



AGENDA ITEM

WASHINGTON COUNTY BOARD OF COMMISSIONERS

ADOPTED

Meeting Date: November 02, 2021
Agenda Category: PUBLIC HEARINGS
Department(s): Health and Human Services
Presented by: Marni Kuyf, Director of Health and Human Services

CPO:

Agenda Title: **Fourth Reading and Third Public Hearing of A-Engrossed Washington County Ordinance 878 to Prohibit Flavored Tobacco and Flavored Synthetic Nicotine, Prohibiting Coupon and Price Promotions and Repealing Ordinance 599**

REQUESTED ACTION:

Conduct the fourth reading and third public hearing of proposed A-Engrossed Ordinance No. 878.

SUMMARY:

In 2002, the Board of Commissioners passed Ordinance 599 to address youth access to tobacco products. Since that time much has changed. In 2017, Oregon increased the prohibition on youth access to tobacco products from under 18 to under 21 and banned use of vaping products by persons under 21. New products have continued to enter the market, including a variety of inhalant delivery systems including e-cigarettes and vaping products (beginning in the mid 2000s). Synthetic nicotine has entered the market (2016). Flavored tobacco products and synthetic nicotine are popular amongst our youth, increasing the use of tobacco and nicotine by our youth. Discounts are popular incentives for youth to try these products.

Public Health proposed an ordinance where all flavored tobacco products cannot be sold in a place where persons under 21 are allowed. Discounts and coupons for tobacco products would be prohibited under the proposed ordinance. An amendment to ban all flavored tobacco and synthetic nicotine products was introduced on October 19, 2021 and the Board voted to accept the amendment and to conduct a fourth reading, third public hearing of A-Engrossed Ordinance 878 on November 2, 2021.

This ordinance will apply countywide as it is proposed to be adopted under the Board of Commissioner's authority as the Local Public Health Authority for Washington County. Staff has met with city officials and they support this action. This ordinance will also repeal and replace Ordinance 599.

ADDITIONAL INFORMATION:

Community Feedback (Known Support/Opposition):

Staff has met with cities and the health care industry. Cities support the ordinance. The health care industry supports the ordinance. Youth Substance Prevention coalitions support the ordinance. Staff has heard from the manufacturing and distribution of tobacco products and inhalant delivery systems industry. There have been significant public comments in opposition as well as supporting the proposed ordinance (MO# 21-249)

Legal History/Prior Board Action:

The Board passed Ordinance 599 (Access to Tobacco by Minors) in 2002. The ordinance is out of date is being repealed by this action. This new ordinance will replace Ordinance 599 and be effective countywide as it is an ordinance under your authority as the Local Public Health Authority.

The Board conducted the first reading of Ordinance No. 878 on August 24, 2021 and conducted the second reading, first public hearing on September 21, 2021. During the September 21, 2021 second reading, first public hearing, there were significant public comments in opposition as well as supporting the proposed ordinance (MO# 21-249).

A significant amendment was proposed during this public hearing , which would lead to a ban of all flavored tobacco products and remove the reference to synthetic tobacco products. This amendment was withdrawn before the Board voted to continue to October 19, 2021 after a work session on October 12, 2021.

On October 19th the Board conducted the third reading and second public hearing of Washington County Ordinance 878 to Limit the Access of Tobacco, Flavored Products, Synthetic Nicotine and Inhalant Delivery Systems to Individuals Under 21 Years Old and Repealing Ordinance 599. There were significant public comments in opposition as well as supporting the proposed ordinance. An amendment to ban all flavored tobacco and synthetic nicotine products was introduced and the Board voted to accept the amendment and to conduct a fourth reading, third public hearing of A-Engrossed Ordinance 878 on November 2, 2021.

Budget Impacts:

N/A

ATTACHMENTS:

[Ordinance 878 Presentation 11-2-21](#)

[ADOPTED A-Engrossed Ordinance 878](#)

Approved by the
Washington County Board of Commissioners
also serving as the governing body of Clean Water Services and all other County Districts



Kevin Moss, Board Clerk

November 2, 2021

Date Signed



Tobacco Retail Licensure (TRL), Flavors and Price Promotions

Marni Kuyl, RN, MS
Director
Health and Human Services

| November 2, 2021

Health and Human Services
Public Health Division

www.co.washington.or.us



Overview of today's presentation

- Senate Bill 587
- Protective strategies
 - Flavors
 - Price promotions and discounts
- Summary of A-Engrossed Ordinance 878
- Public Health recommendation



Senate Bill 587

Statewide Tobacco Retail Licensure

- Any retailer that sells a tobacco product (including vape) must have a license to do so.
- OHA can issue penalties for violations.
- Requires two annual inspections.

State Level Fee - Administration and Enforcement

- Oregon Health Authority & Department of Revenue (DOR)
 - DOR will begin issuing licenses on December 1, 2021, to retailers throughout the state.
 - OHA will begin inspections in July 2022.

→ Senate Bill 587

Local authority can:

- Administer and enforce
- Provide education and outreach
- **Add additional protective strategies (Proposed Ordinance 878)**
- Issue a civil penalty
- Impose a fee
 - No fee is proposed in Washington County



State Preemption

Senate Bill 587

- Provides for continuity for any local ordinance in effect prior to January 1, 2022.
- After that date, local authority may be preempted by state action.
- If the Board wishes to control regulation in Washington County, the ordinance needs to be effective before January 1, 2022.



Protective strategies to promote health equity and reduce youth initiation

1. Prohibit price promotions and discounts
2. Flavor restrictions



Equity





A-Engrossed Ordinance 878

The Proposed A-Engrossed County Ordinance will:

- Add vape/synthetic nicotine to the definition.
- Reflect the legal purchasing age of 21, and updated definitions.
- Restrict all flavored tobacco and synthetic nicotine products (e.g., bubble gum, mint, menthol, mango) **regardless of age** at any retailer with only traditional (plain) tobacco products (e.g., cigarettes, chew, cigars) remaining.
- Prohibits price promotions and discounts in all establishments selling tobacco/vape products.
- **Not result in any change to purchase sites for non-flavored tobacco products for over 21.**



A-Engrossed Ordinance 878

The Proposed A-Engrossed County Ordinance will:

- Become effective within 30 days of being passed.
- Be eligible for inclusion in statewide inspections with non-compliance notifications to local public health if in effect before January 1, 2022.
- **Not** include any additional license fees to retailers in 2022.
- **Not** result in inspections until after January 1, 2022.



A-Engrossed Ordinance 878

The Proposed A-Engrossed County Ordinance implementation can:

- Be supported by local public health
 - Education and outreach with local retailers
 - Response to concerns or complaints



Public Health Recommendation

Hold a public hearing and consider adopting an ordinance that reflects best practice in tobacco prevention.

Today your Board can vote to:

- Approve A-Engrossed Ordinance 878
- Reject ordinance

QUESTIONS?



Health and Human Services – Public Health Division
www.co.washington.or.us/hhs

IN THE BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON
SITTING AS THE LOCAL PUBLIC HEALTH AUTHORITY
OF WASHINGTON COUNTY

A-ENGROSSED ORDINANCE 878

ADOPTED

**An Ordinance to Prohibit Flavored Tobacco and
Flavored Synthetic Nicotine, Prohibiting
Coupon and Price promotions and Repealing
Ordinance 599**

The Board of County Commissioners of Washington County, Oregon, sitting as the Local
Public Health Authority of Washington County (“Board”), ordains:

SECTION 1.

A. The Board finds that youth tobacco use is increasing in Washington County and the
tobacco industry continues to use strategies that target child including the advent of new products,
like flavored products, synthetic nicotine and inhalant delivery systems (vape products).

B. The Board finds that price discounts attract youth to tobacco products.

C. The Board finds that any tobacco products (flavored or not) and inhalant delivery
systems cannot not be sold to persons under 21.

D. The Board finds that flavored tobacco and flavored synthetic nicotine should not be
sold in Washington County.

E. The Board finds that the Oregon legislature recently passed SB 587, that will require
tobacco retailers to be licensed.

F. The Board finds that WCC Chapter 8.48 (Ordinance 599) addresses access to
tobacco to minors, but the code is substantially out of date and needs to be repealed and replaced.

G. The Board further finds that to protect the public health and safety of the people of

1 Washington County and to make the model work most effectively, this ordinance applies to all of
2 Washington County under the Board of Commissioners authority as the Local Public Health
3 Authority of Washington County.

4 SECTION 2.

5 The Board finds and takes public notice that it is in receipt of all information necessary to
6 consider this Ordinance in an adequate manner, and that this Ordinance complies with the ORS
7 Chapter 431.

8 SECTION 3.

9 The Board of Commissioners hereby repeals Washington County Code Chapter 8.48
10 (Ordinance 599).

11 SECTION 4.

12 The attached Exhibit A is hereby adopted and incorporated herein at Chapter 2 of the
13 Washington County Local Public Health Authority Code.

14 SECTION 5.

15 A. Nothing herein is intended, nor shall it be construed, as amending, replacing or
16 otherwise being in conflict with any other ordinances of Washington County unless expressly so
17 stated.

18 B. If any section, clause, phrase, or word of this Ordinance, including the exhibit, shall
19 for any reason be held invalid, unconstitutional, or unenforceable by a body of competent
20 jurisdiction, the remainder of this Ordinance or its application and all portions not so stricken shall
21 not be affected thereby and shall remain in full force and effect.

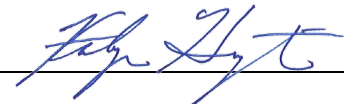
1 C. The Office of County Counsel is authorized to codify this Ordinance and to make
2 any technical changes, not affecting its substance, as are reasonably necessary to accomplish
3 codification.

4 SECTION 5.

5 This Ordinance shall take effect thirty (30) days after adoption.

6 ENACTED this ___2nd___ day of ___November___, ___2021___, being the ___4th___ reading and
7 ___3rd___ public hearing before the Board of County Commissioners of Washington County,
8 Oregon, sitting as the Local Public Health Authority of Washington County.

9
10 BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

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CHAIR

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RECORDING SECRETARY

15 READING

PUBLIC HEARING

16 First 8/24/21
17 Second 9/21/21
18 Third 10/19/21
Fourth 11/2/21
Fifth _____

First 9/21/21
Second 10/19/21
Third 11/2/21
Fourth _____
Fifth _____

19 VOTE: Aye: Harrington, Treece, Fai

Nay: Rogers, Willey

20 Recording Secretary: 

Date: 11/2/21

Local Public Health Authority Chapter 2

Chapter 2 - ACCESS TO TOBACCO, SYNTHETIC NICOTINE AND INHALENT DELIVERY SYSTEMS

2.10 - Findings.

- A. Despite the efforts of federal, state and local governments, together with various private organizations, tobacco use continues to be a significant issue with negative implications for the health of our community, in addition to impacting the cost of providing both private and public health care services.
- B. It is illegal to sell tobacco products or inhalant delivery systems to a person under 21 years old. In some cases, employers have not adequately trained salesclerks and other employees or otherwise taken responsibility to ensure that the laws prohibiting sales to persons under 21 years of age are complied with rigorously.
- C. Selling tobacco products, flavored tobacco products, synthetically derived nicotine products or inhalant delivery systems to persons under 21 years old is a detriment to the health, safety and welfare of the residents of Washington County. Local governments retain the authority to enact regulations concerning the sale of tobacco if the local regulations are directed at encouraging compliance with existing laws.
- D. Oregon law requires retailers to post a notice informing the public that selling tobacco products and inhalant delivery systems to individuals under 21 is prohibited. Oregon law also prohibits the sale of inhalant delivery systems packaged in a manner attractive to minors.

2.20 - Definitions.

- A. **Cigarette.** Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists or contains:
 - 1. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
 - 2. Tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by, consumers as a cigarette; or
 - 3. Any roll of tobacco that is wrapped in any substance containing tobacco and that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by, consumers as cigarette described in subsection (a) of this section.
- B. **Flavored Product.** Any synthetic nicotine product or tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, molasses, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a synthetic nicotine product or tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements or claims concerning such products, that a synthetic nicotine

product or tobacco product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Flavored product 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 other therapeutic purpose if the product is marketed and sold solely for the approved purpose.

- C. **Inhalant delivery system:** A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to an individual 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 includes, but is not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

Inhalant delivery system 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 other therapeutic purpose if the product is marketed and sold solely for the approved purpose.

- D. **Self-service display.** The display of cigarettes or any tobacco products for sale or consumption at a business that allows the public access to the products without the assistance of the owner or an employee of the business. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.
- E. **Synthetic Nicotine product.** Any product designed for human consumption where the nicotine was created and produced in a laboratory and not derived from tobacco.
- F. **Tobacco Product.** (1) 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; (2) Any inhalant delivery system, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains tobacco or nicotine; or (3) Any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

Tobacco product 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 other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

- G. **Vendor-assisted sale.** The sale of cigarettes or any tobacco products to a retail consumer or buyer wherein only the vendor has access to the product until after the completion of the sale.

2.30 - Prohibitions.

- A. Prohibited sales to persons under the age of 21. No person or entity shall sell, distribute or offer for sale or distribution any tobacco product, synthetic nicotine product or inhalant delivery system to a person under the age of 21.
- B. Flavored products restricted. No person shall sell, offer for sale, or otherwise distribute any flavored tobacco product or flavored synthetic nicotine product.
- C. Coupon and price promotions prohibited. No person shall accept or redeem any coupon or

other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any tobacco product, synthetic nicotine product or inhalant delivery system to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

- D. Minimum package size required. No person shall sell or distribute, or offer for sale or distribution, or permit to be sold or distribution, any container of cigarettes containing fewer than 20 cigarettes. Each sale or distribution or offer to sell or distribute shall be a separate violation.
- E. Vendor-assisted sale of tobacco products required. No person or entity shall offer for sale, sell or permit to be sold any cigarettes, tobacco products, synthetic nicotine product or inhalant delivery system by means of a self-service display or any means other than by a vendor-assisted sale. Each day that the self-service display is accessible shall be a separate violation. Each offer for sale or sale other than vendor-assisted shall be a separate violation.
- F. Moveable Place of Business prohibited. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions of any tobacco product, synthetic nicotine product or inhalant delivery system is prohibited.

2.040 - Non-retaliation.

It shall be a violation of this ordinance for any employer to discharge, demote, suspend, refuse to hire, or in any manner retaliate against any employee, applicant for employment or customer because such person reports, testifies, assists or participates in any manner in any investigation, proceeding or hearing regarding an alleged violation of this ordinance. To the extent permitted by law, any person claiming to be aggrieved by a violation of this section shall have a cause of action in any court of competent jurisdiction for damage and such other remedies as may be appropriate.

2.050- Conformity with law.

This chapter shall not, in any way, be a substitute for, nor eliminate in any way, the necessity for conformity with any and all laws or rules of the federal government, the state of Oregon or its agencies, nor any ordinances or rules and regulations of the county.

2.060 - Enforcement.

WCC [Chapter 1.12](#) provides the general enforcement mechanism for this chapter, but does not preclude other enforcement options.

2.070 - Civil infraction.

A county enforcement officer, as defined in WCC [Chapter 1.12](#), may issue a Class A civil infraction for failure to comply with this chapter and any rules and regulations adopted pursuant thereto. Civil infractions shall conform to the requirements of the Administrative Enforcement Code, [Chapter 1.12](#). Enforcement of civil infractions shall be through [Chapter 1.12](#). Each day a person is in violation of this chapter shall be deemed a separate violation thereof.

2.080 - Civil infraction—Other enforcement procedures not excluded.

The provisions of this chapter are in addition to and not in lieu of any other procedures and remedies provided by law, including equitable relief and damages.