

# Council Business Meeting

February 6, 2018

**Title:** Ordinance Amending AMC 6.42 to Restrict Retail Sales of Tobacco Products and Inhalant Delivery Systems To Adults Only

**From:** David Lohman City Attorney  
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## **Summary:**

The proposed Ordinance amends Ashland Municipal Code 6.42 Tobacco Control to harmonize it with the recently-amended ORS 167.400 Tobacco Possession by Minors Prohibited.

## **Actions, Options, or Potential Motions:**

Option 1: A Councilor could move to approve on First Reading by title only the proposed ordinance amending AMC Chapter 6.42 to restrict retail sales of tobacco products and inhalant delivery systems to persons under the age of 21, and take up Second Reading of the ordinance at an upcoming Council meeting.

Option 2: Alternatively, a Councilor could move to repeal Chapter 6.42 altogether, leaving restrictions on the sale of tobacco products and inhalant delivery systems to State statute and eliminating the current local licensing requirement for commercial sales of such products.

## **Staff Recommendation:**

Staff recommends approval of the attached proposed Ordinance at First Reading, as described in Option 1.

## **Resource Requirements:**

N/A

## **Policies, Plans and Goals Supported:**

- Keep Ashland a family-friendly community. (Council Goal 7)
- Provide, promote, and enhance the security/safety, environmental health, and livability of the community. (Quality of Life Administrative Goal)

## **Background and Additional Information:**

Since at least 1971, an Oregon statute on Offenses Involving Tobacco, ORS 167.400 *et seq.*, has prohibited the *purchase* of tobacco products by persons under 18 years of age. A City ordinance, AMC 6.42, complements this purchase restriction by requiring a City license to *sell* tobacco products and prohibiting sales to persons under 18.

On January 1, 2018, a revised version of ORS 167.400 took effect. The new version of the statute raises the minimum age for *purchasing* tobacco products from 18 years of age to 21 and includes inhalant delivery systems in the restriction. The new version of the statute now also includes a prohibition on *selling* tobacco products and inhalant delivery systems to persons under

the age of 21 – which means the statute now encompasses the City ordinance except for the revised age limit and the local licensing requirement.

Option 1. Passage of the attached draft ordinance would bring AMC 6.42 into harmony with the State statute by prohibiting the sale of tobacco products to persons under the age of 21 – instead of 18 – and by including inhalant delivery systems in the prohibition. The licensing requirement retained under Option 1 makes it possible for the City to continue to have a registry of commercial outlets selling tobacco and related products and perhaps thereby provide a modicum of local pressure to discourage sales to teenagers. The City’s application fee for licenses to sell such tobacco products currently costs \$40, with a renewal fee of \$20 per year, which recovers the approximate cost of administering the licensing program. Currently the City has 19 tobacco license holders. In the past, the resources dedicated to administration and enforcement of this ordinance have been minimal, and noncompliance by retail sellers of tobacco products appears not to have been a significant problem.

Option 2. Instead of updating AMC 6.42, Council could simply repeal it, thereby scrapping the licensing requirement. This option would slightly reduce locally-imposed regulatory burdens on some businesses and, on the other hand, probably would slightly reduce cognizance of and responsiveness to the statutory prohibition.

**Attachments:**  
Ordinance.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING AMC 6.42  
TO RESTRICT RETAIL SALES OF TOBACCO PRODUCTS OR  
INHALANT DELIVERY SYSTEMS TO ADULTS ONLY**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, until recently, the Oregon statute on Offenses Involving Tobacco, ORS 167.400 *et seq.*, prohibited persons under 18 years of age from purchasing or possessing tobacco products, except in specified circumstances, and did not, specifically prohibit sales of tobacco products to persons under 21 years of age and did not address the sale of inhalant delivery systems;

**WHEREAS**, Ashland Municipal Code Chapter 6.42, Tobacco Control, currently requires a license for retail sales of tobacco products, prohibits the sale of any tobacco product to a person under 18 years of age, and does not address the sale of inhalant delivery systems;

**WHEREAS**, the Oregon statute on Offenses Involving Tobacco was amended recently to prohibit persons from knowingly distributing, selling, or allowing the sale of tobacco products or inhalant delivery systems to persons under 21 years of age; and

**WHEREAS**, bringing the City's ordinance on licensure of retail sellers of tobacco products into compliance with current Oregon statutes would require amending the ordinance to prohibit sales of tobacco products and inhalant delivery systems to persons under the age of 21.

**THEREFORE, THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS  
FOLLOWS:**

**SECTION 1.** Chapter 6.42 Tobacco Control of the Ashland Municipal Code is hereby amended to read as follows:

### **Section 6.42.010 Purpose and Intent**

The purpose of this chapter is to provide measures ~~of for~~ controlling the access of tobacco products and inhalant delivery systems to ~~adults only~~ persons under the age of 21 by licensing retailers of tobacco products.

### **Section 6.42.020 Definitions**

For the purpose of this chapter the following definitions shall apply:

A. "Employee" means any person who is employed by any employer in consideration of direct or indirect monetary wages or profit, and any person who volunteers his or her services to a non-profit entity.

B. "Employer" means any person or entity who employs the services of one or more employees.

**C. "Inhalant delivery system" has the meaning given that term in ORS 431A.175.**

~~C D.~~ "License" means a license issued under this chapter for the retail sale of tobacco products.

~~D E.~~ "Licensee" means the holder of a valid license for the retail sale of tobacco products.

~~E "Minor" means any person under 18 years of age.~~

F. "Self service display" means the open display of tobacco products to which the public has access without the assistance of a store employee.

G. "Tobacco product" ~~means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion.~~ **has the meaning given that term in ORS 431A.175.**

H. "Vendor assisted sale" means a sale where only the licensee or an employee of the licensee has access to the tobacco product or inhalant delivery systems and assists the customer by supplying the tobacco product or inhalant delivery systems and where the customer does not take possession of the tobacco product or inhalant delivery systems until after it is purchased.

### **Section 6.42.030 License Requirement**

No person may sell tobacco products or inhalant delivery systems unless such person is a licensee or is employed by a licensee. A license is required for each location in which tobacco products or inhalant delivery systems are to be sold. All licenses shall be renewed annually on or before June 30 of each year.

### **Section 6.42.040 License Fee**

No license shall be issued or continue to be valid unless the licensee has paid a fee, the amount of which is established by resolution of the city council, on or before June 30 of each year.

### **Section 6.42.050 Non Transferability of License**

Licenses shall be non-transferable, except that a new license will be issued upon application to any licensee who changes the location of where tobacco products are sold.

### **Section 6.42.060 Sales to Minors Person Under 21 Years Of Age**

No person shall sell, make available or otherwise provide, any tobacco product or inhalant delivery system to a ~~minor~~ person under 21 years of age.

### **Section 6.42.070 Vendor Assisted Sales**

No person shall sell, permit to be sold, offer for sale or make available or accessible any tobacco product or inhalant delivery system by means of a vending machine or self-service display or

any means other than vendor assisted sales, except for: **in a store or other establishment that prohibits persons under 21 years of age from entering the store or establishment.**

~~A. Vending machine sales in taverns, cocktail lounges, industrial plants as defined in ORS 308.408, hotels, and motels.~~

~~B. Smoke shops. For purposes of this section, a smoke shop is a store that sells primarily tobacco products and which prohibits minors to enter or remain upon the premises, unless the minor is accompanied by the minor's parent. To qualify for this exception, the smoke shop must post signs in the store, which are conspicuous upon entering, signs stating "No Minors Permitted Unless with a Parent." No store may qualify as a smoke shop under this section if the store is located on the same premises as an automobile service station, as defined in section 18.08.0754.~~

### **Section 6.42.090 Non Retaliation**

No employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to prosecute any violation of this chapter.

### **Section 6.42.100 Penalties**

A. Any person who violates any provision of this chapter shall be subject to ~~a fine as a Class I violation~~ **Section 1.08.020 of the Ashland Municipal Code. Any violation of this section is a Class I violation**, and may have the license issued under this Chapter suspended as follows:

1. In the case of a second violation within a two year period, the licensee shall be fined not less than \$350.00 and the license suspended for 45 days.
  2. In the case of three or more violations within a two year period, the licensee shall be fined \$500.00 and the license revoked. Any person whose license has been revoked shall be ineligible to apply for a new license, at any location, for six months after the effective date of the revocation.
- B. Any person who violates section 6.42.030 shall be subject to a fine of \$500.00 for each day a violation occurs.

C. License suspensions are subject to appeal pursuant to AMC 2.30.

**SECTION 2. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 3. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 4. Codification.** Provisions of this Ordinance shall be incorporated in the City Code, and the word "ordinance" may be changed to "code", "article", "section", or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any

Whereas clauses and boilerplate provisions (*i.e.*, Sections Nos. 2-4) need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2018, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Melissa Huhtala, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

\_\_\_\_\_  
David H. Lohman, City Attorney