to assess program needs</li> <li>delivers inspection and report information to EH admin secretary or enters in HealthSpace</li> </ul>
Minor Decoy Inspectors  2 minors (inspecting together)	260 stores + 4 hours of training	\$10 an hour	\$5,280	<ul style="list-style-type: none"> <li>attends minor decoy inspection training by EHS II or EH supervisor</li> <li>must be under the age of 21 years old (depending on T21 law passing)</li> <li>if under 18 years of age, must obtain parental permission</li> <li>completes county volunteer forms and waiver to ride in county vehicle</li> <li>accompanies an EHS II or EH supervisor inspector to stores</li> <li>attempts to purchase tobacco illegally with one other minor inspector present</li> <li>completes necessary paperwork for each inspection</li> <li>attends hearings if businesses wish to appeal the citation, if requested</li> </ul>

Tobacco products purchased by minors: \$10 x 260 stores = \$2,600  
 Indirect cost includes legal counsel, IT support, transportation, etc.  
 Total= \$64,023.52 (10% indirect cost included)  
 Annual Fee \$492.49

## Option 2: Annual Fee \$336.62

(For 130 stores receiving one compliance & one minor decoy inspection annually)

Title	FTE/Hours	Pay Rate	Expense	Description
Tobacco Prevention Coordinator	.1 FTE 4 hours per week	\$44.8 hr, includes benefits	\$8,601.60	<ul style="list-style-type: none"> <li>helps with implementation, enforcement, and overall evaluation efforts of the TRL program</li> <li>coordinates with the environmental health program and other departments</li> <li>writes or assists with writing grants for program needs</li> <li>helps inform EH's tobacco retailer database</li> <li>coordinates education efforts for businesses and general public</li> <li>prepares Q &amp; A for website about licensing</li> <li>helps draft TRL application and inspections forms</li> <li>recruits minors for the EH department to train</li> <li>arranges minor decoy incentives</li> <li>assist with minor decoy program planning</li> <li><b>conducts annual tobacco product inspection for every tobacco retailer</b></li> <li>documents inspections and reports information to EH admin secretary or enters it in HealthSpace</li> <li>files remediation plan if violation occurs and conducts a 30 day follow up inspection with person in charge</li> </ul>
Environmental Health Administration Secretary	.125 FTE 5 hours per week	\$42.89 hr, includes benefits	\$10,293.60	<ul style="list-style-type: none"> <li>helps with implementation and enforcement of the TRL program</li> <li>coordinates with IT to set up the tobacco module in HealthSpace</li> <li>enters tobacco retailer data in HealthSpace</li> <li>helps TPEP with educating tobacco retailers and the public about TRL requirements</li> <li>disseminates license renewal instructions on an annual basis</li> <li>contacts businesses out of compliance, and processes licensing fees</li> <li>communicates with EH inspectors and TPEP coordinator to capture inspection data</li> <li>processes violations and enters suspensions in HealthSpace</li> <li>processes minor decoy reimbursements</li> <li>orders program materials and office supplies</li> </ul>
Environmental Health Inspector	.2 FTE 8 hours per week	\$44.03 hr, includes benefits	\$16,907.52	<ul style="list-style-type: none"> <li><b>conducts one minor decoy inspections for each store</b></li> <li>trained by OLCC or Synar to conduct minor decoy inspections</li> <li>possibly deputized to give citations to businesses who are in violation</li> <li>trains minors to conduct inspections</li> <li>communicates with other departments to help draft TRL application and inspections forms</li> <li>accompanies minors to stores and waits in the car while purchase is attempted</li> <li>reports violations to administration secretary</li> <li>prepares and delivers violation notices</li> <li>attends hearings if businesses wish to appeal citation</li> <li>collaborates with other departments to assess program needs</li> <li>coordinates follow-up minor decoy inspection of businesses that failed first inspection within 60 days of first violation</li> </ul>
Minor Decoy Inspectors  2 minors (inspecting together)	130 stores + 4 hours of training	\$10 an hour	\$2,680	<ul style="list-style-type: none"> <li>attends minor decoy inspection training by EHS II or EH supervisor</li> <li>must be under the age of 21 years old (depending on T21 law passing)</li> <li>if under 18 years of age, must obtain parental permission</li> <li>completes county volunteer forms and waiver to ride in county vehicle</li> <li>accompanies an EHS II or EH supervisor inspector to stores</li> <li>attempts to purchase tobacco illegally with one other minor inspector present</li> <li>completes necessary paperwork for each inspection</li> <li>attends hearings if businesses wish to appeal the citation, if requested</li> </ul>

Tobacco products purchased by minors: \$10 x 260 stores = \$1,300  
 Indirect cost includes legal counsel, IT support, transportation, etc.  
 Total= \$43,760.99 (10% indirect cost included)  
 Annual Fee \$336.62

**Option 3: Annual Fee \$265.78  
(For 130 stores receiving one minor decoy inspection annually)**

Title	FTE/Hours	Pay Rate	Expense	Description
Tobacco Prevention Coordinator	.0625 FTE 2.5 hours per week	\$44.8 hr, includes benefits	\$5,376	<ul style="list-style-type: none"> <li>helps with implementation, enforcement , overall evaluation efforts of the TRL program</li> <li>coordinates with the environmental health program and other departments</li> <li>writes or assists with writing grants for program needs</li> <li>helps inform EH's tobacco retailer database</li> <li>coordinates education efforts for businesses and general public</li> <li>prepares Q &amp;A for website about licensing</li> <li>helps draft TRL application and inspections forms</li> <li>recruits minors for the EH department to train</li> <li>arranges minor decoy incentives</li> <li>assists with minor decoy program planning</li> </ul>
Environmental Health Administration Secretary	.0625 FTE 2.5 hours per week	\$42.89 hr, includes benefits	\$5,146.80	<ul style="list-style-type: none"> <li>helps with implementation and enforcement of the TRL program</li> <li>coordinates with IT to set up the tobacco module in HealthSpace</li> <li>enters tobacco retailer data</li> <li>helps TPEP with educating tobacco retailers and the public about TRL requirements</li> <li>disseminates license renewal instructions on annual basis</li> <li>contacts businesses out of compliance, processes licensing fees</li> <li>communicates with EH inspectors and TPEP coordinator to capture inspection data</li> <li>processes violations and enters suspensions in HealthSpace</li> <li>processes minor decoy reimbursements</li> <li>orders program materials and office supplies</li> </ul>
Environmental Health Inspector II	.2 FTE 8 hours per week	\$44.03 hr, includes benefits	\$16,907.52	<ul style="list-style-type: none"> <li><b>conducts one minor decoy inspections for each store</b></li> <li>trained by OLCC or Synar to conduct minor decoy inspections</li> <li>possibly deputized to give citations to businesses who are in violation</li> <li>trains minors to conduct inspections</li> <li>communicates with other departments to help draft TRL application and inspections forms</li> <li>accompanies minors to stores and waits in the car while purchase is attempted</li> <li>Coordinates follow-up minor decoy inspection of businesses that failed first inspection within 60 days of first violation</li> <li>reports violations to administration secretary</li> <li>prepares and delivers violation notices</li> <li>attends hearings if businesses wish to appeal citation</li> <li>collaborates with other departments to assess program needs</li> </ul>
Minor Decoy Inspectors  2 minors (inspecting together)	130 stores + 4 hours of training	\$10 an hour	\$2,680	<ul style="list-style-type: none"> <li>attends minor decoy inspection training by EHS II or EH supervisor</li> <li>must be under the age of 21 years old (depending on T21 law passing)</li> <li>if under 18 years of age, must obtain parental permission</li> <li>completes county volunteer forms and waiver to ride in county vehicle</li> <li>accompanies an EHS II or EH supervisor inspector to stores</li> <li>attempts to purchase tobacco illegally with one other minor inspector present</li> <li>completes necessary paperwork for each inspection</li> <li>attends hearings if businesses wish to appeal the citation, if requested</li> </ul>

**Tobacco products purchased by minors: \$10 x 260 stores = \$1,300**  
**Indirect cost includes legal counsel, IT support, transportation, etc.**  
**Total= \$34,551.35 (10% indirect cost included)**  
**Annual Fee \$265.77**

**Option 4: Annual Fee \$195.29**  
**(For 130 stores, 50% receiving one minor decoy inspection annually)**

Title	FTE/Hours	Pay Rate	Expense	Description
Tobacco Prevention Coordinator	.0625 FTE 2.5 hours per week	\$44.8 hr, includes benefits	\$5,376	<ul style="list-style-type: none"> <li>helps with implementation, enforcement, overall evaluation efforts of the TRL program</li> <li>coordinates with the environmental health program and other departments</li> <li>writes or assists with writing grants for program needs</li> <li>helps inform EH's tobacco retailer database</li> <li>coordinates education efforts for businesses and general public</li> <li>prepares Q &amp; A for website about licensing</li> <li>helps draft TRL application and inspections forms</li> <li>recruits minors for the EH department to train</li> <li>arranges minor decoy incentives</li> <li>assists with minor decoy program planning</li> </ul>
Environmental Health Administration Secretary	.0625 FTE 2.5 hours per week	\$42.89 hr, includes benefits	\$5,146.80	<ul style="list-style-type: none"> <li>helps with implementation and enforcement of the TRL program</li> <li>coordinates with IT to set up the tobacco module in HealthSpace</li> <li>enters tobacco retailer data</li> <li>helps TPEP with educating tobacco retailers and the public about TRL requirements</li> <li>disseminates license renewal instructions on annual basis</li> <li>contacts businesses out of compliance, processes licensing fees</li> <li>communicates with EH inspectors and TPEP coordinator to capture inspection data</li> <li>processes violations and enters suspensions in HealthSpace</li> <li>processes minor decoy reimbursements</li> <li>orders program materials and office supplies</li> </ul>
Environmental Health Inspector II	.125 FTE 5 hours per week	\$44.03 hr, includes benefits	\$10,567.20	<ul style="list-style-type: none"> <li><b>conducts minor decoy inspections at 50% of stores</b></li> <li>trained by OLCC or Synar to conduct minor decoy inspections</li> <li>possibly deputized to give citations to businesses who are in violation</li> <li>trains minors to conduct inspections</li> <li>communicates with other departments to help draft TRL application and inspections forms</li> <li>accompanies minors to stores and waits in the car while purchase is attempted</li> <li>reports violations to administration secretary</li> <li>prepares and delivers violation notices</li> <li>attends hearings if businesses wish to appeal citation</li> <li>collaborates with other departments to assess program needs</li> <li>coordinates follow-up minor decoy inspection of businesses that failed first inspection within 60 days of first violation</li> </ul>
Minor Decoy Inspectors  2 minors (inspecting together)	65 stores + 4 hours of training	\$10 an hour	\$1,340	<ul style="list-style-type: none"> <li>attends minor decoy inspection training by EHS II or EH supervisor</li> <li>must be under the age of 21 years old (depending on T21 law passing)</li> <li>if under 18 years of age, must obtain parental permission</li> <li>completes county volunteer forms and waiver to ride in county vehicle</li> <li>accompanies an EHS II or EH supervisor inspector to stores</li> <li>attempts to purchase tobacco illegally with one other minor inspector present</li> <li>completes necessary paperwork for each inspection</li> <li>attends hearings if businesses wish to appeal the citation, if requested</li> </ul>

**Tobacco products purchased by minors: \$10 x 260 stores = \$650**  
**Indirect cost includes legal counsel, IT support, transportation, etc.**  
**Total= \$25,388 (10% indirect cost included)**  
**Annual Fee \$195.29**

**Option 5: Annual Fee \$67.26  
(For 130 stores with no enforcement of licensure requirements)**

Title	FTE/Hours	Pay Rate	Expense	Description
Tobacco Prevention Coordinator	.0625 FTE 2.5 hours per week	\$44.8 hr, includes benefits	\$5,376	<ul style="list-style-type: none"> <li>• helps inform tobacco retailer database</li> <li>• coordinates education efforts for businesses and general public</li> <li>• prepares Q &amp;A for website about licensing</li> <li>• helps draft TRL application forms</li> </ul>
Environmental Health Administration Secretary	.0625 FTE 2.5 hours per week	\$42.89 hr, includes benefits	\$5,146.80	<ul style="list-style-type: none"> <li>• helps with implementation of the TRL program</li> <li>• coordinates with IT to set up the tobacco module in HealthSpace</li> <li>• enters tobacco retailer data</li> <li>• helps TPEP with educating tobacco retailers and the public about TRL requirements</li> <li>• disseminates license renewal instructions on annual basis</li> <li>• contacts businesses out of compliance, processes licensing fees</li> <li>• orders program materials and office supplies</li> </ul>
Environmental Health Inspector	.0325 FTE 1.25 hours per week	\$42.89 hr	\$2,573.40	<ul style="list-style-type: none"> <li>• helps with implementation of the TRL program</li> <li>• coordinates with IT to set up the tobacco module in HealthSpace</li> <li>• enters tobacco retailer data</li> <li>• helps TPEP with educating tobacco retailers and the public about TRL requirements</li> <li>• contacts businesses out of compliance, processes licensing fees</li> </ul>

Indirect cost includes legal counsel, IT support, transportation, etc.  
 Total= \$8,744.34 (10% indirect cost included)  
 Annual Fee \$67.26

# Conclusion and Committee Recommendation

## Conclusion

In establishing an agreed upon recommendation, several steps were taken by the Committee members to ensure decisions were based on accurate data and best practices and included input and perspective from tobacco retailers. These steps included:

- » Data and information about youth tobacco use initiation and how the tobacco retail environment influences youth;
- » Review of policy options shown to impact youth access to tobacco and discourage youth tobacco use initiation;
- » Tobacco retailer survey and review of results to gain understanding of how TRL is perceived by retailers and how it would impact business practices;
- » Formulation and review of program costs based on the potential options, including staff needs, job duties, and costs associated with implementing and enforcing tobacco retail licensure countywide.

The Committee decided to formulate a recommendation based on Deschutes County Health Services acting as the licensing and enforcement agent for the entire county. This recommendation was made for the following reasons: 1) the cities indicated they did not have the staff or fiscal capacity to implement a TRL program; 2) Deschutes County, as the local public health authority, could enact an ordinance requiring all tobacco retailers in the county to obtain a license to sell tobacco; and 3) Deschutes County Health Services already employs staff with the knowledge and technical skills needed to effectively implement a TRL program.

The committee acknowledges the importance of allowing elected officials the ability to weigh the pros and cons of each TRL program option, rather than being presented with only one “gold standard” policy option to consider. In addition, the Committee wanted to include some options with minimal to no enforcement costs even though these options would have little to no impact on reducing minors’ access to tobacco or preventing tobacco use among youth. However, options with lower fees may be received better by the business community and policymakers.

For these reasons, all five options are included in the report and presented in descending order based on total program cost (individual license fee) and frequency/type of license enforcement inspections.

## Committee Recommendation

While all options are included in the TRL report for consideration, the Committee unanimously supports and recommends Policy Option #2. This policy option would allow for effective TRL education and enforcement efforts at the most reasonable license fee cost to affected businesses. The Committee strongly believes it will be important to have the financial and staff capacity to conduct both compliance checks (educational visits) and minor decoy operations annually at all of the estimated 130 stores in Deschutes County. Option #2 is less expensive to implement than Option #1 and it is similar in scope to the licensing programs in Lane and Multnomah Counties. It is also more likely to result in intended public health improvements than Options #3-#5, which allow for minimal to no enforcement of license requirements. Additional County General Fund would not be needed for any of the Options presented in the report.

# How Other Jurisdictions are Tackling the Problem

	LANE COUNTY (unincorporated areas)	MULTNOMAH COUNTY	Klamath (unincorporated areas)
Population	96,150	776,712	41,598
Number of Tobacco Retailers	60	763 licensed (additional 25 in process for license and/or penalties)	unknown
Tobacco Retail License Policy Specifics	<ul style="list-style-type: none"> <li>No new retailers within 1,000 ft schools</li> <li>Prohibits the sale of electronic cigarettes to minors</li> <li>bans self-service displays of e-cigarettes</li> <li>retailers required to post Oregon Tobacco Quit Line and tobacco use health warning</li> <li>Clerks must be 18 years of age to sell tobacco</li> </ul>	<ul style="list-style-type: none"> <li>Ban self-service display</li> <li>Ban sales from motor vehicles</li> <li>Establish MLSA for e-cigarettes</li> <li>Ban self-service displays for e-cigarettes</li> <li>Require licensing for e-cigarettes</li> </ul>	<ul style="list-style-type: none"> <li>Ban sales from motor vehicles</li> <li>Ban sale of tobacco products sold outside original packaging containing health warnings (which is federal law)</li> <li>Ban sale to a person who looks younger than 27 without checking ID first</li> </ul>
Policy Adopted	TRL originally adopted 2014, updated 8/2015, effective 1/16	TRL 2016	TRL 5/2017
Licensing Agency	Lane County Environmental Health	Multnomah County Environmental Health Services	Klamath County Health Department
License Fee	\$200	\$580	\$275 (proposed)
Enforcing Agency	EH checks for ordinance requirements other than minor decoy inspections (still working on protocol)	Multnomah County Health Department	The Klamath County Health Department
Frequency of Inspections	All retailers checked annually for code compliance. Program currently discussing how to conduct minor decoy inspections.	All retailers checked at least once a year for all elements of the ordinance. Every retailer will receive a youth decoy inspection annually.	All retailers checked twice a year, including the use of youth decoys (proposed).
Who Pays for Enforcement	License fee covers cost to administer and have EH do site visits. Current license fee does not cover costs to run minor decoy inspections.	License fee covers EH inspections and minor decoy operations.	License Fee will cover EH inspections (proposed).
Penalties for Violations	<ul style="list-style-type: none"> <li>1st violation \$1,650 fine or license suspended for 10 days</li> <li>2nd offense \$4,950 or license suspended for 30 days</li> <li>3rd offense license suspended for 30 days</li> <li>4th offense license revoked</li> </ul>	<ul style="list-style-type: none"> <li>1st violation: \$500 fine and mandatory training</li> <li>2nd violation: \$500 fine and 30-day license suspension</li> <li>3rd violation: \$750 fine and 90-day license suspension</li> <li>4th violation: \$1,000 fine and license revoked for 2 years</li> </ul>	To be determined
Look Back Period	2 years	5 years	
Penalty Process			
Misc. Notes	Minors are subject to heavy fines if found in possession of e-cigarettes, may be required to attend cessation/education class and pay up to \$1,000 for repeated offenses.	Citizen complaint system to report stores in violation.	County Health Department director may impose restrictions and deny, suspend, or revoke a Tobacco Retail License based on licensees violation of ordinance rules.

# End Notes

1. Deschutes County Behavioral Risk Factor Surveillance Survey 2012-2015. [https://public.health.oregon.gov/BirthDeathCertificate/Surveys/AdultBehaviorRisk/county/Documents/1013/ORCountyBRFSS\\_tobacco.pdf](https://public.health.oregon.gov/BirthDeathCertificate/Surveys/AdultBehaviorRisk/county/Documents/1013/ORCountyBRFSS_tobacco.pdf)
2. Portland State University Population Research Center 2014; Oregon Behavioral Risk Factor Surveillance System 2013; CDC Smoking-Attributable Morbidity and Mortality Cost calculator 2013.
3. U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.
4. Oregon Healthy Teens (OHT) Survey, 2015. Oregon Health Authority. Chronic Disease Data. Youth Data. Tobacco use and related topics. Oregon Health Authority Webpage. [https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT\\_Tobacco.pdf](https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT_Tobacco.pdf).
5. Counter Tobacco.Org, summary of the Federal Trade Commission Cigarette and Smokeless Tobacco Report for 2014. <http://countertobacco.org/the-war-in-the-store/>.
6. Campaign for Tobacco-Free Kids (CTFK). State-Specific Estimates of Tobacco Company Marketing Expenditures 1998-2016. Campaign for Tobacco-Free Kids webpage. <https://www.tobaccofreekids.org/research/factsheets/pdf/0271.pdf>
7. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. Arch Pediat Adol Med. May 2007; 161(5):440-445. <http://archpedi.jamanetwork.com/article.aspx?articleid=57032>.
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9. "What's For Sale in Your Neighborhood?" Oregon Health Authority. July 2014. <http://smokefreeoregon.com/wp-content/uploads/2014/07/StatewideRetailRollup.pdf>.
10. Oregon Healthy Teens (OHT) Survey, 2013. Oregon Health Authority. Chronic Disease Data. Youth Data. Tobacco Use and related topics. Oregon Healthy Authority Webpage. [https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT\\_Tobacco.pdf](https://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT_Tobacco.pdf)
11. Diemert L, Dubray J, Babayan A, Schwartz R. Strategies Affecting Tobacco Vendor Compliance with Youth Access Laws: A Review of the Literature. Toronto: Ontario Tobacco Research Unit, October 2013. [http://otru.org/wp-content/uploads/2013/10/special\\_vendor\\_compliance.pdf](http://otru.org/wp-content/uploads/2013/10/special_vendor_compliance.pdf)
12. B.R. Loomis, the density of tobacco retailers and its association with attitudes towards smoking, exposure to point of sale tobacco advertising, cigarette purchasing, and smoking among New York Youth, 55(5) PREV. MED. 468, 468(2012).
13. [http://www.nationalacademies.org/hmd/~media/Files/Report%20Files/2015/TobaccoMinAge/tobacco\\_minimum\\_age\\_report\\_brief.pdf](http://www.nationalacademies.org/hmd/~media/Files/Report%20Files/2015/TobaccoMinAge/tobacco_minimum_age_report_brief.pdf)



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# TRL Activity Timeline

## Legend

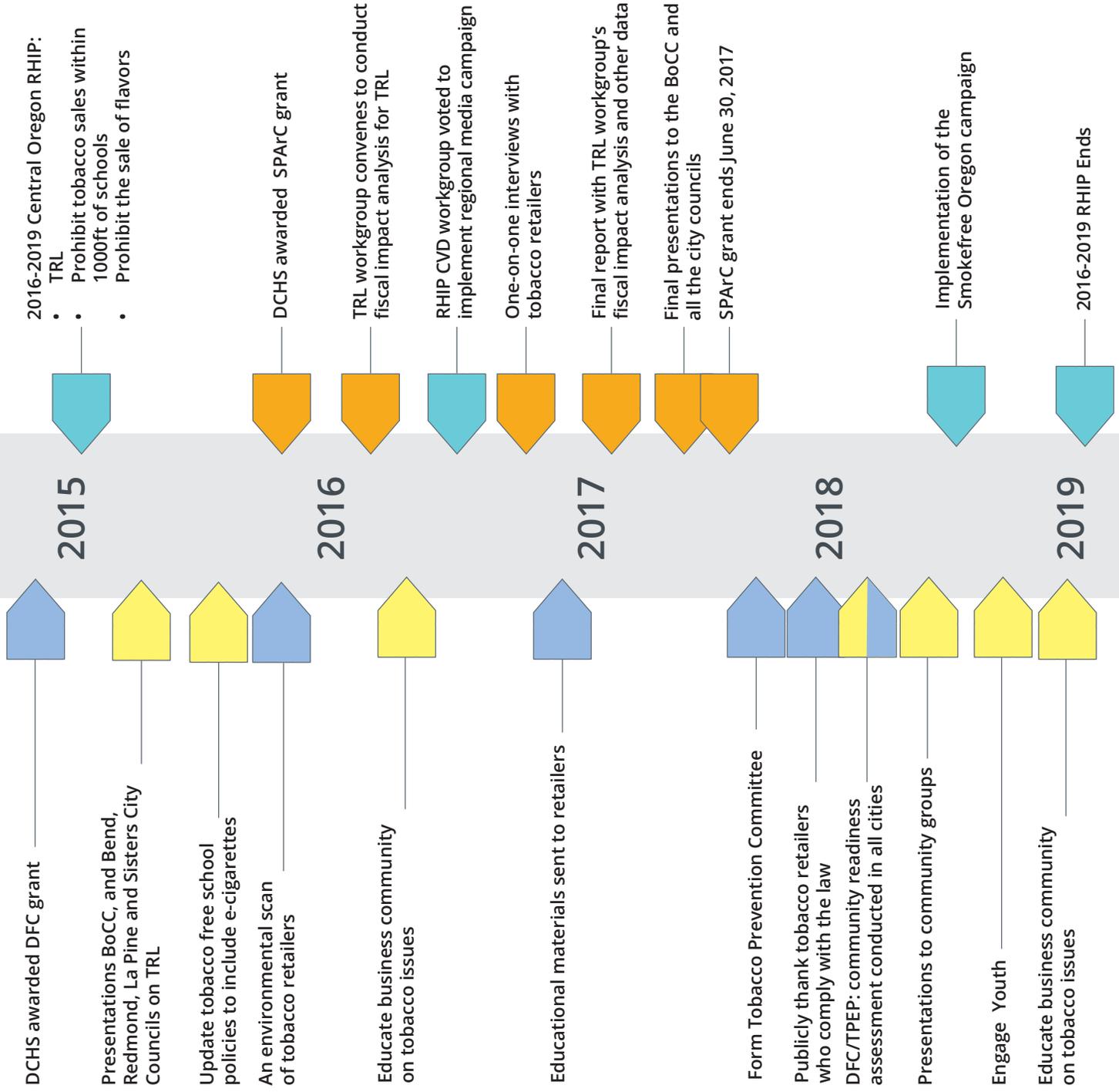
### Types of Activities:

 Drug-Free Communities (DFC)

 Tobacco Prevention Education Program (TPEP)

 Strategies for Policy and Environmental Change (SPARC)

 Regional Health Improvement Plan (RHIP)



2016-2019 Central Oregon RHIP:

- TRL
- Prohibit tobacco sales within 1000ft of schools
- Prohibit the sale of flavors

Lane Code  
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TOBACCO REGULATIONS

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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. 14-19, Effective 1/16/15)*

### **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. 14-19, Effective 1/16/15)*

#### **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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

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

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

(m) Engaging in Tobacco Retailing within 1000 feet of any school, 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. 14-19, Effective 1/16/15)*

#### **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 as follows:

(a) 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" a public kindergarten, elementary, middle, junior high or high school.

(b) 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.

(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.

(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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

**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. *(Revised by Ordinance No. 14-19, Effective 1/16/15)*

**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 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. 14-19, Effective 1/16/15)*

**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. 14-19, Effective 1/16/15)*

**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 twenty-four month period, the license will be suspended for ten days or a \$1,650 fine imposed.

(b) Upon a finding by the Department of a second violation of LC 9.752 to 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.

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

(d) Upon a finding by the Department of four or more violations of LC 9.752 to 9.772 at a location within any twenty-four month (24) 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. 14-19, Effective 1/16/15)*

**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 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.

(b) 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.

(c) 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.

(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. 14-19, Effective 1/16/15)*

**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 \$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.

(3) Any employee involved in tobacco product sales to anyone under 18 years of age is subject to civil action pursuant to ORS 163.575, endangering the welfare of a minor, punishable by a civil fine per violation of not less than \$100 nor exceeding \$500.

Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.752 to 9.772 is punishable according to 9.772 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. 14-19, Effective 1/16/15)*



PUBLIC HEALTH  
Prevent. Promote. Protect.  
ENVIRONMENTAL HEALTH  
SECTION

# Tobacco Retailer's License Application

## Lane County Code Chapter 9 Tobacco Regulations

Establishment ID \_\_\_\_\_ Owner ID \_\_\_\_\_

DO NOT WRITE IN THE SPACE ABOVE

This Application is for:  New License  Annual Renewal  Change of Ownership  I do not sell Tobacco Products

### **Business Information**

Business Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Manager's Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Manager's Mailing Address: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Have all employees been trained on the local, state and federal laws relating to tobacco and vaping product sales?  
Yes \_\_\_\_\_ No \_\_\_\_\_

### **Owner Information**

(List the name, phone number and address of each Proprietor. If licensee is a legal entity (Corporation, LLC, etc.) an authorized person must sign for the entity.)

#1 Owner Name/Authorized Agent \_\_\_\_\_ Address: \_\_\_\_\_

#1 Owner Phone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

#2 Owner Name/Authorized Agent \_\_\_\_\_ Address: \_\_\_\_\_

#2 Owner Phone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

**Signature of Applicant** \_\_\_\_\_ **Date** \_\_\_\_\_

**TOBACCO LICENSE FEE - New Operator \$200.00 or Previously Licensed Operator (no violations) \$125.00**  
(Payable upon receipt)

Make Check Payable to : Lane County Environmental Health  
151 W. 7<sup>th</sup> Ave., Ste. 430  
Eugene, OR 97401

### **Office Use Only**

Fee received \_\_\_\_\_ Receipt # \_\_\_\_\_ Date \_\_\_\_\_

**Complete, sign and mail this application with the appropriate fees. Thank you.**

# Lane County Tobacco Retailer's Compliance Inspection Report



PUBLIC HEALTH  
Prevent. Promote. Protect.  
ENVIRONMENTAL HEALTH  
SECTION

Date of Inspection: \_\_\_\_\_ Visit Type: Annual  Recheck

Store Name: \_\_\_\_\_ Address: \_\_\_\_\_

Person In Charge present during inspection: \_\_\_\_\_  
(Print Please)

## COMPLIANCE

Requirements for Lane County Code Chapter 9 Tobacco Regulations 9.700-9.774. This law applies to tobacco, e-cigarettes and tobacco and e-cigarette paraphernalia.	In	Out
1. Retailer has obtained a license to sell tobacco, e-cigarettes and paraphernalia products, and the license is displayed in a clearly visible public location?		
Comments:		
2. Retailer checks customers' identification and does not sell e-cigarette or tobacco products or paraphernalia to minors?		
Comments:		
3. Retailer keeps tobacco, e-cigarette and paraphernalia products behind the counter which would require employee assistance to access the products?		
Comments:		
4. Retailer displays tobacco health warning and Oregon Tobacco Quit Line sign (1-800-QUIT-NOW) in a clearly visible public location?		
Comments:		
5. The store is located more than 1,000 feet of a public school? <i>(Existing locations operating before October 21, 2014 and those operating since October 21, 2014 near which a public school has relocated are grandfathered in and are exempt from this restriction.)</i>		
Comments:		
6. Retailer trains employees on the local, state and federal laws relating to tobacco, e-cigarette and paraphernalia product sales and maintains documentation of employees' training.		
Comments:		
7. Retailer does not sell cigarettes or smokeless tobacco products in amounts smaller than the original package size?		
Comments:		
8. Retailer does not offer free samples of any tobacco, e-cigarette or paraphernalia products?		
Comments:		
9. Retailer does not sell flavored cigarettes or flavored cigarette tobacco (excludes menthol)?		
Comments:		
10. Retailer posts a sign substantially similar to the State sign stating that tobacco, smoking instruments and vaping products cannot be sold to minors and posts the sign in a clearly visible public location?		
Comments:		
Remediation Plan and Due Date -		

Environmental Health Specialist \_\_\_\_\_ Date \_\_\_\_\_ Person in Charge Signature \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions regarding this report, please call Lane County Environmental Health at (541) 682-4480

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1225

**Amending Multnomah County Code Chapter 21 – Health – Relating to Licensing of Tobacco Retailers in Multnomah County.**

(Language stricken is deleted; double underlined language is new.)

**The Multnomah County Board of Commissioners Finds:**

1. This Ordinance is enacted in accordance with the Board of Health's policy Order 2015-011, February 12, 2015.
2. Licensing of retail sales of tobacco products and inhalant delivery systems will promote compliance with federal, state, and local laws relating to the retail sale of tobacco products and inhalant delivery systems and discourage violations of tobacco-related laws, particularly those which relate to minors.
3. The Health Department will begin accepting applications for Tobacco Retail licenses on July 1, 2016.

**Multnomah County Ordains as Follows:**

**Section 1.** MCC § 21.560 is added as follows:

**§ 21.560 – DEFINITIONS.**

**Arm's Length Transaction.** A sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, none of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

**Department.** Multnomah County Health Department.

**Inhalant Delivery System.** Any device or component of a device meeting the definition of "inhalant delivery system" in MCC § 21.510.

**Retail Sale.** Any transfer, conditional or otherwise, of title or possession of Tobacco Products.

**Tobacco Products.**

(A) Any substance containing, made, or derived from tobacco that is intended for human consumption by any means including but not limited to cigarettes, cigars, little cigars,

pipe tobacco, shisha, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(B) Electronic cigarettes or any inhalant delivery systems containing or delivering nicotine.

(C) Vape juice or e-liquid defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing product, in any amount or concentration, including tobacco plant extract, tobacco dust, or synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, pre-filled cartridges, or as part of a kit.

(D) This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

**Tobacco Retailer.** Any person or entity, as defined in ORS 60.001, that owns a business that sells, offers for retail sale, exchanges or offers to exchange Tobacco Products, including inhalant delivery systems retailers as defined in MCC § 21.510, or that distributes free or low cost samples of Tobacco Products. This definition is without regard to the quantity of Tobacco Products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

**Section 2.** MCC § 21.561 is added as follows:

**§ 21.561- LICENSE REQUIRED.**

(A) A Tobacco Retail license is required for each address at which Tobacco Products are available from a Tobacco Retailer.

(B) Application for a Tobacco Retail license issued under this subchapter shall be made on forms provided by the Department.

(C) A Tobacco Retail license fee shall be submitted with the license application.

(D) To obtain a Tobacco Retail license, each applicant must meet all requirements of this subchapter, the rules adopted pursuant to this subchapter, and federal, state, and local laws relating to the retail sale of tobacco products.

(E) Each Tobacco Retail license shall expire one calendar year from the date of issuance.

(F) The Tobacco Retail license shall be displayed in a prominent and conspicuous place at the location licensed.

**Section 3.** MCC § 21.562 is added as follows:

**§ 21.562 – LICENSE NONTRANSFERABLE.**

(A) A Tobacco Retail license may not be transferred from one Tobacco Retailer to another or from one location to another.

(B) Prior violation of this subchapter at a location will continue to be counted against a location, and license ineligibility and suspension periods will continue to apply to a location, unless 100 percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners. The new owner must provide the Department with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

(C) Prior violation of this subchapter may be considered in subsequent enforcement actions and applications for additional Tobacco Retail licenses.

**Section 4.** MCC § 21.563 is added as follows:

**§ 21.563 – PROHIBITED ACTIVITIES.**

(A) It is a violation of this subchapter for a Tobacco Retailer to make available Tobacco Products:

(1) Without a Tobacco Retail License.

(2) From a motor vehicle.

(3) Outside original packaging containing health warnings satisfying the requirements of federal law.

(4) To a person who appears to be under the age of 27 years without first examining the recipient's identification to confirm that the recipient is at least the minimum age under federal, state, or local law to purchase and possess Tobacco Products.

(B) It is a violation of this subchapter to fail to comply with license terms, the rules adopted pursuant to this subchapter, and federal, state, and local laws relating to the retail sale of tobacco products.

**Section 5.** MCC § 21.564 is added as follows:

**§ 21.564 – ADMINISTRATIVE RULEMAKING COMMITTEE.**

(A) The Board will appoint by Resolution a Tobacco Retail Licensing Administrative Rulemaking Committee.

(B) The powers, duties, membership, terms of office of members, provisions as to meetings and conduct of business of and by the Committee will be in accordance with its adopted bylaws.

(C) The Committee will adopt administrative rules that include but are not limited to the following:

(1) License application and issuance process;

(2) Licensing inspection;

(3) Licensing enforcement, including a notice of violation process that may allow a Tobacco Retailer to:

(a) Correct a violation prior to imposition of civil penalty, license suspension, or license revocation.

(b) Reapply for a license two years following revocation, upon showing all violations have been remedied, as determined at the sole discretion of the Director, or designee.

(c) Immediately apply for a license if they are operating without a Tobacco Retail license;

(4) Data collection by licensees regarding sales of tobacco products; and

(5) Educational information.

**Section 6.** MCC § 21.565 is added as follows:

**§ 21.565 – INSPECTIONS.**

(A) The Department Director, or designee, shall have authority to inspect and investigate potential violations of this subchapter in accordance with the administrative rules.

(B) The provisions of this subchapter will not be deemed to restrict the right of the County to inspect any property pursuant to any applicable federal, state, or local law or regulation.

**Section 7.** MCC § 21.566 is added as follows:

**§ 21.566 – ENFORCEMENT.**

(A) The Department Director, or designee, shall enforce the provisions of this subchapter and the administrative rules adopted pursuant to this subchapter.

(B) The Department Director may issue civil penalties, impose restrictions, and deny, suspend, or revoke a Tobacco Retail license based upon a finding that a Tobacco Retailer is in violation of the rules adopted pursuant to this subchapter, and federal, state, or local laws relating to the retail sale of Tobacco Products.

**Section 8.** MCC § 21.567 is added as follows:

**§ 21.567 – APPEALS AND HEARING.**

Any person receiving a written notice of violation of this subchapter may request a hearing in accordance with the administrative rules.

**Section 9.** MCC § 21.568 is added as follows:

**§ 21.568 – FEES AND PENALTY.**

(A) License fees and civil penalties under this subchapter will be set by Board resolution.

(B) Any Tobacco Retailer found in violation of this subchapter may be subject to a civil penalty not to exceed \$1000 per day.

**FIRST READING:** \_\_\_\_\_ November 5, 2015 \_\_\_\_\_

**SECOND READING AND ADOPTION:** \_\_\_\_\_ November 12, 2015 \_\_\_\_\_



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

*Deborah Kafoury*

\_\_\_\_\_  
Deborah Kafoury, Chair

REVIEWED:  
JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By *[Signature]*  
Bernadette D. Nunley, Assistant County Attorney

# Environmental Health Services

## Tobacco Retail License Application

New License – Date Opening: \_\_\_\_/\_\_\_\_/\_\_\_\_  
MM DD YYYY

New Owner, Existing Business – Date Effective: \_\_\_\_/\_\_\_\_/\_\_\_\_  
MM DD YYYY

**Office use only:**

Facility #: \_\_\_\_\_

### Business Information *(Please print or type)*

Organization Name: \_\_\_\_\_

Doing Business as: \_\_\_\_\_

Have you changed the name of the Business?  Yes  No Store #: \_\_\_\_\_

Business Email: \_\_\_\_\_ Business Phone: \_\_\_\_\_

Business Website Address: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Days and Hours of Operation: \_\_\_\_\_

Address Line 1: \_\_\_\_\_

Address Line 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Total Annual Tobacco Sales:  \$0–\$399,000  \$400,000–\$699,000  \$700,000 and up

Number of Employees:  1-9  10-24  25-99  100-249  250+

Has this business been in violation of any tobacco retail law?  Yes  No

#### Business Type *(Check all that apply)*

Bar/Restaurant  Convenience Store  Gas Station  Grocery Store  Liquor Store  Pharmacy

Tobacco Shop  Vape Shop  Other: \_\_\_\_\_

#### Products Sold *(Check all that apply)*

Cigarettes  Little Cigars  Large Cigars  Smokeless Tobacco  Loose Tobacco  Blunt Wraps

E-cigarettes/Nicotine Vaping Products  Hookah or Shisha  Other Products: \_\_\_\_\_

### Retail Business Owner

First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Organization Name: \_\_\_\_\_ Business Phone: \_\_\_\_\_

Business Address 1: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_

Business Address 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Email: \_\_\_\_\_

Preferred Contact Method: \_\_\_\_\_

*Please complete the following section to help Multnomah County serve the retailer community.*

Preferred Language:  English  Korean  Chinese  Russian  Somali  Spanish  Vietnamese

Other: \_\_\_\_\_

What is your race or origin? Mark as many boxes as appropriate.

African  Latino/Hispanic  Native Hawaiian or Pacific Islander  Black/African American  Slavic  Asian

Middle Eastern  Native American or Alaska Native  White  Decline to answer  Other: \_\_\_\_\_

# Environmental Health Services

**Applicant**  Same as Retail Business Owner

First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
 Organization Name: \_\_\_\_\_ Business Phone: \_\_\_\_\_  
 Address Line 1: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_  
 Address Line 2: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Email: \_\_\_\_\_  
 Preferred Contact Method: \_\_\_\_\_

**Billing Contact**  Same as Retail Business Owner

First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
 Organization Name: \_\_\_\_\_ Business Phone: \_\_\_\_\_  
 Address Line 1: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_  
 Address Line 2: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Email: \_\_\_\_\_  
 Preferred Contact Method: \_\_\_\_\_

**Affirmation**

Every application for a Tobacco Retail License shall include a signed affirmation that the Retail Business Owner is informed of the laws affecting the Tobacco Retail License pursuant to Multnomah County Code Section 21.564. A signed affirmation is required for each address where tobacco products are made available for retail sale or exchange. It is the Retail Business Owner’s responsibility to ensure that all employees and retail associates who sell tobacco products are informed of and trained to comply with all federal, state and local tobacco retail laws pertaining to the license. Educational materials regarding federal, state and local tobacco retail laws have been provided with this application for your information.

I, (Print Retail Business Owner’s full name) \_\_\_\_\_, have been informed of the tobacco laws affecting the Multnomah County tobacco retail license and will train all staff who sell tobacco products on these laws.

\_\_\_\_\_  
Retail Business Owner Signature

\_\_\_\_\_  
Date

**To Submit an Application and \$580 License Fee**

**By Mail:** Send a completed application with a check or money order in the amount of \$580 to:  
 Environmental Health Services, ATTN: TRL, 847 NE 19th Ave, Ste 350, Portland OR 97232.

**In Person:** Drop off a completed application with check, money order, or cash in the amount of \$580 to:  
 847 NE 19th Ave, Ste 350, Portland OR 97232.

\*Business office hours: Monday through Friday, 8:00am - 5:00pm. Closed all major holidays.

**Questions:** Please contact us at 503-988-4163 or visit [mchealthinspect.org](http://mchealthinspect.org).

Office use only:	
Update Parent Record(s):	<input type="checkbox"/> Yes <input type="checkbox"/> No
Operating without a license:	<input type="checkbox"/> Yes <input type="checkbox"/> No

## Things to know about selling tobacco and nicotine products in Multnomah County

For this ordinance, tobacco products are defined as any substance containing, made from or derived from tobacco that is intended for human consumption, including but not limited to: cigarettes, cigars, little cigars, pipe tobacco, shisha, snuff, chewing tobacco bidis, etc; electronic cigarettes or any inhalant delivery system containing or delivering nicotine; vape juice, e-liquid or any liquid solution that contains nicotine that is intended for human consumption. This does not include FDA approved nicotine products for tobacco cessation such as nicotine patches, gum or lozenges.

**Only sell tobacco products to people who are 18 years of age or older. Make sure you ask customers who look younger than 27 years of age for ID's and check the birthdates carefully.** (CFR § 1140.14(a)) (ORS 431A.175) (MCC § 21.563)

### About your Tobacco Retail License

**All locations selling tobacco products must have a valid annual Tobacco Retail License, issued by the Multnomah County Health Department, Environmental Health Services, Tobacco Control and Prevention Program, starting on July 1, 2016.** (MCC § 21.561)

**Multnomah County will provide a paper license that must be displayed at your location, easily visible to customers.** (MCC § 21.561)

**All locations must display required signage (provided with license) under Oregon State law that states it is illegal to sell tobacco or inhalant delivery systems to persons under 18 years of age.** (ORS 431A.175)

### Packaging

**Tobacco Products as defined above must be sold in original packaging with health warnings. Cigarettes must be sold in packages of 20. Tobacco products cannot be opened to be sold as single units, such as single cigarettes (aka "loosies") or snus pouches.** (MCC § 21.563) (CFR § 1140.16(b)) (CFR § 1140.14(2d)) (ORS 431A.175)

**Inhalant delivery systems must be packaged and labeled according to law.** (ORS 431A.175)

## Point of Sale

**Keep all tobacco products behind the counter in an area accessible only to employees/owners or in a locked case.** (ORS 167.407)

**Selling tobacco products in vending machines is only allowed in facilities that prohibit persons under 21.** (ORS 167.402)

## Promotions

**It is illegal to sell any flavored cigarettes except menthol or cigarettes labeled "light," "low tar," or "mild."** (21 US Code § 387g) (Section 911(b)(2)(A)(ii) of the Federal Food, Drug, and Cosmetic Act)

**It is illegal to offer gifts or other items when purchasing a tobacco product.** (CFR § 1140.34(b))

**Samples of tobacco products are illegal except in locations that exclude persons under 21 years of age.** (21 US Code § 387 a-1(a)(2)(G)) (ORS 180.486)(431A.175)

## Working with Multnomah County

**Tobacco retailers must permit access for Multnomah County inspectors to perform annual inspections and investigations.** (MC TRL Rules § H.2.a)

**Tobacco retailers must cooperate in remediation planning.** (MC TRL Rules § H.2.b.i)

**A tobacco retail license is nontransferable. If you should move your business within Multnomah County, you must obtain a new license prior to selling tobacco products at the new location. If a licensed business is sold or transferred, the new owner must obtain a new license for that location before selling tobacco products.**

If you have any further questions please contact us at: 503-988-4163 or [hlth.tobacco.prevention@multco.us](mailto:hlth.tobacco.prevention@multco.us)



## Tobacco Retail License Inspection Routine Form

Environmental Health Services  
Tobacco Control and Prevention Program

Date:	Time in:	Time out:	Business Name: Lots of Smokes		
Person in Charge Name:			Facility Number: 17-00225-TRL		
Address: 847 NE 19Th Ave 350		City: Portland	Zip: 97232	Phone: 111-111-1111	
Headquarters or corporate office name, if applicable: Berenice Retail Business Owner					

<b>Observed violations</b> Check "In" or "Out" for each of the following: In=in compliance    Out=out of compliance	<b>Remediation plan</b> <i>Tobacco Retailers must comply with the remediation plan. Observed violations must be corrected within 15 calendar days of the inspection.</i>																																																								
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Environmental Health Services  
 Tobacco Control and Prevention Program

<b>Observed violations</b> Check "In" or "Out" for each of the following: In=in compliance Out=out of compliance	<b>Remediation plan</b> <i>Tobacco Retailers must comply with the remediation plan. Observed violations must be corrected within 15 calendar days of the inspection.</i>									
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<b>Inspection Results:</b>	<b>Notes:</b>									
<input checked="" type="checkbox"/> No Violations  <input type="checkbox"/> Observed violations must be corrected by _____	Comments:          <p>It is the responsibility of each Tobacco Retailer to be informed regarding all laws applicable to the Tobacco Retail license, including those laws affecting the issuance of a Tobacco Retail license. It is also the Retail Business Owner's responsibly to ensure that all employees and retail associates who sell tobacco products are informed of and trained to comply with all federal, state and local tobacco-related laws pertaining to the license.</p>									

A follow-up inspection will be conducted within 30 days of the Remediation Plan completion date to confirm violations have been corrected. Any violations observed during or after the follow-up may result in the imposition of a civil penalty, license suspension or revocation, not to exceed \$1000 per day (MCC § 21.568).

**Signatures**

Inspector

Date

Person In Charge

Date

Inspector Name

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF ORDINANCE NO. 90.00 )  
ESTABLISHING TOBACCO RETAIL LICENSING IN ) ORDINANCE NO. 90.00  
KLAMATH COUNTY AND AMENDING KLAMATH )  
COUNTY CODE )

**WHEREAS**, businesses in Klamath County that sell tobacco products currently do not have to obtain a license in exchange for the privilege of selling tobacco; and

**WHEREAS**, research shows a tobacco retail license is an effective way to reduce youth access to tobacco products; and

**WHEREAS**, thirty-five (35%) percent of youth were able to successfully purchase tobacco products during the 2014-2015 Food and Drug Administration inspections; and

**WHEREAS**, twenty-eight (28%) percent of 11<sup>th</sup> graders in Klamath County reported regular tobacco use; and

**WHEREAS**, ninety percent (90%) of smokers start before age 18.

**NOW THEREFORE**, it is the intent of the Board of County Commissioners, in enacting this ordinance, to provide for the public health, safety, and welfare of youth by amending Klamath County Code to require a license to sell tobacco, resulting in a restriction of tobacco sales to those younger than the minimum age established by state law for the purchase or possession of tobacco products. Klamath County Code is hereby amended to add Chapter 412, Tobacco Retail Licensing, as set forth below:

CHAPTER 412 CONTENTS

CHAPTER 412  
TOBACCO RETAIL LICENSING

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**412.001 DEFINITIONS.**

(1) **Arm's Length Transaction:** A sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, none of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this ordinance is not an Arm's Length Transaction.

(2) **Department:** Klamath County Health Department

(3) **Inhalant Delivery System:**

Any device or component of a device meeting the definition of "inhalant delivery system" in Oregon House Bill 2546.

(a) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or

(b) A component of a device described in this definition or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this definition, whether the component or substance is sold separately or is not sold separately.

(4) **Inhalant Delivery System Retail Store:** A retail store utilized primarily for the sale of inhalant delivery system products and accessories, and in which the sale of other products is merely incidental.

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

(6) **Tobacco Products:**

(a) Any substance containing, made, or derived from tobacco that is intended for human consumption by any means including, but not limited to, cigarettes, cigars, little cigars, pipe tobacco, shisha, hookah tobacco, snuff, chewing tobacco, dipping tobacco, orbs, strips, sticks, or any other preparation of tobacco.

(b) Electronic cigarettes or any inhalant delivery system containing or delivering nicotine.

- (c) Vape juice or e-liquid defined as any aerosol or liquid solution that vaporizes when heated to make a smoke-like vapor and that contains nicotine or any nicotine containing product, in any amount or concentration, including tobacco plant extract, tobacco dust, or synthetic nicotine in any amount, concentration or strength, in any form including but not limited to bottled, pre-filled cartridges, or as part of a kit.
- (d) This definition excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for such an approved purpose.

**(7) Tobacco Retailer:** Any person or entity, as defined in ORS 60.001, that owns a business that sells, offers for retail sale, exchanges or offers to exchange tobacco products, including inhalant delivery system retail stores, or that distributes free or low cost samples of tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for retail sale, exchanged, offered for exchange, or distributed.

**412.010 LICENSE REQUIREMENTS.**

(1) A Tobacco Retail License is required for each address at which tobacco products are available from a Tobacco Retailer.

(2) Application for a Tobacco Retail License issued under this ordinance shall be made on forms provided by the Department.

(3) To obtain a Tobacco Retail License, each applicant must meet all requirements of this ordinance, the rules adopted pursuant to this ordinance, and federal, state, and local laws relating to the retail sale of tobacco products.

(4) A Tobacco Retail License fee shall be submitted with the license application.

(5) The Tobacco Retail License shall be displayed in a prominent and conspicuous place at the location licensed.

(6) Each Tobacco Retail License shall be valid from January 1<sup>st</sup> to December 31<sup>st</sup> of a calendar year, or for a prorated portion of the year if the license is for a new location.

(a) The Tobacco Retail License must be renewed annually on or before December 31st.

(b) The application for renewal is considered late if submitted after December 31 and is subject to a late fee as recommended by the department and adopted by the Board of County Commissioners.

(c) Tobacco Retail Licenses for 2017, the first year of adoption of this ordinance, do not have to be obtained. Tobacco Retail Licenses are required beginning January 1, 2018.

#### **412.020 LICENSE NON-TRANSFERABLE.**

(1) A Tobacco Retail License may not be transferred from one Tobacco Retailer to another or from one location to another.

(2) Prior violation of this ordinance at a location will continue to be counted against a location, and license ineligibility and suspension periods will continue to apply to a location unless 100 percent of the interest in stock, assets or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners. The new owner must provide the Department with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

(3) Prior violation of this ordinance may be considered in subsequent enforcement actions and application for additional Tobacco Retail Licenses.

#### **412.030 PROHIBITED ACTIVITIES.**

(1) It is a violation of this ordinance for a Tobacco Retailer to make available tobacco products:

- (a) Without a Tobacco Retail License;
- (b) From a motor vehicle;
- (c) Outside original packaging containing health warnings satisfying the requirements of federal law;
- (d) To a person who is younger than the minimum age established by state law for the purchase or possession of tobacco products.

(e) To a person who appears to be under the age of 27 years without first examining the recipient's identification to confirm that the recipient is at least the minimum age under federal, state, or local law to purchase and possess tobacco products, as required by the Oregon Health Authority.

(2) It is a violation of this ordinance to fail to comply with license terms, the rules adopted pursuant to this

ordinance, and federal, state, and local laws relating to the retail sale of tobacco products.

**412.040 INSPECTIONS.**

(1) The Department Director, or designee, shall have authority to inspect and investigate potential violations of this ordinance in accordance with the tobacco retail licensing policies and procedures.

(2) The provisions of this ordinance will not be deemed to restrict the right of the county to inspect any property pursuant to any applicable federal, state, or local law regulation.

**412.050 ENFORCEMENT.**

(1) The Department Director, or designee, shall enforce the provisions of this ordinance and the policies and procedures adopted pursuant to this ordinance.

(2) The Department Director, or designee, may issue civil penalties, impose restrictions, and deny, suspend, or revoke a Tobacco Retail License based upon a finding that a Tobacco Retailer is in violation of the rules adopted pursuant to this ordinance, and federal, state, or local laws relating to the retail sale of tobacco products.

**412.060 FEES.**

(1) License fees under this ordinance will be set by the Department and adopted by the Board of County Commissioners.

(2) All license fees imposed for a Tobacco Retail License shall be remitted to the Klamath County Treasurer for deposit into the tobacco retail licensing enforcement fund.

**412.070 APPEALS AND HEARINGS.**

(1) Any person receiving a written notice of violation of this ordinance may request a hearing in accordance with Chapter 800, Uniform Civil Violation Procedure of the Klamath County Code.

**412.080 PENALTIES**

(1) Notwithstanding 412.070 and Chapter 800, alternative civil penalties under this ordinance may be set by the Department and adopted by the Board of County Commissioners.

(2) In addition to any civil penalty imposed, the Department Director, or designee, may impose restrictions, and deny,

suspend, or revoke a Tobacco Retail License based upon a finding that a Tobacco Retailer is in violation of the rules adopted pursuant to this ordinance, or federal, state, or local laws relating to the retail sale of tobacco products.

(3) Surplus funds generated from civil penalties shall be remitted to the Klamath County Treasurer for deposit into the tobacco education and cessation fund.

#### **412.090 YOUTH DECOY PARTICIPATION**

(1) Klamath County shall not enforce any law establishing a minimum age for tobacco product purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

(a) The Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the person designated by the County to monitor compliance with this ordinance.

(b) The Youth Decoy is acting as an agent of a Person designated by Klamath County.

(c) The Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by Klamath County Public Health or the Oregon Health Authority.

**412.100 Severability.** If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Chapter.

This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DONE and DATED this 2nd day of May, 2017.

KLAMATH COUNTY BOARD OF COMMISSIONERS

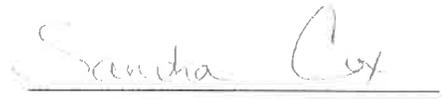
  
Chair  
Commissioner  
Commissioner

APPROVED FOR LEGAL SUFFICIENCY:



David P. Groff  
Klamath County Counsel

ATTEST:



Recording Secretary

County/City	Population	# of Tobacco Retailers	Tobacco Retail License Policy Specifics	Policy Adopted	Licensing Agency	License Fee	Enforcing Agency/ies	Frequency of Inspections	Who Pays for Enforcement	Penalties for Violations	Look Back Period	Penalty Process	Misc. Notes
Lane County, OR (unincorporated areas)	96,150	60	<ul style="list-style-type: none"> <li>No new retailers within 1,000 ft schools</li> <li>Prohibits the sale of electronic cigarettes to minors and bans self-service displays of e-cigs (retailers required to post Oregon Tobacco Quit Line and tobacco use health warning)</li> <li>Clerks must be 18 years of age to sell tobacco</li> </ul>	TRL originally adopted 2014, updated 8/2015, effective 1/16	Lane County Environmental Health	200	EH checks for ordinance requirements other than minor decoy inspections(still working on protocol)	All retailers checked annually	License fee covers cost to administer and have EH do site visits	<ul style="list-style-type: none"> <li>1st violation \$1,650 fine or license suspended for 10 days</li> <li>2nd offense \$4,950 or license suspended for 30 days</li> <li>3rd offense license suspended for 30 days</li> <li>4th offense license revoked</li> </ul>	2 years		Minors are subject to heavy fines if found in possession of e-cigarettes, may be required to attend cessation/education class and pay up to \$1,000 for repeated offenses.
Multnomah County, OR	766,135	842 estimated 500 applications received	<ul style="list-style-type: none"> <li>Ban self-service display</li> <li>Ban sales from motor vehicles</li> <li>Establish MISA for e-cigarettes</li> <li>Ban self-service displays for e-cigarettes</li> <li>Require licensing for e-cigarettes</li> </ul>	TRL 2016	Multnomah County Environmental Health Services	\$580 per license	Multnomah County Health Department	All retailers checked at least once a year for all elements of the ordinance other than sales to minors. Random sample of retailers will receive youth decoy inspections	License fee will cover EH inspections. Unsure of how minor decoy inspections will be paid for	<ul style="list-style-type: none"> <li>1st violation: \$500 fine and mandatory training</li> <li>2nd violation: \$500 fine and 30-day license suspension</li> <li>3rd violation: \$750 fine and 90-day license suspension</li> <li>4th violation: \$1,000 fine and license revoked for 2 years</li> </ul>	5 years		Citizen complaint system to report stores in violation
Contra Costa County, CA (unincorporated areas)	171,122	93	<ul style="list-style-type: none"> <li>Revise definition of "tobacco products" to include electronic smoking devices and "liquids"</li> <li>Proposed: Prohibit the sale of flavored (non-cigarette) products</li> <li>Prohibit sale of menthol flavored cigarettes within 500 feet of schools</li> <li>Require minimum pack size of ten for little cigars and cigarillos</li> <li>Prohibit new retailers within 1000 feet of schools, parks, playgrounds and libraries</li> <li>Prohibit new retailers within 500 feet of new or existing tobacco retailer</li> <li>Prohibit the sale of tobacco products in pharmacies</li> </ul>	TRL 2003/ updated in 2013 to include e-cigs/2016 all other items proposed(council will vote in October)	Treasurer-Tax Collector's Office Business License & Tax Division	\$287	Sheriff's Dept. enforces youth access; Health Dept. enforces all other rules	100 targeted inspections performed annually	License fee covers cost of GF covers cost of minor decoy inspections at \$18,000 per year	<ul style="list-style-type: none"> <li>1st violation suspends license for up to 30 days. (PH Administrator has discretion to shorten suspension and typically suspends license for 1 week.)</li> <li>2nd violation license suspension up to 90 days</li> <li>3rd violation license suspension up to 1 year</li> </ul>	2 years	Sales to minors, Sheriff cites clerk. Clerk appears in court pleads case. Citation typically stands is used as "evidence" by the health dept. to issue the business owner notice of license suspension. business owner is required to appear at a hearing before the PH Director and Sheriff.	Require tobacco retailers who have their license suspended remove tobacco advertising during suspension periods. Illegal sales dropped from 37% to 7% within 2 years

<p><b>Santa Clara County, CA (unincorporated areas)</b></p>	<p>87,352</p>	<p>Prohibits:  <ul style="list-style-type: none"> <li>• Mobile retailers/retailers operating @ temporary events</li> <li>• Pharmacies from selling tobacco</li> <li>• Retailers located w/in 1,000 feet of a school (existing grandfathered)</li> <li>• Retailers located w/in 500 feet of another tobacco retailer. Prohibits retailers from:</li> <li>• Selling flavored tobacco products (except tobacco/menthol)</li> <li>• Covering more than 15% of windows &amp; doors w/ any signs</li> <li>• Violating any local, state, federal law regarding tobacco products/retailing.</li> </ul> </p>	<p>TRL 2010/e-cigs in 2014/ T21 in 2015</p>	<p>Environmental Health</p>	<p>\$425</p>	<p>Public Health with assistance from Sheriff's Dept. on minor decoy operations ordinance</p>	<p>Requires that retailers be checked 2x/year to ensure no sales of tobacco to youth &amp; 1x/year for compliance with all other components of the ordinance</p>	<p>Enforcement costs covered by licensing fees</p>	<p>• Up to \$100 for 1st violation w/in 1 year          • Up to \$200 for 2nd violation w/in 1 year          • Up to \$500 for each additional violation w/in 1 year          Permit Suspension:          • Up to 30 days for 1st violation w/in 2 years          • Up to 90 days for 2nd violation w/in 2 years          • Up to 1 year for 3rd violation w/in 2 years</p>	<p>12-24 months</p>	<p>Director of Environmental Health and/or Health &amp; Human Services is hearings officer</p>	<p>waive penalties for first violation of any requirement other than an illegal sale to a minor if retailer admits violation, forgoes a hearing and corrects the violation within the required time limit.          California Tobacco Control Section          Manager reports that Santa Clara is expecting to be sued by tobacco industry.</p>	
<p><b>Huntington Park, CA</b></p>	<p>59,718</p>	<p>• Nonconforming use will be granted to those already in operation prior to this ordinance  <ul style="list-style-type: none"> <li>• Prohibits sales within 500 ft. of schools</li> <li>• Flavor restrictions (on new businesses)</li> <li>• MLSA to sell tobacco</li> <li>• Minimum pack size for cigars</li> <li>• Ban on self-service including e-cigs, paraphernalia</li> <li>• Stores that are 10,000 sq. ft. or more have different rules</li> <li>• Vapor bars and hookah lounges are prohibited in all zoning districts</li> </ul> </p>	<p>TRL 2011</p>	<p>City Finance Dept.</p>	<p>Huntington Park Police Department</p>	<p>1X per year until proven compliant, then department may inspect less frequently to allow for more frequent inspections of violators</p>	<p>Enforcement costs covered by license fee</p>	<p>• 1st violation, License suspension 30 days.          • 2nd violation 60 days,          • 3rd violation license revoked.          Civil penalties of up to \$1,000 per violation also possible</p>	<p>5 years</p>	<p>Enforcement costs covered by license fee          Licensing fee covers cost of enforcement, violators are liable for all costs associated with correction, abatement, prosecution of or administrative license suspension          Hearings on the violation, reinspection fees</p>	<p>Reinspection fee of \$125</p>	<p>3 years</p>	<p>Hearing before Planning Commission prior to license revocation</p>
<p><b>Hayward, CA</b></p>	<p>158,985</p>	<p>• Prohibits sales within 500 ft. of schools  <ul style="list-style-type: none"> <li>• Flavor restrictions (on new businesses)</li> <li>• MLSA to sell tobacco</li> <li>• Minimum pack size for cigars</li> <li>• Ban on self-service including e-cigs, paraphernalia</li> <li>• Stores that are 10,000 sq. ft. or more have different rules</li> <li>• Vapor bars and hookah lounges are prohibited in all zoning districts</li> </ul> </p>	<p>TRL 2014 put e-cigs and ban on city flavors into city code</p>	<p>City Planning Dept.</p>	<p>\$400</p>	<p>Planning Dept. enforcement agents. Hayward Police Dept. minor decoy inspections</p>	<p>annual inspections of all stores</p>	<p>reinspection fees</p>	<p>• 1st offense \$1,500/30 day license suspension          • 2nd offense \$3,000/30 day license suspension          • 3rd offense \$5,000/ 30 day license suspension or revocation.</p>	<p>3 years</p>	<p>Hearing before Planning Commission prior to license revocation</p>	<p>3 years</p>	<p>Hearing before Planning Commission prior to license revocation</p>

## **GREETING**

Hello, this is \_\_\_\_\_ with the Rede Group. I'm trying to reach \_\_\_\_\_ . Is he/she available?

**(If answer is Yes)**

Thank you.

(Then begin with interview introduction when person gets on phone)

**(If answer is No)**

I am assisting the Deschutes County Public Health Dept. in an effort to gather input from businesses that sell tobacco and vaping products. We connected earlier by phone and scheduled this interview with \_\_\_\_\_. Since he/she is not available, is there another manager or person in charge that we could speak with?

**(If answer is Yes )**

Thank you. (Then begin with interview introduction when person gets on phone)

**(If answer is No)**

Okay. Could you please let \_\_\_\_\_ know that we contacted him/her to conduct this interview and that we may try to get back in touch to reschedule the interview? Thank you for your time. Goodbye.

## **INTERVIEW INTRODUCTION**

Hello \_\_\_\_\_, this is \_\_\_\_\_ with the Rede Group. I am assisting the Deschutes County Public Health Dept. in an effort to gather input from businesses that sell tobacco and electronic nicotine delivery systems (also known as vaping products) about the best way to prevent underage youth from accessing and using

these products. We connected earlier by phone and scheduled this interview. Is now still a good time to talk?

Thank you for agreeing to be interviewed for this survey of business owners. As we stated in our first contact with you, we are conducting this interview on behalf of the Deschutes County Public Health Department. Currently, minors are using tobacco products including hookahs and vape pens, in Deschutes County at alarming rates. The Deschutes Public Health Department is trying to better understand how to prevent youth from accessing and using these tobacco products. The health department currently has a grant to look into community level solutions to prevent youth from accessing and using tobacco including vape products. I'm assuming, as a retailer of tobacco and/or vaping products you are likely aware of community and state level discussions and legislative action regarding this issue?

**(If answer is Yes, skip to Introduction Closing)**

**(If answer is No, read Legislative Action then continue to Introduction Closing)**

### **LEGISLATIVE ACTION**

In 2016 a new law took effect establishing the legal sale age for electronic nicotine delivery systems to be 18. Then, during the 2016 legislative session, SB 1559 which would have required a state retail license to sell tobacco or electronic nicotine delivery systems was introduced, but failed to pass. Additionally, some local jurisdictions like Lane and Multnomah counties have recently implemented a tobacco retail licensing system.

### **INTRODUCTION CLOSING**

Given the interest in preventing youth from accessing and using tobacco, the Deschutes County Health Department is conducting interviews with the business community to hear your perspective

on this public health issue. Information I compile will be shared with decision makers, stakeholders and your community, but your name and other identifying information will remain confidential unless you specifically request that it be made public. The interview will take about 30 minutes. As we move through the interview, please feel free to ask me any questions if something that I have said needs more clarification. Do you have any questions for me at this point, or may we begin?

## **Interview Questions – Demographics**

### **Question 1**

How would you describe yourself? [Select only one answer]

- A. Manager
- B. Owner
- C. Staff

### **Question 2**

How long have you worked in this store/business? [Select only one answer]

- A. 3 months or less
- B. 6 months or less
- C. 1 year or less
- D. 1-3 years
- E. 3-5 years
- F. More than 5 years

## **Interview Questions – Youth Access**

### **Question 3**

Please describe your training policies or program used to educate your employees on the subject of preventing the sale of tobacco and/or electronic nicotine delivery systems to minors? [Open-ended]

**Please indicate whether you strongly agree, somewhat agree, somewhat disagree, strongly disagree or neither agree or disagree with the following statements:**

**Question 4**

Your current training policies and program are successful in limiting sales of tobacco and electronic nicotine delivery systems to minors?

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

**Question 5**

Employees at my store have experienced minors attempting to purchase tobacco or electronic nicotine delivery products illegally.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

**Question 6**

If you become aware that one of your clerks has sold tobacco or electronic nicotine delivery systems to a minor, what is your protocol for dealing with that situation?  
(open-ended)

**Question 7**

Is there anything that the Deschutes County Health Dept. could do to support your education and training efforts focused on reducing sales of tobacco and nicotine delivery systems to minors? [Circle yes, no, or unsure]

Yes/No/Unsure

**If Yes, please describe:**

**Background – TRL Policy**

Despite most retailers best efforts, youth in OR still get their hands on tobacco products and experiment with smoking and/or vaping. The 2015 Oregon Healthy Teens Survey data indicates that the number one way high school kids access tobacco products is through their friends who are eighteen years or older. However, 39% of survey respondents from Deschutes County cited “stores” as their access point to tobacco products. OR state law prohibits selling any tobacco or vaping product to children under 18, but the state has limitations when it comes to enforcement. As a result local jurisdictions are trying to find their own best methods to address youth tobacco use initiation and access to tobacco and vaping products. One solution that has been put into place by a couple of counties and a handful of cities in Oregon is a local tobacco retailer license system. These systems require retailers pay an annual licensing fee and there is a graduated system of penalties for stores that are found to be out of compliance with minor sales laws. Fees/fines collected from the tobacco retail license program support retailer education and license enforcement efforts.

**Interview Questions – Tobacco Retail Policy**

**Question 8**

If a tobacco retail license system would help prevent youth from starting to use tobacco or vaping products, I would support a licensing program.

Strongly agree

Somewhat agree

Neither agree nor disagree

Somewhat disagree

Strongly disagree

### **Question 9**

What do you think the penalty should be for retailers who continually break the law by selling tobacco products to minors? (Open-ended)

### **Question 10**

How, if at all, would your business be impacted by the implementation of a tobacco retail license system, similar to the Oregon Liquor Control Commission alcohol license system? (Open-ended)

**Please indicate whether you strongly agree, somewhat agree, somewhat disagree, strongly disagree or neither agree or disagree with the following statements:**

### **Question 11**

If I knew it would reduce or prevent youth from using tobacco, I would consider discontinuing the sale of flavored tobacco and/or vaping products.

Strongly agree  
Somewhat agree  
Neither agree nor disagree  
Somewhat disagree  
Strongly disagree

### **Question 12**

If I knew it would reduce or prevent youth from using tobacco, I would support a policy that prohibits retailers from selling tobacco within 1000ft. of schools.

Strongly agree  
Somewhat agree  
Neither agree nor disagree  
Somewhat disagree  
Strongly disagree

**Question 13**

I would support increasing the purchase age for tobacco and vaping products from 18 to 21, like the purchase age for alcohol and recreational marijuana.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

**Question 14**

My store would be willing to post Oregon Tobacco Quit Line information in order to support tobacco users who are interested in quitting.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

**Question 15**

Is there anything else concerning this subject matter that you would like the Deschutes County Public Health Department to know? (Open-ended)

That was my last question. Thank you very much for your time and thoughtful responses to this survey.

**(If phone interview)**

Could I please verify your name and the address that you would like us to mail your \$25 gift card to?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Thank you and have a nice day.

# Tobacco Retail Policies

