

APRIL 3, 2019

The regular meeting of the City Council was called to order on Wednesday April 3, 2019 at 7 p.m. by Mayor Matt Brown. Present were Councilor Fackerell, Councilor Jesse, Councilor Smith, Mayor Brown, Councilor Cockrum, City Attorney Peter Watts, City Administrator Chad Sweet and City Treasurer Gail Como.

Mayor Brown asked to add 3-minute visitor section to the agenda if the council agrees. The council agreed.

There was no conflict of interest declared by any member of the council.

Councilor Smith asked to have a word changed in the March 6, 2019 council meeting minutes. ON MOTION by Councilor Smith, 2<sup>nd</sup> by Councilor Jesse to approve the March 6, 2019 Council meeting minutes as amended, MOTION was approved 5-0.

Each member of Council was given a copy of reports from the Police Dept., Fire Dept, Planning Commission and City Treasurer.

Mayor Brown gave his report. (see attached).

Councilor Fackerell attended the budget meeting and enjoyed the presentations and thought it gave us a better look at our community.

Councilor Cockrum reported working on personnel policies, attended a CERT meeting where they worked on updating our call out system and Josh Como drafted a possible situations document.

City Attorney Peter Watts has reached out to the owners of the High Point property to notify them the city may be interested in purchasing the property.

City Administrator Chad Sweet reported:

- Fire station surveys are coming in.
- Guided tour of the 3 proposed locations.
- Duncan's Crossing – our goal is to submit the permit by April 30<sup>th</sup>

- GHA – plantings across the street from the fire dept.
- Water meter replacement company is working around town
- Gearhart Crossing – no violations
- Held the budget meeting
- National Hazard Mitigation meeting
- Joint work session with pc/cc on April 11, 2019
- Work session to discuss Coastal Resiliency Plan on April 23, 2019
- Grant for SCBA has been pushed out to May
- Gearhart Free Dump Day April 20, 2019
- Fireman’s Ball will be May 25, 2019
- Well removal contract is signed.

Melissa Eddy 196 Dylan Court noted that last years’ street dance was so popular that citizens asked to have it again this year. Ms. Eddy asked permission to hold the street dance on Friday July 5, 2019 from 7:30 – 10:30 p.m. There will not be alcohol sales or food sales and it will be funded by private donations and called the “GHA Street Dance”. Ms. Eddy asked if the city would provide the porta potties. The Council agreed.

Mike McNickle of the Clatsop County Public Health Department spoke to the council in the matter of licensing retail sales of tobacco products. The county has drafted an ordinance and asked the City of Gearhart to adopt it into the City codes. City Attorney Peter Watts advised you would adopt an ordinance that says the county has permission to enforce their ordinance in the City of Gearhart. The council supported the county tobacco draft ordinance.

Jeff Hazen executive director of Sunset Empire Transit asked the council for support by signing a letter for a grant to get an electric bus. The focus is on rural transit and expanding service and planning to add a bus stop shelter at the bowling alley. The council agreed.

Jeannie Mark P.O. Box 2627 reported the fire station field trips had 21 people the first week including the male owner of one of the high point lots and the second week 17 attended including the female owner of the high point lot. It was informative and everyone was engaged. It was Spring Break during the fire station walk about and there were lots of visitors in town and

these visitors are not aware of what to do in case of a tsunami. If a tsunami happened during their visit it would be our responsibility to help them.

ON MOTION by Councilor Cockrum, 2<sup>nd</sup> by Councilor Fackerell to adopt a proclamation to declare April 2019 child abuse prevention month, MOTION was approved 5-0.

ON MOTION by Councilor Jesse, 2<sup>nd</sup> by Councilor Smith to adopt resolution #942, a Park Master Plan resolution, as amended, MOTION was approved 5-0.

Sam and Joanna Drier 927 N. Marion thanked the Mayor and Council for moving forward with Oregon Solutions and he is hopeful they can help with our elk situation.


Judd Todd P.O. Box 2326 appreciated the sterling job that Chad Sweet has been doing explaining in detail the septic at Gearhart Crossing and the pollution at 10<sup>th</sup> St. It is great to see this communication.

Councilor Fackerell would like to address the plastic bag ban soon.

Councilor Cockrum mentioned that Carole Connell did a report on the aquatic zone. We do not have an enforceable ordinance, so Carole Connell made some recommendations to help with that. Ms. Cockrum also has concerns about parking and thought that kiosks would be helpful to educate visitors.

ON MOTION by Councilor Smith, 2<sup>nd</sup> by Councilor Jesse to adjourn, MOTION was approved 5-0. Mayor Brown adjourned the meeting at 8:33 p.m.

  
\_\_\_\_\_  
Mayor Matt Brown

  
\_\_\_\_\_  
Chad Sweet, City Administrator

April 3, 2019

City of Gearhart  
PO Box 2510  
Gearhart, Oregon 97138

RE: Mayor's Report, April 2019

Dear City Council & Residents of Gearhart,

**Gearhart Elk Herd Update**

The city of Gearhart has been working with Oregon Solutions, alongside the City of Warrenton and the ODFW, to find ways to mitigate public safety issues with our local elk herds in Clatsop County. Oregon Solutions is a state organization who helps solve complex problems across multiple jurisdictions and agencies. They have formed a committee of stakeholders within Clatsop County including the City of Gearhart, City of Warrenton, ODFW, State Police, private land owners, and the North Coast Land Conservancy to help find solutions to mitigate public safety hazards with the over population of elk in all of Clatsop County. The name of their project is "Clatsop Plains Elk Collaborative" and they are now asking Governor Brown to back the project and a select Mayor Henry Balensifer of Warrenton and Mayor Jay Barber of Seaside to co-convene the committee meetings. We will keep you posted on the status of the project.

We recently had a very dangerous incident with the elk herd last week on Marion Ave. A neighbor's dog was trampled and suffered a broken leg. The dog's owner went under a cow to rescue the dog and could have been seriously injured by the herd. The incident was very sudden and could have been a lot worse. A description of the incident was recorded in this meeting's correspondence and forwarded to the ODFW and Oregon Solutions.

Because of the increase in elk activity recently, the city will be putting out our elk caving warning signs early this year and Chad Sweet has been working with the ODFW and local sign makers to get permanent elk safety signs made up to be put on busy right of ways and areas with pedestrian traffic. Part of our job as a city is to educate the public and visitors on elk safety but we need all of our citizens to help with the education process. Please review our wildlife page on the city's website for more safety information.

The city recently passed a no feeding ordinance for elk and other wildlife. This will help cut down on elk/human interactions and prevent the elk from getting too friendly and approaching humans and pets.

The elk are beautiful animals and fun to look at from a distance but can be very dangerous to humans and pets. Please exercise caution and keep a safe distance with your pets leashed at all

times to avoid potentially harmful situations. For more information please contact city hall for an elk safety flyer from the ODFW.

### **New Emergency Response and Resiliency Station Update**

So far, we have received 687 total (as of 4/2/19) fire station questionnaires and I wanted to give you a quick update of the stats.

This data is from all full time and part time residents (Gearhart voters + Gearhart property owners) who filled out surveys:

**75.5% are in support of a new station**  
**74.4% support a bond**  
**58.6% support private donations/financing**

**51.7% support High Point Station as their #1 choice**  
**36.4% support Pacific Way Station (current location) as their #1 choice**  
**11.9% support Gearhart Park Station as their #1 choice**

Remember we need all of your surveys in by April 29<sup>th</sup>! Please review the latest information, updated FAQ, Slide Show, and Town Hall meeting on-line:

(<https://www.cityofgearhart.com/general/webform/new-emergency-response-resiliency-station>)

### **City Budget**

The city held it's first budget committee meeting of the year. The process has started earlier this year to allow for more public feedback, more deliberation, and transparency. I want to thank all of our citizen volunteers who are on the committee: Judy Schector, Christopher Gluck, Al Carder, Bob Shortman, and Jack Zimmerman. We appreciate the participation and wonderful input and suggestions.

One thing the city will begin as of the April 2019 city council meeting is for staff to present the year to date budget versus actuals monthly report. This will go in the public minutes so citizens can stay up to date on what the city is spending and see where taxpayer dollars are potentially being saved in the form of fiscal year end cash carryover and reserve funds.

All the best,

Matt J. Brown  
Mayor of Gearhart

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR  
CLATSOP COUNTY, OREGON

In the Matter of Licensing Retail Sales )  
of Tobacco Products )  
 )  
 )

ORDINANCE No. 2019-0\_\_

The People of Clatsop County, Oregon, ordain as follows:

SECTION 1. TITLE.

This Ordinance shall be known as Ordinance No. 2019-0\_\_ the "Clatsop County Retail Sales of Tobacco Product Licensing Ordinance".

SECTION 2. AUTHORITY.

This Ordinance is adopted pursuant to Chapter 3, Section 8 of the Clatsop County Home Rule Charter.

SECTION 3. PURPOSE.

The purpose of this Ordinance is to regulate the sale of tobacco and inhalant delivery products with a goal of enhancing public health and preventing teenagers from accessing tobacco or inhalant products.

SECTION 4. ADOPTION.

The Board of County Commissioners hereby adopts the Clatsop County Retail Sales of Tobacco Products Licensing Ordinance as shown in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 5. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this Ordinance, including its attachments or any portion therein, to be invalid, and such holding is upheld on any appeal, such portion shall be deemed a separate, distinct and independent portion. Any such holding shall not affect the validity of the remaining portions.

SECTION 6. SCRIVENER'S ERRORS.

A scrivener's error in any portion of this ordinance or its attachments may be corrected by order of the Board of County Commissioners.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall be effective 30 days after passage.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

BOARD OF COUNTY COMMISSIONERS FOR  
CLATSOP COUNTY, OREGON

By \_\_\_\_\_  
\_\_\_\_\_, Chair

By \_\_\_\_\_  
Theresa Dursse, Recording Secretary

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

DRAFT

## EXHIBIT A

### 1. Definitions.

The following words and phrases, whenever used in this ordinance, shall have the meanings defined herein unless the context clearly requires otherwise:

- A. "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 the effect of any violations of this ordinance is not an Arm's Length Transaction.
- B. "Cigar" means any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, and that is not defined as a cigarette under Oregon Revised Statutes Section 323.010.
- C. "Department" means Clatsop County Public Health and any agency or Person designated by the Department to enforce or administer the provisions of this ordinance.
- D. "Inhalant Delivery System" means a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device, or a component of such a device or a substance in any form sold for the purpose of being vaporized or aerosolized by such a device, whether the component or substance is sold separately or is not sold separately. "Inhalant Delivery System" does not include Tobacco Products and does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any therapeutic purpose, if the product is marketed and sold solely for that approved purpose.
- E. "Listed or Non-Discounted Price" means the higher of the price listed for a Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System on its package or the price listed on any related shelving, posting, advertising or display at the place where any such products are sold or offered for sale. Listed or Non-Discounted Price includes all applicable taxes if such taxes are not included in the stated price, and before the application of any allowed discounts or coupons.
- F. "Person" means any natural person, business, partnership, cooperative association, employer, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including a government agency.
- G. "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be 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 shall be deemed to exist when a Person can, does have, or shares ultimate control over the day-to-day operations of a business.
- H. "Tobacco Paraphernalia" means cigarette papers, wrappers, pipes, cigarette rolling machines, and any other item designed for the consumption, use, or preparation of any Tobacco Product.
- I. "Tobacco Product" means any bidi, cigarette, as defined in Oregon Revised Statutes, Section 323.010 (definitions for ORS323.005 to 323.482), cigar, cheroot, stogie, perique, granulated, plug



cut, crimp cut, ready rubbed, pipe tobacco and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobacco, snus, short, refuse scrap, clipping, cutting, and sweeping of tobacco. "Tobacco Product" also means any device that can be used to deliver tobacco products to a person using the device. "Tobacco Product" does not include any drug, device, or combination product authorized by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

- J. "Tobacco Retailer" means any Proprietor or entity, as defined in Oregon Revised Statutes Section 60.001 that sells, offers for sale, or exchanges or offers to exchange, for any form of consideration, any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products, Tobacco Paraphernalia, or Inhalant Delivery Systems sold, offered for sale, exchanged, or offered for exchange.

**2. License required.**

- A. A Tobacco Retailer License is required for each address at which any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System is sold, exchanged, or offered for sale or exchange.
- B. Each applicant for a Tobacco Retailer license must meet all requirements of this ordinance and all rules adopted pursuant to this ordinance, and all federal, state, and local laws relating to the retail sale of Tobacco Products, Tobacco Paraphernalia, or Inhalant Delivery Systems.
- C. A Tobacco Retailer may only make Tobacco Products available from a licensed, fixed location. Tobacco Retailing by natural persons on foot or from vehicles or mobile units is prohibited.
- D. Application for a Tobacco Retailer license shall be made on forms provided by Clatsop County and shall be submitted in the name of each Proprietor proposing to conduct Tobacco Retailer sales and signed by each Proprietor or an authorized agent thereof. It shall be the responsibility of each Proprietor to be informed about all applicable laws affecting a Tobacco Retailer license. All applications for a Tobacco Retailer license shall contain the following information:
1. The name, address, and telephone number of each Proprietor of the business seeking a license;
  2. The business name, address, and telephone number of the single fixed location for which a license is sought;
  3. 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 this ordinance, provided that, if an Authorized Address is not provided, each Proprietor will be understood to consent to the provision of notice at the business address specified in subparagraph two (2) above;
  4. Proof that the location for which a Tobacco Retailer license is sought has been issued a valid state license for the sale of Tobacco Products, Tobacco Paraphernalia and Inhalant Delivery Device if the Tobacco Retailer sells products that require state licensure;
  5. Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this ordinance and, if so, the dates and locations of all such violations within the previous five (5) years; and
  6. Such other information as the Department deems necessary for the administration and

enforcement of this ordinance, as specified on the required application form.

- E. A licensed Tobacco Retailer shall inform the Department, in writing, of any change in the information submitted on an application for a Tobacco Retailer license within ten (10) business days of any such change.
- F. A license fee shall be submitted with an application for a new license or the renewal of a license. The fee shall be established from time to time by resolution of the Clatsop County Board of Commissioners and shall be calculated so as to recover the costs of administration and enforcement of this ordinance including, but not limited to, issuing a license, administering the Tobacco Retailer license program, providing Tobacco Retailer education, conducting Tobacco Retailer inspections and compliance checks, documenting violations, and prosecuting alleged violators. The fee established shall not exceed the costs of the administration and enforcement of this ordinance. All fees and interest upon proceeds of fees shall be used exclusively to fund the costs of the administration and enforcement of this ordinance.
- G. 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.
- H. All Tobacco Retailer licenses issued are valid for one calendar year from the date of issuance.
- I. Each Tobacco Retailer license shall be prominently displayed in plain view of the general public at each licensed location and shall be exhibited to any person upon request.
- J. As part of program administration, the Department shall provide educational resources to licensed Tobacco Retailers to support compliance with the license requirements. Upon request, the Department shall provide educational materials in the preferred language of a Tobacco Retailer. In addition to the provision of educational materials, the Department, in its discretion, may offer Tobacco Retailers, including managers or other employees, annual, free, culturally responsive training on federal, state, and local laws affecting Tobacco Retailers and Tobacco Retailing to support clerks, managers, and owners in meeting applicable legal requirements. The Department shall update its educational resources when federal, state, or local laws are enacted and provide the updated resources to Tobacco Retailers in a timely manner.

**3. Prohibition within 1000 feet of school.** 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, or whose predecessor in interest has been in operation, at a location governed by subsection (A) above consistently since January 1, 2019, is exempt from the requirements of section (A) above. A Tobacco Retailer that has been in operation, or whose predecessor in interest has been in operation, at a location governed by subsection (A) above consistently since January 1, 2019, 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 this subsection.

**4. License Conveys a Limited, Conditional Privilege.**

Nothing in this ordinance 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 identified on the face of the license. Nothing in this Ordinance renders inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including but not limited to, any provision of this Ordinance, 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.

**5. Grounds for denial of license.**

Upon receipt of a complete application for a Tobacco Retailer license and the license fee required by this ordinance, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- A. The information presented in the application is inaccurate, misleading, or false. Intentionally supplying inaccurate, misleading, or false information shall be a violation of this ordinance;
- B. The application seeks authorization for a Tobacco Retailer license at a location for which this ordinance prohibits issuance of a Tobacco Retailer license. This subparagraph shall not constitute a basis for denial of a license if the applicant provides Clatsop County with clear and convincing evidence that the applicant has acquired, or is acquiring, the location or business in an Arm's Length Transaction from a Tobacco Retailer that is exempt from all applicable location prohibitions in this ordinance;
- C. The application seeks a Tobacco Retailer license for a Proprietor to whom this ordinance prohibits a license to be issued; or
- D. The application seeks a Tobacco Retailer license for activities that are prohibited by law or municipal Ordinance including, without limitation, a zoning ordinance, building code, or business license, or that is unlawful pursuant to any other local, state, or federal law.

**6. License renewal and expiration.**

- A. A Tobacco Retailer license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. Each Tobacco Retailer shall apply for the renewal of the license and submit the license fee no later than thirty (30) days prior to expiration of the one-year license term.
- B. A Tobacco Retailer license that is not timely renewed will expire at the end of its one-year term. To renew a license not timely renewed as described herein, the Tobacco Retailer must:
  1. Submit the license fee and application renewal form; and
  2. Submit a signed and notarized affidavit affirming that the Tobacco Retailer:
    - (a) Has not sold and will not sell any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System after the license expiration date and before the license is renewed; or
    - (b) Has waited the period of time required by Section 10 of this ordinance, for the violation of

Tobacco Retailing without a valid license, before seeking renewal of the license.

**7. Licenses nontransferable.**

Tobacco Retailer license may not be transferred from one Tobacco Retailer to another or from one location to another. Any prior violation of this ordinance at any location will continue to be counted against a location unless the location has been transferred to new proprietors(s) in an Arm's Length Transaction and the new proprietors provide the Department with clear and convincing evidence, that the business has been acquired in an Arm's Length Transaction.

**8. Prohibitions.**

- A. No Person who holds a Tobacco Retailer license issued under this ordinance, nor any employee or agent of same, shall make available, dispense, sell, offer to sell, or cause to be sold any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System:
1. Without a valid Tobacco Retailer license.
  2. Outside original packaging containing health warnings required under federal law.
  3. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.
- B. No Person shall sell, exchange, transfer, offer to sell, exchange or transfer, or otherwise distribute any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System to any Person under the minimum legal sales age of twenty-one (21).
1. No Person who holds a Tobacco Retailer license issued under this ordinance, nor any employee or agent of same, shall sell, exchange, transfer, offer to sell, exchange or transfer, or otherwise distribute a Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System to another Person who appears to be under the age of thirty (30) years without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least the minimum legal sales age to purchase and possess the Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System.
  2. No Person engaged in Tobacco Retailing shall locate any Tobacco Products, Tobacco Paraphernalia, or Inhalant Delivery Systems in any location in a retail store or other establishment where such products are accessible by a customer without the assistance of a Tobacco Retailer or an employee or agent of the Tobacco Retailer. This prohibition does not apply to a Person in a licensed establishment that is permanently and entirely off-limits to Persons under the age of twenty-one (21) and that prohibits Persons under twenty-one (21) from entering the establishment at any time.
- C. No Tobacco Retailer with a license issued under this ordinance, nor any employee or agent of same, shall:
1. Accept or redeem, offer to accept or redeem, or cause or hire any Person to accept, redeem, or offer to accept or redeem any coupon that provides any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System without charge or for less than the listed or non-discounted price; or

2. Sell, offer to sell, or cause to be sold any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System to any Person through any multi-pack discounts, such as a buy-two-get-one-free discount or a cents- or dollars-off discount, or otherwise provide or distribute to any Person any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System without charge, or for less than the listed or non-discounted price, in exchange for the purchase of any other Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System; or
  3. Distribute, or cause to be distributed, any free or nominally-priced sample of any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System at any retail location or at any other public place within Clatsop County.
- D. A Person without a valid Tobacco Retailer license, including, but not limited to, a Person whose license has been suspended, revoked, or not renewed shall keep all Tobacco Products, Tobacco Paraphernalia, and Inhalant Delivery Systems out of public view, and shall not display any indoor outdoor advertisement or otherwise publish or distribute any advertisement relating to a Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System that promotes the sale or distribution of such products from the Tobacco Retailer location or that could lead a reasonable consumer to believe that such products can be obtained at that location. The public display of any Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System in violation of this provision shall constitute Tobacco Retailing without a license.
- E. It is a violation of this ordinance to fail to comply with license provisions or rules adopted pursuant to this ordinance and federal, state, and local laws relating to Tobacco Retailing.

**9. Enforcement and monitoring.**

- A. The Department will monitor and enforce compliance with this Ordinance. In addition, any peace officers may enforce the penal provisions of this Ordinance and Clatsop County Code Compliance Specialist may enforce compliance with this Ordinance.
- B. 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.

**10. Administrative penalties, license suspension or revocation.**

- A. In addition to any other penalty authorized by law, a Tobacco Retailer shall be charged an administrative penalty and the Tobacco Retailer's license shall be suspended or revoked if a court of competent jurisdiction determines, or the Department finds, based on a preponderance of the evidence, after the Tobacco Retailer is afforded notice and an opportunity to be heard, that the Tobacco Retailer, or any agent or employee of the licensee, has violated any of the requirements, conditions, or prohibitions of this ordinance or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 8 above.
  1. Upon a finding by the Department of a first violation of this ordinance at a location within any twenty-four (24) month period, the Tobacco Retailer shall be charged an administrative penalty of \$500 for a first violation.
  2. Upon a finding by the Department of a second violation of this ordinance at a location within any

twenty-four (24) month period, the Tobacco Retailer shall be charged an administrative penalty of \$2500 and the Tobacco Retailer's license shall be suspended for thirty (30) days.

3. Upon a finding by the Department of a third violation of this ordinance at a location within any twenty-four (24) month period, the Tobacco Retailer shall be charged an administrative penalty of \$5000 and the Tobacco Retailer's license shall be suspended for ninety (90) days.
  4. Upon a finding by the Department of four or more violations of this ordinance at a location within any twenty-four (24) month period, the Tobacco Retailer shall be charged an administrative penalty of \$7500 and the Tobacco Retailer's license shall be revoked.
- B. A decision of the Department to assess a penalty and suspend or revoke a license is appealable to the Clatsop County Manager. Any appeal must be filed in writing with the County Manager within ten (10) days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the County Manager is not available for a revocation made pursuant to subsection (C) below.
- C. A Tobacco Retailer license shall 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 this Ordinance existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of Clatsop County. Such a revocation shall be without prejudice to the filing of a new license application.

**11. Tobacco retailing without a valid license.**

- A. 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 license, either directly or through any agent or employee of the Person, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer license as follows:
1. After a first violation of this section at a location within any twenty-four (24) 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 (30) days have passed from the date of the violation.
  2. After a second violation of this section at a location within any twenty-four (24) 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 (90) days have passed from the date of the violation.
  3. After of a third or subsequent violation of this section at a location within any twenty-four (24) 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 five (5) years have passed from the date of the violation.

- B. Tobacco Products, Tobacco Paraphernalia, and Inhalant Delivery Systems offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of any Tobacco Products, Tobacco Paraphernalia, and Inhalant Delivery Systems seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products, Tobacco Paraphernalia, and Inhalant Delivery Systems were not offered for sale or exchange in violation of this ordinance. The decision by the Department may be appealed pursuant to the procedures set forth in Section 10B. Forfeited Tobacco Products, Tobacco Paraphernalia, and Inhalant Delivery Systems shall be destroyed after all internal appeals have been exhausted.
- C. For the purposes of the civil remedies provided by this Ordinance, each day on which a Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System is offered for sale in violation of this ordinance, or each individual Tobacco Product, Tobacco Paraphernalia, or Inhalant Delivery System that is distributed, sold, or offered for sale in violation of this ordinance, shall constitute a separate violation of this ordinance.

**12. Additional remedies.**

- A. The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity.
- B. Violations of this ordinance are hereby declared to be public nuisances and may be abated pursuant to Chapter 1.12 of the Clatsop County Code.
- C. In addition to other remedies provided in this ordinance, municipal code, or by other law, any violation this ordinance 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.