



AGENDA COVER MEMO

Agenda Date: January 31, 2017 (Date of First Reading)
February 14, 2017 (Date of Second Reading/Public Hearing)

TO: Board of County Commissioners
Sitting also as the Board of Health

DEPARTMENT: Department of Health & Human Services

PRESENTED BY: Karen Gaffney

AGENDA ITEM TITLE: ORDINANCE 17-01/ IN THE MATTER OF AMENDING
LANE COUNTY CODE CHAPTER 9 TO ADDRESS ISSUES
RELATED TO THE AGE OF PURCHASE OF TOBACCO
PRODUCTS THROUGHOUT LANE COUNTY

I. MOTION

A. January 31, 2017:

Move approval of the First Reading of Ordinance No. 17-01 and setting the Second Reading and Public Hearing for February 14, 2017 at 9:00 a.m. in Harris Hall, Public Service Building.

B. February 14, 2017: Alternate Motions after the Public Hearing

A. Move to Approve Ordinance No. 17-01, as Presented.

OR

B. Move to Set a Third Reading and to Direct Staff to further Revise Ordinance No. 17-01, as Directed by the Board of Health (BoH) and to Return with a Revised Ordinance for BoH Consideration and Action on (Date Certain) at (Time Certain) in Harris Hall.

II. AGENDA ITEM SUMMARY

After due consideration and based upon the data set forth by Health & Human Services (H&HS), after conducting a series of meetings with the community leaders and city officials throughout the County, the Board of Health has requested that Lane Code (LC) Chapter 9 be revised to establish twenty-one (21) as the legal minimum sales age for tobacco products regulated under LC 9. This action will not change any of the penalties, fines or fees already established in LC 9. The proposed Board of Health (BOH) Ordinance will be effective countywide in both incorporated and unincorporated areas.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

On September 22, 2015, Health & Human Services (H&HS) provided the Board of Health (BoH) with an update on progress made with respect to tobacco reduction strategies. On March 1, 2016, H&HS presented a discussion of four possible tobacco-reduction initiatives, including a Countywide Tobacco 21 retail sales age Ordinance. On June 7, 2016, the Board engaged in a discussion of the establishment of such an ordinance. At that session, H&HS staff were directed to arrange a series of stakeholder engagement meetings to determine attitudes toward and potential support for a Tobacco 21 Ordinance.

In June, 2016, H&HS leadership and the County Administrator met with the Regional Managers at their regular meeting, and in September, 2016 H&HS Leadership and the Board Chair met with local mayors at the Mayor's Roundtable. In September, 2016, H&HS, in conjunction with the Board of Health and the CHIP partners (Trillium Community Health Plan, PeaceHealth, the United Way of Lane County and Orchid Health), held five general community engagement meetings in the following communities: Cottage Grove, Eugene, Florence, Oakridge and Springfield. These meetings were widely advertised and held in the evening to encourage broad community participation. Staff engaged in specific outreach to retailer representatives, school and youth-serving stakeholders. Additionally, staff presented on Tobacco 21 to other CHIP and community groups, coalitions and partners.

On November 29, 2016, H&HS reported on the stakeholder and community engagement meetings, providing the Board with a Tobacco 21 Community Engagement Meeting Report (attached to the Board Agenda of that date: http://www.lanecounty.org/UserFiles/Servers/Server_3585797/File/Government/BC/2016/2016_AGENDAS/112916agenda/T.4.B.pdf)

At the conclusion of the November 29 report to the Board, H&HS and Counsel staff were charged to collaborate on the development of a Countywide Tobacco 21 Ordinance, which is presented for consideration and action, at this time.

B. Policy Issues

The current County code regarding tobacco sales reflects the state minimum age of 18. Currently, more than 200 jurisdictions, including two states, have increased the legal age for tobacco to 21. A similar policy change would require a change in Lane Code in order to implement in Lane County. Adoption of this Ordinance would represent action by the BoH in the best interest of its residents, as part of a comprehensive effort to address the rise in tobacco use among Lane County youth, to reduce negative health outcomes and to reduce the costs associated with treating smoking-related illnesses. According to the CDC, 75%¹ of American adults (including 70% of people who smoke cigarettes) favor raising the minimum age for sale of all tobacco products to 21 and the most recent polling (2014) in Lane County also indicates strong community support. The persistently high tobacco use among youth in Lane County is compounded by the 450% increase in the use of electronic smoking devices by 11th graders alone, between 2013 and 2015.²

C. Board Goals

The reduction of smoking, especially at the age of initiation, supports the goal of a Safe and Healthy County.

D. Financial and/or Resource Considerations

The financial impact on retailers of raising the legal age to purchase is anticipated to be low and any resulting increase in fines/penalties related to Ordinance violations should be minimal, estimated at 2%.³ Any impact of tax revenue will be similarly negligible.

Long term savings on healthcare costs, decreased health-related absenteeism and increased years of productive working life are, in contrast, estimated to be substantial.

E. Health Implications

The negative health impacts of tobacco/nicotine use remains the leading cause of preventable death/disease and represents significant costs, both financial and personal, to all county employers and residents. Nicotine is highly addictive and its use is most commonly initiated among youth, not adults. According to the National Survey on Drug Use and Health, over 95% of smokers started before age twenty-one (21), a time when the brain has heightened susceptibility to nicotine addiction,

according to the New England Journal of Medicine. Smoking is also the leading cause of adverse pregnancy outcomes. Babies born to tobacco-dependent mothers are at risk for many long and short-term health problems

Lane County has a high rate of smoking particularly among people living in poverty, resulting in high costs both to the individuals who are addicted as well as higher medical and social costs to the larger community. Limiting access to nicotine products promotes a social environment in which these products are less visible and less likely to be viewed positively. Furthermore, the negative impact of second and third hand smoke exposure have also been well established.

F. Analysis/Update

The current Community Health Improvement Plan identifies reducing smoking in Lane County as an important strategy for improving health in Lane County, and prioritizes the adoption of tobacco prevention policies. The policy has been introduced in past sessions of the Oregon legislature, but has not gained the necessary votes. A 2014 survey in Lane County indicated 59% of respondents would support raising the age to 21.

The purpose of the County's Tobacco Ordinance is to reduce the number of youth who become addicted to nicotine. The most effective time at which to impact addiction is at its highest point of commencement and the age of initiation for the greatest percentage of smokers is precisely prior to age 21.⁴

Currently at least 217 jurisdictions in fourteen states, including major cities such as New York and Chicago, and 2 States (California and Hawaii) have adopted Tobacco 21 codes/statutes/policies.^{5,6}

A 2015 Institute of Medicine report, based on a study of the existing literature, concluded that raising the minimum sales age to 21 would produce a 25% decrease in initiation rates among youth age 15-17.

At the request of the Board, staff held a series of community and stakeholder meetings about the proposed policy. The purpose of the meetings was to help educate stakeholders about the proposed policy, answer questions that people might have regarding the proposed policy, and to identify concerns that might need to be addressed if the Board were to move forward with the policy. The results of these meetings were presented to the Board at the November 29, 2016 meeting.

References

1. Centers for Disease Control and Prevention. 2015 July 7. *Three out of 4 American adults favor making 21 the minimum age of sale for tobacco products*. Available at: <https://www.cdc.gov/media/releases/2015/p0707-tobacco-age.html>
2. Oregon Health Authority, Public Health Division. Oregon Health Teens Surveys, 2013 and 2015. Available at: <https://public.health.oregon.gov/BirthDeathCertificates/Surveys/OregonHealthyTeens/Pages/index.aspx>
3. Winickoff JP, Hartman L, Chen ML, Gottlieb M, Nabi-Burza E, DiFranza JR. Retail impact of raising tobacco sales age to 21 years. *American Journal of Public Health*. 2014 November;104(11):e18-e21.
4. JosephDiFanza and Mardia Coleman, 2001. *Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws*
5. Flenady, Vicki, et al. "Major Risk Factors for Stillbirth in High-Income Countries: A Systematic Review and Meta-Analysis." *Lancet (London, England)* 377, no. 9774 (April 16, 2011): 1331–40. doi:10.1016/S0140-6736(10)62233-7
6. Preventing Tobacco Addiction Foundation. 2016. *Tobacco 21 cities*. Available at: <http://tobacco21.org/wp-content/uploads/2014/02/tobacco21-localities-new-7.pdf>

G. Alternatives/Options

1. Approve Ordinance 17-01 with the options selected by category of proposed Amendments, as determined based on direction provided this date; or
2. Direct staff to revise Ordinance 17-01, as directed by the Board, and to return with a revised Ordinance for the Board’s consideration and action; or
3. Decline to adopt an Ordinance related to increasing the age of tobacco sales at this time.

IV. RECOMMENDATION

The Analysis put forth above, supported by the cited research/article, suggests that raising the legal sales age to 21 represents a prudent change that has the ability to decrease youth tobacco initiation and use by decreasing youth access to tobacco products

V. TIMING/IMPLEMENTATION

Changes would become effective 30 days after Ordinance Enactment.

VI. FOLLOW-UP

Notice to all interested parties will be provided as required by law.

VII. ATTACHMENT

Board Order
Legislative Format

Final Format, Ordinance No. 17-01
Fact Sheet on Raising the Minimum Sales Age to 21 (LCPH)
Have Tobacco 21 Laws Come of Age? (New England Journal of Medicine)
Institute of Medicine—Report Brief March, 2015—“Public Health Implications of
Raising the Minimum Age of Legal Access to Tobacco Products”

BEFORE THE BOARD OF COMMISSIONERS AND
THE BOARD OF HEALTH OF LANE COUNTY, OREGON

ORDINANCE NO: 17-01

IN THE MATTER OF AMENDING LANE
CODE CHAPTER 9 TO PROHIBIT
TOBACCO SALES TO PERSONS
UNDER 21 YEARS OF AGE

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

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

REMOVE THESE SECTIONS

9.700 – 9.715
9.725 – 9.752
9.756
9.760 – 9.764
9.768 – 9.774

INSERT THESE SECTIONS

9.700 – 9.715
9.725 – 9.752
9.756
9.760 – 9.764
9.768 – 9.774

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

ENACTED this ____ day of February 2017.

Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date _____

LANE COUNTY OFFICE OF LEGAL COUNSEL

Recording Secretary for this Meeting of the Board

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**LEGISLATIVE
FORMAT**

9.685

Lane Code

9.700

issued, unless said cities by separate order of their governing body separately elect not to come under the provisions of this ordinance. *(Revised by Ordinance No. 5-73, Effective 8.4.73)*

9.685 Administrative Rules.

The Board may establish rules necessary to carry out the provisions of this sub-chapter upon the recommendation of the Department. Such rules shall be published in the Lane Manual. *(Revised by Ordinance No. 5-73, Effective 8.4.73)*

9.690 Effective Date.

The provisions of this sub-chapter shall be effective September 1, 1973. All permits issued shall be valid for three years from date of issuance. *(Revised by Ordinance No. 5-73, Effective 8.4.73; 7-78, 6.9.78)*

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 all unincorporated areas of Lane County, including incorporated jurisdictions and unincorporated areas.

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

(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.

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9.705 Lane Code

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

 (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 lighted or heated tobacco like or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, 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, or which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus, ~~or Tobacco Product~~ also means an Electronic Smoking Device and any component or accessory used in the preparation or consumption of tobacco products, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

 (~~17~~16) “Tobacco Retailer” means any Person who holds a license to ~~sells,~~ offers for sale, or exchanges or offers 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; 15-05, 9.25.15)*

Electronic Smoking Devices and Minors Tobacco Products and Person under Age 21

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9.705 Lane Code

**LEGISLATIVE
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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 Tobacco Products ~~Electronic Smoking Devices~~ in Lane County and unincorporated Lane County to and by persons under ~~18-21~~ years of age.

_____ Lane County passes ~~this ordinance~~ LC 9.700 through 9.774 out of a desire to promote a wholesome environment where children are encouraged to make healthful choices that allow them to grow up to lead healthy, productive and prosperous lives. Nicotine is a highly addictive toxic substance, the use of which is initiated primarily by young people. Nicotine use is associated with the risk of numerous adverse health consequences, including increased susceptibility of addiction to other drugs of abuse and the use of tobacco, and with serious neurobehavioral problems and nicotine use in children of mothers that use during pregnancy. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

9.710 Requirements and Prohibitions.

_____ (1) Sale to ~~minors~~ person under age 21 prohibited. All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, ~~an Electronic Smoking Device~~ Tobacco Product to a person under ~~18-21~~ years of age in any place within Lane County.

_____ (2) Positive identification required. Tobacco Retailers in Lane County are prohibited from selling, giving or furnishing ~~an Electronic Smoking Device~~ a Tobacco Product to a person who appears to be under ~~27-30~~ years of age without first examining the holder's government-issued photographic identification to confirm that the recipient is at least ~~18-21~~ years of age.

_____ (3) Posting of sales age signage required. All Tobacco Retailers in Lane County are required to conspicuously post a notice that is clearly visible to the seller and the purchaser at the location where Tobacco Products are available for purchase. The Department will provide a notice that reads "The sale or provision of tobacco products, tobacco paraphernalia, and electronic smoking devices to persons under the age of 21 is prohibited by law" legibly printed in red letters at least one-half inch high.

_____ (4) Self-Service Displays of ~~Electronic Smoking Devices~~ Tobacco Products are prohibited.

_____ (5) Non-sale Distribution Prohibited. All persons are prohibited from the Non-sale Distribution of any ~~Electronic Smoking Device~~ Tobacco Products to a Person who is not a Retailer. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

9.715 Possession, Distribution and Use by Minors Person Under Age 21.

_____ (1) It is unlawful for any person under ~~18-21~~ years of age to possess, receive, purchase, sell, distribute, use or consume Tobacco Products ~~Electronic Smoking Devices~~. It is unlawful for any person under ~~18-21~~ years of age to have personal possession of a Tobacco Product ~~an Electronic Smoking Device~~, except when such ~~minor~~ person under 21 years of age is in a private residence accompanied by ~~the such person's~~ parent or legal guardian ~~of the minor~~ and with the consent of such parent or legal guardian.

_____ (2) A ~~minor acting under the supervision of an authorized adult~~ Youth Decoy, under the terms of LC 9.752(2), may purchase, attempt to purchase or acquire Tobacco

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9.720 Lane Code

**LEGISLATIVE
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9.725

~~Products 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~~ Tobacco Products to person under 21 years of age.

(3) Notwithstanding the prohibitions of Lane Code 9.715(1) and (2), an individual who is at least 18 years of age may possess, receive, sell, distribute Tobacco Products while lawfully employed as and performing the duties of a Tobacco Retailer.
(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)

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; 15-05, 9.25.15)*

9.725 Penalties and Enforcement.

(1) The Department or its authorized designee may conduct random, unannounced inspections at locations where Tobacco Products are distributed to test and ensure compliance with LC 9.710 through 9.720

(2) A Youth Decoy is exempt from the provisions of LC 9.715(1). A Youth Decoy is a natural person under the age of 21 who:

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

(b) Is acting as an agent of a Person designated by the Department 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.

(3) ~~The All~~ penalty and enforcement provisions within this section are cumulative and in addition to any other remedies available at law or in equity.

(4) Violations of LC 9.710 ~~to and~~ 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 separate violation, as follows:

(a) Any Person who commits a violation while not in the course of Tobacco Retailing, a fine not exceeding \$50.

(b) Any non-managerial Employee while in the course of Tobacco Retailing who commits a violation, a fine not exceeding \$50.

(c) Any managerial Employee while in the course of Tobacco Retailing, acting within the course and scope of the person's employment, who violates, or the person has supervisory authority over a person described in LC 9.725(4)(b) who violates within a twenty-four month period: after a first or second violation, a fine not exceeding five hundred dollars (\$500); and after a third or subsequent violation, a fine not exceeding one thousand dollars (\$1,000).

(d) Any Employer or owner of a Tobacco Retailing business who violates or where a person described in LC 9.725(4)(b) or (c) who violates within a twenty-four month period: after a first violation, a \$1,650 fine; after a second violation, a \$4,950 fine; after a third or subsequent violation, a \$4,950 fine for Tobacco Retailers who do not hold a license to sell Tobacco Products. Those in violation will be responsible for all costs associated with prosecutions of violations.

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~~_____~~ ~~(35)~~ Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.710 to 9.720 constitutes a violation of those sections.

~~_____~~ ~~(46)~~ In addition to any other penalty, a Tobacco Retailer who holds a license to sell Tobacco Products who violates any provision of LC 9.710 through 9.720 may be subject to license suspension or revocation.

~~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.~~ _____ (7) 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.

~~_____ (8) If a peace officer can see the Tobacco Product in plain sight that the person is in violation of LC 9.715(1), the peace officer may confiscate the Tobacco Product.~~

~~_____ (9) Criminal Prosecution. Nothing in this section 9.725 will prohibit Lane County from initiating criminal proceedings for any alleged violation of LC 9.710 through 9.720. (Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)~~

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 unincorporated 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 government-issued photographic 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 27-30 years of age.

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____(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 ~~18-21~~ 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 Non-sale 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; 15-05, 9.25.15)

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. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

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~~ Department that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to LC 9.758, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor will be revoked pursuant to LC 9.770. Nothing in LC 9.758 will be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

(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; 15-05, 9.25.15)*

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:

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(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; 15-05, 9.25.15)*

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-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-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; 15-05, 9.25.15)*

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-Department 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; 15-05, 9.25.15)*

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 unincorporated Lane~~ 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

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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; 15-05, 9.25.15)*

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; 15-05, 9.25.15)*

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, Department 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; 15-05, 9.25.15)

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 9.752 710 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 a court or the Department of a first violation of LC 9.752 710 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 a court or the Department of a second violation of LC 9.752 710 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 a court or the Department of a third violation of LC 9.752 710 to 9.772 at a location within any twenty-four-month period, the license will be suspended for -thirty days.

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(d) Upon a finding by a court or the Department of four or more violations of LC ~~9.752-710~~ 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; 15-05, 9.25.15)

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

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(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; 15-05, 9.25.15)*

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; 15-05, 9.25.15)*

SEWAGE FACILITIES MANAGEMENT REGULATIONS

9.800 Authority, Intent and Purpose.

Pursuant to Oregon Revised Statutes and the Home Rule Charter of Lane County, this sub-chapter is adopted for the following purposes:

(1) To provide a management system for the safe and sanitary collection, treatment and disposal of domestic waste for cluster units.

(2) To provide for implementation of sewage facilities in specified areas within Lane County.

(3) To prevent sewage facilities from becoming a financial burden or otherwise a nuisance to those citizens not directly served by such sewage facilities.

(4) To provide a mechanism to permit sewage facilities in New Development Centers.

(5) To assure the financial stability and the operational integrity of sewage facilities approved hereunder.

(6) To protect the health, safety and welfare of the people of Lane County. *(Revised by Ordinance No. 3-78, Effective 3.31.78; 1-00, 4.12.00)*

9.805 Definitions.

For purposes of this sub-chapter, the following words and phrases shall mean:

Approval or Approved. Approved by the Board of County Commissioners.

Developer. Any person or the heirs, successors or assigns of such person who owns or proposes or intends to develop a subdivision or multiple housing unit project which is proposed to be, or is served, by sewer facilities.

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

(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 device that can be used to deliver aerosolized or vaporized nicotine, cannabinoids, or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic Smoking Device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

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

(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 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, or other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an Electronic Smoking Device.

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

(16) “Tobacco Retailer” means any Person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, Tobacco Products. “Tobacco Retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products sold, offered for sale, exchanged, or offered for exchange. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

Tobacco Products and Person under Age 21

9.705 Purpose and Findings.

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

Lane County passes LC 9.700 through 9.774 out of a desire to promote a wholesome environment where children are encouraged to make healthful choices that allow them to grow up to lead healthy, productive and prosperous lives. Nicotine is a highly addictive toxic substance, the use of which is initiated primarily by young people. Nicotine use is associated with the risk of numerous adverse health consequences, including increased susceptibility of addiction to other drugs of abuse and the use of tobacco, and with serious neurobehavioral problems and nicotine use in children of mothers that use during pregnancy. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

9.710 Requirements and Prohibitions.

(1) Sale to person under age 21 prohibited. All Persons are prohibited from selling, giving or furnishing, or causing to be sold, given or furnished, a Tobacco Product to a person under 21 years of age in any place within Lane County.

(2) Positive identification required. Tobacco Retailers in Lane County are prohibited from selling, giving or furnishing a Tobacco Product to a person who appears to be under 30 years of age without first examining the holder’s government-issued photographic identification to confirm that the recipient is at least 21 years of age.

(3) Posting of sales age signage required. All Tobacco Retailers in Lane County are required to conspicuously post a notice that is clearly visible to the seller and the purchaser at the location where Tobacco Products are available for purchase. The Department will provide a notice that reads “The sale or provision of tobacco products, tobacco paraphernalia, and electronic smoking devices to persons under the age of 21 is prohibited by law” legibly printed in red letters at least one-half inch high.

(4) Self-Service Displays of Tobacco Products are prohibited.

(5) Non-sale Distribution Prohibited. All persons are prohibited from the Non-sale Distribution of any Tobacco Products to a Person who is not a Retailer. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

9.715 Possession, Distribution and Use by Person Under Age 21.

(1) It is unlawful for any person under 21 years of age to possess, receive, purchase, sell, distribute, use or consume Tobacco Products. It is unlawful for any person under 21 years of age to have personal possession of a Tobacco Product, except when such person under 21 years of age is in a private residence accompanied by such person’s parent or legal guardian and with the consent of such parent or legal guardian.

(2) A Youth Decoy, under the terms of LC 9.752(2), may purchase, attempt to purchase or acquire Tobacco Products for the purpose of testing compliance with local law or Tobacco Retailer management policy limiting or regulating the delivery of Tobacco Products to person under 21 years of age.

(3) Notwithstanding the prohibitions of Lane Code 9.715(1) and (2), an individual who is at least 18 years of age may possess, receive, sell, distribute Tobacco Products while lawfully employed as and performing the duties of a Tobacco Retailer. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

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; 15-05, 9.25.15)*

9.725 Penalties and Enforcement.

(1) The Department or its authorized designee may conduct random, unannounced inspections at locations where Tobacco Products are distributed to test and ensure compliance with LC 9.710 through 9.720

(2) A Youth Decoy is exempt from the provisions of LC 9.715(1). A Youth Decoy is a natural person under the age of 21 who:

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

(b) Is acting as an agent of a Person designated by the Department 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.

(3) All penalty and enforcement provisions within this section are cumulative and in addition to any other remedies available at law or in equity.

(4) Violations of LC 9.710 and 9.720 are punishable by a civil fine per separate violation as follows:

(a) Any Person who commits a violation while not in the course of Tobacco Retailing, a fine not exceeding \$50.

(b) Any non-managerial Employee while in the course of Tobacco Retailing who commits a violation, a fine not exceeding \$50.

(c) Any managerial Employee while in the course of Tobacco Retailing, acting within the course and scope of the person's employment, who violates, or the person has supervisory authority over a person described in LC 9.725(4)(b) who violates within a twenty-four month period: after a first or second violation, a fine not exceeding five hundred dollars (\$500); and after a third or subsequent violation, a fine not exceeding one thousand dollars (\$1,000).

(d) Any Employer or owner of a Tobacco Retailing business who violates or where a person described in LC 9.725(4)(b) or (c) who violates within a twenty-four month period: after a first violation, a \$1,650 fine; after a second violation, a \$4,950 fine; after a third or subsequent violation, a \$4,950 fine for Tobacco Retailers who do not hold a license to sell Tobacco Products. Those in violation will be responsible for all costs associated with prosecutions of violations.

(5) Causing, permitting, aiding, abetting, or concealing a violation of any provision of LC 9.710 to 9.720 constitutes a violation of those sections.

(6) In addition to any other penalty, a Tobacco Retailer who holds a license to sell Tobacco Products who violates any provision of LC 9.710 through 9.720 may be subject to license suspension or revocation.

(7) 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.

(8) If a peace officer can see the Tobacco Product in plain sight that the person is in violation of LC 9.715(1), the peace officer may confiscate the Tobacco Product.

(9) Criminal Prosecution. Nothing in this section 9.725 will prohibit Lane County from initiating criminal proceedings for any alleged violation of LC 9.710 through 9.720. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

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 in unincorporated 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 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 government-issued photographic identification and confirm that the holder is at least 18 years of age, before selling or transferring Tobacco Products to a natural person who appears to be under 30 years of age.

(e) Selling, giving, or furnishing, or causing to be sold, given or furnished, a Tobacco Product to a natural person who is younger than 21 years of age.

(f) Permitting a natural person who is younger than 18 years of age to sell, offer for sale, or exchange or offer to exchange for any form of consideration, Tobacco Products.

(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 out of public view. The public display of Tobacco Products in violation of this subsection constitutes Tobacco Retailing without a valid license under LC 9.772.

(i) Without a valid Tobacco Retailer license, including a license that has been suspended or revoked, displaying any advertisement relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(j) Engaging in the Non-sale Distribution of Tobacco Products.

(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; 15-05, 9.25.15)*

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. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

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 Department that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to LC 9.758, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor will be revoked pursuant to LC 9.770. Nothing in LC 9.758 will be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

(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; 15-05, 9.25.15)*

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; 15-05, 9.25.15)*

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 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; 15-05, 9.25.15)*

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 Department 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; 15-05, 9.25.15)*

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 unincorporated Lane 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; 15-05, 9.25.15)*

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; 15-05, 9.25.15)*

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, Department or its agents.

(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)

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 9.710 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 a court or the Department of a first violation of LC 9.710 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 a court or the Department of a second violation of LC 9.710 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 a court or the Department of a third violation of LC 9.710 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 a court or the Department of four or more violations of LC 9.710 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 WRONGFULLY ISSUED.** A Tobacco Retailer's license will be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 9.758 existed at the time application was made or at any time before the license issued. The decision by the Department will be the final decision. Such a revocation will be without prejudice to the filing of a new license application. *(Revised by Ordinance No. 14-19, Effective 1.16.15; 15-05, 9.25.15)*

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 offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and will be forfeited after the licensee and any other owner of the Tobacco Products seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products were not offered for sale or exchange in violation of LC 9.752 to 9.772. The decision by the Department may be appealed under LC 9.770. Forfeited Tobacco Products will be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to Oregon law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(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 is offered for sale in violation of LC 9.752 to 9.772; or

(b) Each instance in which an individual retail Tobacco Product 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; 15-05, 9.25.15)*

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) 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; 15-05, 9.25.15)*

SEWAGE FACILITIES MANAGEMENT REGULATIONS

9.800 Authority, Intent and Purpose.

Pursuant to Oregon Revised Statutes and the Home Rule Charter of Lane County, this sub-chapter is adopted for the following purposes:

(1) To provide a management system for the safe and sanitary collection, treatment and disposal of domestic waste for cluster units.

Raising the Minimum Sales Age to 21

- Adolescence is a period of high susceptibility to nicotine addiction. The younger people are when they start smoking, the more likely they are to become strongly addicted and to become lifelong smokers.^{1,2}
- Eighty to ninety percent of long term smokers start during adolescence before the age of 18. Ninety-nine percent start before the age of 26.³
- Older Teen Smokers, over 18 or appearing to be over 18, can buy their own cigarettes and are a major and sometimes the prime social source of supply to smokers too young to buy their own.⁴
- Raising the legal age to buy tobacco to 21 will cut the distribution pathways from 18 to 21 year olds to younger teens.⁵
- The Institute of medicine estimates that the biggest impact will be to reduce smoking initiation among 15 to 17 year olds by 25 per cent.⁵
- The IOM also estimates that by raising the legal sales age to 21, over time the adult smoking prevalence will fall by 12%.⁵ (For Lane County, 22% to 19%)
- Over time hundreds of thousands of lives will be saved.⁵
- Raising the minimum sales age would decrease tobacco retailer and industry sales by approximately 2%.⁴
- Gallup polls show that about 9 in 10 people who smoke cigarettes wish that they had never started.⁶
- Adolescents have impaired decision making abilities. The prefrontal cortical regions of adolescent brains required for making considered choices about activities with long term consequences are under-developed. They are not fully functional till age 25.⁷
- Three quarters of adults favor raising the minimum tobacco age of sale to 21 years, including seven in ten smokers.⁸
- California, Hawaii and at least 145 localities in 11 states have raised the tobacco age to 21, including New York City, Chicago, Boston, Cleveland, and both Kansas Cities.⁹
- “If a man has never smoked by age 18, the odds are three-to-one he never will. By age 21, the odds are twenty-to-one” – An RJ Reynolds executive.¹⁰

References:

1. Zhan, Weihai, Lisa C. Dierker, Jennifer S. Rose, Arielle Selya, and Robin J. Mermelstein. "The Natural Course of Nicotine Dependence Symptoms among Adolescent Smokers." *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco* 14, no. 12 (December 2012): 1445–52.
2. Azagba, Sunday, Neill Bruce Baskerville, and Leia Minaker. "A Comparison of Adolescent Smoking Initiation Measures on Predicting Future Smoking Behavior." *Preventive Medicine Reports* 2 (2015): 174–77.
3. National Center for Chronic Disease Prevention and Health Promotion (US) Office on Smoking and Health. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Reports of the Surgeon General. Atlanta (GA): Centers for Disease Control and Prevention (US), 2012.
<http://www.ncbi.nlm.nih.gov/books/NBK99237/>.
4. Winickoff, Jonathan P., Lester Hartman, Minghua L. Chen, Mark Gottlieb, Emara Nabi-Burza, and Joseph R. DiFranza. "Retail Impact of Raising Tobacco Sales Age to 21 Years." *American Journal of Public Health* 104, no. 11 (November 2014).
5. Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Washington, DC: The National Academies Press, 2015
<http://www.nationalacademies.org/hmd/Reports/2015/TobaccoMinimumAgeReport.aspx>
6. Tobacco and smoking: Gallup historical trends. (2016). Retrieved from
<http://www.gallup.com/poll/1717/Tobacco-Smoking.aspx>
7. Yuan, Menglu, Sarah J. Cross, Sandra E. Loughlin, and Frances M. Leslie. "Nicotine and the Adolescent Brain." *The Journal of Physiology*, May 27, 2015.
8. King, Brian A., Amal O. Jama, Kristy L. Marynak, and Gabbi R. Promoff. "Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults." *American Journal of Preventive Medicine* 49, no. 4 (October 2015): 583–88.
9. Increasing the Minimum Legal Sale Age For Tobacco Products to 21, Campaign for Tobacco-Free Kids, May 11, 2016, <https://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>
10. RJ Reynolds, "Estimated Change in Industry Trend Following Federal Excise Tax Increase," September 10, 1982, Bates Number 513318387/8390,
<http://legacy.library.ucsf.edu/tid/tib23d00;jsessionid=211D4CCF0DBD25F9DC2C9BB025239484.tobacco03>

5/16/16



Perspective

Have Tobacco 21 Laws Come of Age?

Stephanie R. Morain, Ph.D., Jonathan P. Winickoff, M.D., M.P.H., and Michelle M. Mello, J.D., Ph.D.

On January 20, 2016, New Jersey Governor Chris Christie vetoed a bill passed with strong bipartisan support by his state legislature that would have raised New Jersey's minimum

age of sale for tobacco products to 21. The veto is a setback in an otherwise accelerating movement toward dissemination of "Tobacco 21" laws as a new tool for reducing young people's access to cigarettes and e-cigarettes. In 2013, only 8 U.S. localities had adopted Tobacco 21 laws. By March 2016, at least 125 localities and the state of Hawaii had done so, and California was on the cusp of following suit. In September 2015, the first federal Tobacco 21 legislation was introduced (Tobacco to 21 Act, S. 2100).

Are Tobacco 21 laws ready to go to scale, as these legislative developments suggest? We believe they are. In the past 2 years, research has generated new evidence that these laws are effective, enjoy very high levels of public support, and have minimal economic impact in the short term.

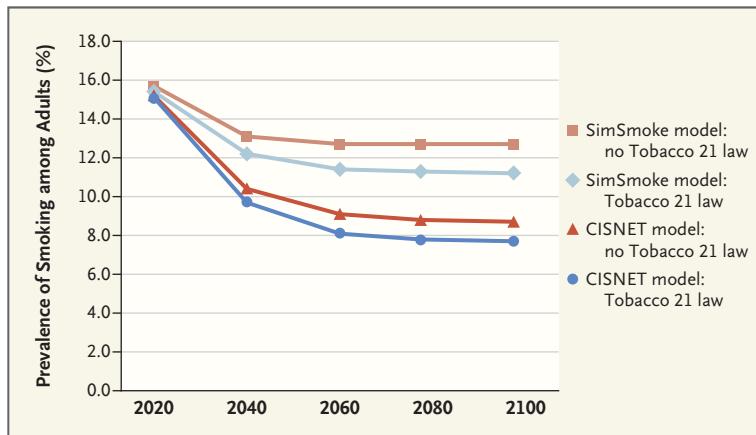
In 2012, when momentum for

Tobacco 21 laws began to build, the arguments supporting their plausibility as a mechanism for deterring smoking initiation and reducing tobacco consumption among young people were strong. The vast majority of smokers begin smoking during adolescence, a period when the brain has heightened susceptibility to nicotine addiction. Nearly everyone who buys cigarettes for minors in the United States is under 21 years of age; raising the sale age prevents high school students from buying tobacco products for their peers.¹ Raising the age to 21 also facilitates enforcement of sale restrictions, because many states use a different color or format for driver's licenses for under-21s.

Today, new evidence greatly buttresses the case for Tobacco 21 laws. A multivariate analysis of the effects of the law adopted in Need-

ham, Massachusetts, using pooled cross-sectional data, revealed a 47% reduction in the smoking rate among high school students, along with a reported decline in area retail tobacco purchases.² These decreases were significantly greater than those in 16 comparison communities without Tobacco 21 laws. A 2015 report by an Institute of Medicine (IOM) committee provided evidence from two different simulation models that increasing the minimum age to 21 would lead to a 12% reduction in smoking prevalence (see graph).² In terms of smoking initiation by young people, the IOM estimated a "large" (20.8–30.0%) effect among teens 15 to 17 years of age, with effects in the 12.5-to-18.0% range among other adolescents.

The health effects of such decreases are dramatic. If implemented now, the IOM report estimated, a nationwide Tobacco 21 rule would result in 249,000 fewer premature deaths, 45,000 fewer deaths from lung cancer, and 4.2 million fewer lost life-years



Estimated Effects of the Nationwide Tobacco 21 Law on the Prevalence of Smoking among Adults, 2020-2100, According to an Institute of Medicine Report.

among Americans born between 2010 and 2019.² The health benefits would multiply as this cohort reached childbearing age: by 2100, the IOM projected 286,000 fewer preterm births among mothers 15 to 49 years of age, 438,000 fewer low-birth-weight babies, and 4000 fewer cases of sudden infant death syndrome. Although further evidence from jurisdictions where Tobacco 21 laws have been implemented is certainly desirable, the IOM found the evidentiary base sufficient to conclude that wider adoption of Tobacco 21 laws would prevent smoking initiation and save lives.

In addition, new survey evidence reveals strong public support for the Tobacco 21 approach. Two national public opinion studies published in 2015 found that 70 to 75% of Americans — including a majority of current smokers — support raising the minimum purchase age to 21.^{3,4}

In July 2015, we surveyed a nationally representative sample of 1125 U.S. adults (≥18 years of age) regarding their attitudes toward various public health laws. The survey was conducted online, using a standing, probability-based panel of civilian, noninstitutionalized adults, and had a comple-

tion rate of 61.4%. We found that three in four Americans support the adoption of a federal Tobacco 21 law (see table). Majority support extends across all major sociodemographic groups, including 68.3% support among young adults 18 to 24 years of age. Chi-square analyses revealed no significant differences according to sex, income or educational level, or race or ethnic background. Support is high even among current smokers (66.5%) and former smokers (73.0%).

Past health policy debates have underscored the importance of considering differences in support according to political party affiliation. Our results show that a federal Tobacco 21 law enjoys support across the political spectrum, including about 76% of respondents identifying as Republican and nearly 80% of Democrats. It may also be reassuring for policymakers to know that support among our respondents for a Tobacco 21 law equals or exceeds support for other widely adopted tobacco-control laws such as smoking bans in restaurants and bars. In other words, legislators of both red and blue stripes should feel comfortable supporting these laws without fear of voter backlash.

The major political barrier to scaling up the Tobacco 21 effort may be interest-group opposition. Media reports suggest, for example, that resistance from tobacco manufacturers, e-cigarette companies, and retailers' associations influenced Governor Christie's veto decision. Industry opposition undoubtedly emanates primarily from concerns about reduced sales revenue. Objections from a coalition of tobacco retailers and manufacturers, following a well-rehearsed playbook, emphasize the sanctity of personal liberty and warn that further access restrictions will harm small businesses.

But near-term economic harms are overstated. Estimates suggest that raising the tobacco-purchasing age to 21 would result in a 2-to-3% annual decrease in total tobacco sales.⁵ Over the longer term, the revenue loss from decreased smoking prevalence will be substantial. But allowing future generations to become addicted to nicotine in order to preserve tobacco revenue fails the red-face test as an argument against Tobacco 21, just as it failed in debates over other laws restricting youth access to tobacco.

Among the interest groups best placed to counteract industry opposition are medical and health professional organizations. The American Medical Association, the American Academy of Pediatrics, the American Academy of Family Physicians, and the American Public Health Association all publicly support Tobacco 21 laws. Active engagement by these and other organizations is critical to ensuring that the policy frame for these laws remains focused on the health benefits, despite efforts to recast the laws as anti-small-business measures. Health professionals can also reinforce the message that Tobacco 21 is a pe-

Support for a Federal Tobacco 21 Law among U.S. Adults, 2015.*				
Group	Definitely Support	Probably Support	Probably Oppose	Definitely Oppose
	%			
Overall	48.6	26.6	12.9	11.9
Political party				
Democrat	55.8	23.9	11.9	8.4
Republican	50.3	25.4	12.3	12.0
Independent	41.0	30.3	13.8	14.9
Smoking status				
Never	51.9	26.8	9.8	11.6
Former	47.8	25.2	15.5	11.6
Current	36.3	30.2	21.8	11.7
Age				
18–24 yr	38.8	29.5	16.1	15.6
25–44 yr	44.5	28.2	13.2	14.1
45–64 yr	51.9	25.0	12.9	10.1
≥65 yr	56.3	24.7	10.1	8.9
Sex				
Male	44.1	29.8	12.2	13.9
Female	52.8	23.6	13.6	10.0
Race or ethnic background				
White	49.0	25.8	12.1	13.1
Black	49.0	26.2	13.5	11.4
Hispanic	52.2	25.5	14.3	8.0
Other	37.8	36.5	15.7	10.1
Annual income				
<\$50,000	44.7	27.3	12.8	15.2
\$50,000–\$99,000	50.7	27.8	11.5	10.1
≥\$100,000	51.8	24.2	14.7	9.3

* Data are from the authors' survey of a nationally representative panel of 1125 U.S. adults, fielded July 7–18, 2015. Race or ethnic background was self-reported. Question text: "Would you support the U.S. Congress establishing 21 as the minimum legal age to purchase cigarettes?" The table presents weighted proportions accounting for the probability of selection into the survey sample. The Stanford University School of Medicine Institutional Review Board declared this study exempt.

diatric intervention. The IOM concluded that although Tobacco 21 laws, on their face, affect young adults 18 to 20 years of age, the greatest beneficiaries are children 15 to 17 years of age.²

Legal barriers to scaling up Tobacco 21 exist, but they are surmountable. National adoption requires an act of Congress, be-

cause the Family Smoking Prevention and Tobacco Control Act of 2009 prohibits the Food and Drug Administration from raising the minimum age by using administrative regulations. Nationwide adoption is desirable because the broader the scope of the rule, the greater its health effects will be — and a federal law would elimi-

nate the potential for adolescents to "jurisdiction hop" to obtain tobacco products. More widespread adoption by states is a next-best alternative. Further dissemination at the local level will continue but is hampered in 19 states by laws preempting any local law that is more stringent than the state law.

Local and state efforts have succeeded in extending Tobacco 21 protections to more than 16 million Americans. We believe the time has come to expand this effective, broadly supported approach to a much greater share of the population.

Disclosure forms provided by the authors are available with the full text of this article at NEJM.org.

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1. Institute of Medicine. Public health implications of raising the minimum age of legal access to tobacco products. Washington, DC: National Academies Press, 2015.
2. Kessel Schneider S, Buka SL, Dash K, Winickoff JP, O'Donnell L. Community reductions in youth smoking after raising the minimum tobacco sales age to 21. *Tob Control* 2015 June 12 (Epub ahead of print).
3. King BA, Jama AO, Marynak KL, Proffoff GR. Attitudes toward raising the minimum age of sale for tobacco among U.S. adults. *Am J Prev Med* 2015;49:583-8.
4. Winickoff JP, McMillen R, Tanski S, Wilson K, Gottlieb M, Crane R. Public support for raising the age of sale for tobacco to 21 in the United States. *Tob Control* 2015 February 20 (Epub ahead of print).
5. Winickoff JP, Hartman L, Chen ML, Gottlieb M, Nabi-Burza E, DiFranza JR. Retail impact of raising tobacco sales age to 21 years. *Am J Public Health* 2014;104(11):e18-21.

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Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products



Over the past 50 years, tobacco control in the United States has led to an estimated 8 million fewer premature deaths. However, tobacco use continues to significantly affect public health, and more than 40 million Americans still smoke.

In 2009, the Family Smoking Prevention and Tobacco Control Act granted the U.S. Food and Drug Administration (FDA) broad authorities over tobacco products, though it prohibited FDA from establishing a nationwide minimum age of legal access—an MLA for tobacco products—above 18 years of age. It also directed FDA to convene a panel of experts to conduct a study on the public health implications of raising the minimum age to purchase tobacco products. At FDA's request, the Institute of Medicine (IOM) convened a committee in 2013 for this purpose.

In the resulting report, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, the committee of experts reviews existing literature on tobacco use initiation, developmental biology and psychology, and tobacco policy and predicts the likely public health outcomes of raising the MLA for tobacco products to 19 years, 21 years, and 25 years. The committee also uses mathematical modeling to quantify these predictions. Of note, the report contains only conclusions regarding raising the MLA; as requested by FDA, the committee does not offer recommendations as to whether the MLA should be raised.

...tobacco use continues to significantly affect public health, and more than 40 million Americans still smoke.

Lowering Initiation Rates

The initiation age of tobacco use is critical. Among adults who become daily smokers, approximately 90 percent report first use of cigarettes before reaching 19 years of age, and almost 100 percent report first use before age 26. As mentioned above, FDA cannot raise the MLA nationwide. However, states and localities can set a higher minimum age for their communities. Most states currently set the MLA at 18 years. Four states set it at 19 years, and several localities around the country have raised the minimum age to 21 years.

Based on its review of the literature, the committee concludes that overall, increasing the MLA for tobacco products will likely prevent or delay initiation of tobacco use by adolescents and young adults. The age group most impacted will be those age 15 to 17 years. The committee also concludes that the impact of raising the MLA to 21 will likely be substantially higher than raising it to 19. However, the added effect of raising the MLA from 21 to 25 will likely be considerably less.

The parts of the brain most responsible for

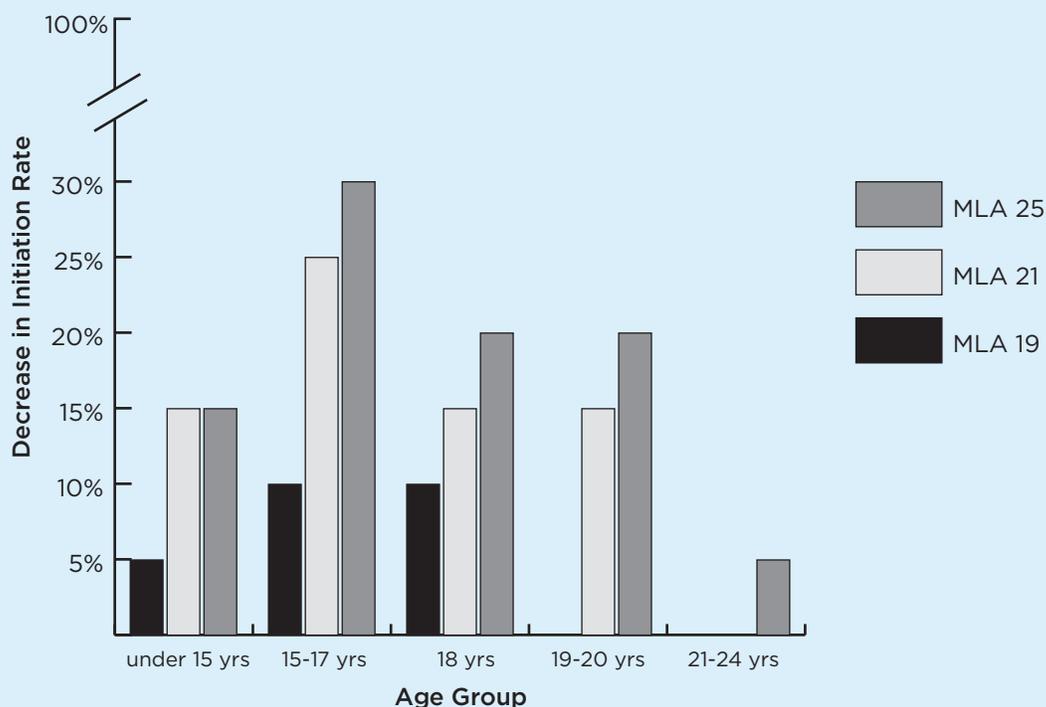
decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine. In addition, the majority of underage users rely on social sources—like family and friends—to get tobacco.

Raising the MLA to 19 will therefore not have much of an effect on reducing the social sources of those in high school. Raising the MLA to 21 will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students. In the same vein, increasing the MLA from 21 to 25 is not likely to achieve additional notable reductions in social sources for those under age 15.

Reducing Prevalence, Decreasing Disease

Delaying initiation rates will likely decrease the prevalence of tobacco users in the U.S. population. To quantify this decrease in both prevalence of tobacco users and in related health concerns

FIGURE: Committee Estimates Regarding Effects on Initiation Rates



NOTE: This figure was created using data from Table 7-2 in the report.

The parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction.

that could be a result of raising the MLA, the committee commissioned the use of two established and complementary tobacco simulation models, SimSmoke and the Cancer Intervention and Surveillance Modeling Network smoking population model (CISNET).

In using the models, the committee employed all available evidence and expert judgment to project outcomes. The committee also had to make assumptions with important implications. The models only address cigarette smoking, but the committee expects the MLA and relative effects on initiation to apply to all tobacco products. In addition, the models project the effects of raising the MLA on the United States as a whole and do not take into account existing variations in tobacco use—such as by race or socioeconomic status—initiation rates, and tobacco control activities. In addition, the rapidly changing landscape of tobacco products—for example, e-cigarettes—provides unknowns and could affect the future of tobacco product use in ways that the committee was unable to anticipate due to lack of evidence.

Based on the modeling and backed up by the literature review, the committee concludes that raising the minimum age of legal access to tobacco products in the United States, particularly to ages 21 and 25, will likely lead to a substantial reduction in smoking prevalence. If the MLA were raised now, the models projected that by the time today's teenagers were adults, there would be a 3 percent decrease in prevalence of tobacco use among those adults if the MLA were raised to 19, a 12 percent decrease if raised to 21, and a 16 per-

cent decrease if raised to 25.

Given a decline in the initiation rates of tobacco use by adolescents and lower prevalence in the population, it follows that tobacco-related disease would also decrease in proportion to the reduction in tobacco use. It is generally known that smoking-related diseases like cancer and heart disease develop over decades, and therefore, it could take many years to lower rates of these diseases; however, there could be immediate decreases in other tobacco-related health effects.

The committee concludes that raising the MLA will likely immediately improve the health of adolescents and young adults by reducing the number of those with adverse physiological effects such as increased inflammation and impaired immune functioning caused by smoking, as these could potentially lead to negative health consequences, including increased hospitalizations and lessened capacity to heal wounds. Adverse maternal, fetal, and infant outcomes—including preterm births, low birth weight, and sudden infant death—will also probably decrease due to reduced tobacco exposure in mothers and infants. Raising the MLA will also lessen the population's exposure to secondhand smoke and its associated health effects, both now and in the future.

Over time, the committee concludes that raising the MLA will likely lead to substantial reductions in smoking-related mortality, though results from the models suggest that these results will not be observed for at least 30 years, assuming that the MLA increase occurs now. The CISNET model



Committee on the Public Health Implications of Raising the Minimum Age for Purchasing Tobacco Products

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projected that if the MLA were raised now to 21 nationwide, there would be approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019.

Conclusion

The public health impact of raising the MLA for tobacco products depends on the degree to which local and state governments change their policies. These decisions will depend on each state's or locality's balance between personal interests and the privacy of young adults to make their own choices versus society's legitimate concerns about protecting public health.

The IOM committee makes conclusions about likely public health outcomes of raising the MLA for tobacco products. Overall, in the absence of transformative changes in the tobacco market, social norms and attitudes, or in the knowledge of patterns and causes of tobacco use, the committee is reasonably confident that raising the MLA will reduce tobacco use initiation, particularly among adolescents 15 to 17 years of age; improve the health of Americans across the lifespan; and save lives. 



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