

CHAPTER 17
SALE OF TOBACCO ADMINISTRATION

17.005 Definitions. As used in BCC Chapter 17:

(1) **“Electronic smoking device”** means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include “drugs,” “devices,” or “combination products,” authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(2) **"License"** means a license issued by the County for the retail sale of tobacco products.

(3) **"Licensee"** means the holder of a valid license for the retail sale of tobacco products.

(4) **“Sale” or “Sell”** means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

(5) **“School”** means any public or private elementary, middle, junior high or high school.

(6) **"Self Service Displays"** means open displays of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of a store employee.

(7) **"Tobacco Product"** means:

i. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

ii. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

iii. any component, part, or accessory of (i) or (ii), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

“Tobacco product” does not mean “drugs,” “devices,” or “combination products” authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(8) **"Vendor-assisted"** means only a store employee has access to the tobacco product and

assists the customer by supplying the tobacco product. The customer does not take physical possession of the tobacco product until after it is purchased. [Ord. 97-0129; Ord. 2016-0277; Ord. 2022-0310]

IDENTIFICATION

17.010 Identification Required. It shall be a violation of BCC Chapter 17 for a retailer to sell or permit to be sold any tobacco products to an individual under the age of 27 without requesting and examining photographic identification establishing the purchaser's age as twenty-one (21) years or greater. [Ord. 97-0129; Ord. 2022-0310]

LICENSES

17.015 License Required.

(1) It shall be a violation of BCC Chapter 17 for a retailer to sell any tobacco products unless that retailer holds and maintains a valid license from the County for each location in which tobacco products are sold. All such licenses shall be renewed annually on or before June 30.

(2) No license may be issued to authorize tobacco retailing at a non-fixed location. For the purposes of this section, a non-fixed location means any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or non-motorized vehicle.

(3) No license may be issued to authorize tobacco retailing at a temporary event. For example, a tobacco retail license will not be issued for use at a farmer's market or fair.

(4) No license may be issued to authorize tobacco retailing at any location within 1,000 feet of a school, as measured by the shortest distance traveled from any entrance of the proposed location for tobacco retailing to the parcel boundary of the school, provided, however, that the prohibition contained in this subsection (4) shall not apply to any tobacco retailer operating lawfully on the date immediately prior to this ordinance becoming effective.

(5) No license may be issued to authorize tobacco retailing at a location which is within 1,000 feet of a location occupied by another tobacco retailer, as measured by the shortest distance traveled from any entrance of the proposed location to any entrance of the existing location, provided, however, that the prohibition contained in this subsection (5) shall not apply to existing tobacco retailers operating lawfully on the date immediately prior to this ordinance becoming effective.

(6) Any exemption granted to a tobacco retailer pursuant to this section shall cease to apply if the tobacco retailer fails to timely renew the tobacco retailer license pursuant to subsection (1). [Ord. 97-0129; Ord. 2016-0277]

17.017 License Renewal. Licensees shall renew licenses annually. [Ord. 97-0129]

17.020 License Fee. The fee for the license shall be established by the Benton County Board of Commissioners by order and shall be sufficient to fund the administration, implementation, and enforcement of BCC Chapter 17. The fee for renewing tobacco licenses shall be determined by the Board by order and shall be sufficient to fund the administration, implementation, and enforcement of BCC Chapter 17. No fees shall be collected in excess of what is necessary for administration, implementation, and enforcement of BCC Chapter 17. No license is valid unless and until the fee is paid in full. [Ord. 97-0129]

17.025 Non-transferability. A tobacco retail license is non-transferable, except a replacement license will be issued, without charge. [Ord. 97-0129; Ord. 2022-0310]

17.026 Display of License. Each license shall be prominently displayed in a publicly visible location at the licensed location. [Ord. 2016-0277]

SALES

17.030 Sales to Persons Under the Minimum Legal Age to Purchase Tobacco. It shall be a violation of BCC Chapter 17 for any tobacco retailer to sell, permit to be sold, or offer for sale any tobacco products to a person that is under 21 years of age. [Ord. 97-0129; Ord. 2022-0310]

17.035 Vendor-Assisted Sales. It shall be a violation of BCC Chapter 17 for any tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any means other than vendor-assisted sales. This section does not apply if the location at which the tobacco products are sold is an establishment that prohibits persons under 21 years of age from entering the establishment. [Ord. 97-0129; Ord. 2022-0310]

17.036 Lawful Business Operation. It shall be a violation of BCC Chapter 17 for a licensee to violate 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 is issued. [Ord. 2016-0277]

17.037 Minimum Age for Persons Selling Tobacco. It shall be a violation of BCC Chapter 17 for persons under 18 years of age to engage in tobacco retail sales. [Ord. 2016-0277; Ord. 2022-0310]

INSPECTIONS

17.040

(1) The Health Department Director, or designee, shall have the authority to inspect for and investigate potential violations of BCC Chapter 17 in accordance with OAR 333-015-0242 and OAR 333-015-0252, except as otherwise provided for in this chapter.

(2) The Health Department Director, or designee, shall have the authority to conduct annual random, unannounced inspections of retailers to ensure compliance with, and to enforce, the minimum legal sales age law for tobacco in accordance with OAR 333-015-0247, except as

otherwise provided for in this chapter. [Ord. 2022-0310]

ENFORCEMENT

17.050

(1) The Health Department Director, or designee, shall enforce the provisions of BCC Chapter 17.

(2) The Health Department Director may issue civil penalties, impose restrictions, and deny, suspend, or revoke a tobacco retail license based upon finding that a tobacco retailer is in violation of BCC Chapter 17. [Ord. 2022-0310]

PENALTIES

17.060 Licensee Penalties.

(1) Any licensee may be assessed a civil penalty not to exceed five thousand dollars (\$5,000) for each violation of Section 17.036. A licensee may be subject to multiple civil penalties at a single inspection if the County Health Department finds multiple violations.

(2) Any licensee who violates any provision of BCC Chapter 17 shall be assessed civil penalties and/or have their license suspended or revoked as follows:

(a) In the case of a first violation, the licensee shall be fined one thousand dollars (\$1,000) and shall be notified in writing of penalties levied for further violations.

(b) In the case of a second violation within a 60-month period of the first violation under subsection (a), the licensee shall be fined two thousand dollars (\$2,000) and the license shall be suspended for 45 days. Tobacco retailers may not sell tobacco products and must remove all tobacco products from all retail areas while the license is suspended.

(c) In the case of a third violation within a 60-month period of the first violation under subsection (a), the licensee shall be fined three thousand five hundred dollars (\$3,500) and the license shall be revoked. The former licensee shall not be eligible to reapply for a license for a period of six (6) months from the date of revocation. Tobacco retailers may not sell tobacco products and must remove all tobacco products from all retail areas while the license is suspended.

(d) In the case of a fourth, or any subsequent violation within a 60-month period of the first violation under subsection (a), the licensee shall be fined five thousand dollars (\$5,000) and the license shall be revoked.

(e) Failure to pay a fine levied under Section 17.060 within thirty (30) days of the date the fine is levied shall result in the suspension of the licensee's license until the fine is paid.

(f) Any new application for a license or renewal, during the period a license is

suspended pursuant to Section 17.060, shall be held in abeyance pending payment of the fine and termination of the suspension period. Any new application for a license, during the period a license is revoked pursuant to Section 17.060, shall be denied.

- (3) Any retailer violating Section 17.015 shall be subject to a fine of one thousand dollars (\$1,000) per day for each violation.
- (4) In the case of an illegal sale of a tobacco product during a minimum sale age inspection, the licensee may be assessed a civil penalty, license suspension or revocation without a remediation plan.
- (5) The County Health Department shall have the authority to impose penalties pursuant to Section 17.060.
- (6) The Health Department Director, or designee, may enforce any provision of this Chapter pursuant to Chapter 31 of the Benton County Code. [Ord. 97-129; Ord. 99-0147; Ord. 2016-0277; formerly BCC 2.040 Ord. 2022-0310]

APPEALS

17.070 Notice and Hearing.

- (1) Prior to the suspension or revocation of a license pursuant to Section 17.060, the County shall provide notice to the licensee. This notice shall be sufficient to apprise the licensee of:
 - (a) the date of issuance of the notice,
 - (b) the proposed penalty,
 - (c) the reason for the proposed imposition of the penalty, and
 - (d) licensee's right to request a hearing regarding the proposed penalty and the request procedure in Section 17.070(2).
- (2) To appeal, a licensee shall request a hearing as follows:
 - (a) The request shall be in writing, directed to the Health Department Director, and must be accompanied by a non-refundable hearing fee, the amount of which fee shall be established by an order of the Board of Commissioners, and
 - (b) The request must be received by the Health Department Director within ten (10) days of issuance of the notice.
- (3) If a hearing is properly requested pursuant to Section 17.070, a hearing shall be conducted before a hearings officer designated by the Board. The hearings officer shall have full authority to set hearing dates and hearing procedures. All actions of the hearings officer are final and any

penalties imposed by the hearings officer shall take effect immediately. For purposes of Section 17.060(1)(d), a contested fine is levied as of the date the hearings officer imposes penalties.

(4) Should the licensee fail to request a hearing within the time and in the manner set out in this Section, licensee has waived the right to a hearing and the penalty shall be imposed at the expiration of the ten (10) day period established in Section 17.070(2)(b). For purposes of Section 17.060(1)(d), a fine is levied as of the date of the expiration of this ten (10) day period. [Ord. 97-0129; formerly BCC 2.045 Ord. 2022-0310]