

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*

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Deborah Kafoury, Chair

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

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