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DEC 28 2000

Josephine Veltri
County Clerk

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BEFORE THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY OREGON

In the Matter of Prohibiting Smoking in Public)
Places and Places of Employment, Regulating the)
Sale and Distribution of Tobacco Products, Pro-)
viding an Effective Date and Ordering Referral)
to the Voters.)

ORDINANCE # 58

The Board of Commissioners for Tillamook County ordains as follows:

Section I. Title.

This ordinance shall be known as the smoking pollution control and tobacco regulation ordinance.

Section II. Findings and Purpose.

The Board of Commissioners does hereby find that:

- A. Tillamook County has the authority to regulate smoking in public places pursuant to ORS 203.035.
- B. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- C. Tobacco use is the leading preventable cause of death in Tillamook County; and
- D. Each day in Oregon, the equivalent of a classroom full of children begins smoking. In Tillamook County, 17% of 8th graders, and 26% of 11th graders smoke; and
- E. More than half the tobacco retail outlets in Tillamook County have self-service tobacco displays where customers, including young people, have access to cigarettes, spit tobacco, and cigars without the assistance of a store employee; and
- F. Cigarettes are the item most frequently taken by shoplifters.
- G. Accordingly, the Board of Commissioners find and declare that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in

public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section III. Definitions.

Bar – Any area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Business - Any sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.

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

Employer - Any person or entity who employs the services of one or more individuals.

Enclosed area - All space between a floor and a ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

Minor - Any person under eighteen years of age.

Place of employment - Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference and classrooms, cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

Public place - Any enclosed area to which the public is invited or in which the public is permitted including, but not limited to, banks, education facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

Restaurant - Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the

public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail tobacco store - A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Service line - Any indoor line, or any portion of an indoor line that extends out of doors, at which one or more persons are waiting for or receiving services of any kind, whether or not such services involves the exchange of money.

Smoking - Any inhaling, exhaling, burning, or carrying of any lighted cigar, cigarette, weed, plant, or other tobacco-like product or substance in any manner or in any form.

Sports arena - Any sports pavilion, gymnasium, health spa, swimming pool, roller rink, bowling alley, and other places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Tobacco product - 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.

Vendor-assisted - Only a store employee has access to the tobacco product and assists the customer by supplying the tobacco product; the customer does not take possession of the tobacco product until after it is purchased.

Section IV. Smoking prohibited in public places.

- 1) Smoking shall be prohibited in all enclosed public places within Tillamook County, including, but not limited to the following places:
 - a) Elevators;
 - b) Restrooms, lobbies, reception areas, hallways, and any other common-use areas;
 - c) Buses, taxicabs, any other means of public transportation, ticket, boarding, and waiting areas of public transit depots;
 - d) Service lines, or within 10 feet of a service line that extends out of doors;
 - e) Retail stores;

- f) All areas available and customarily used by the general public located in all businesses patronized by the public, including non-profit and public businesses. Affected businesses include, but are not limited to, professional offices, banks, laundromats, hotels and motels;
 - g) Restaurants;
 - h) Bars;
 - i) Any facility which is primarily used for exhibiting any motion picture, stage or drama production, lecture, music, recital or other similar performances, except performers when smoking is part of a stage or drama production;
 - j) Sports arenas, including bowling facilities and convention halls;
 - k) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the County or any political subdivision of the County during such time as a public meeting is in progress, to the extent such a place is subject to the jurisdiction of the County;
 - l) Waiting rooms, hallways, wards, and semiprivate rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor's and dentist's offices;
 - m) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
 - n) Bingo games; and
 - o) Polling places.
- 2) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

Section V. Smoking prohibited in places of employment.

It shall be the responsibility of employers to provide a smoke-free work place for all

employees, but employers are not required to incur any expense to make structural or other physical modifications.

Section VI. Smoking prohibited outside entrances.

Smoking shall not occur within a reasonable distance, not to be less than ten (10) feet, of any entrance of any enclosed area where smoking is prohibited or of any service line that extends out of doors.

Section VII. Places where smoking is not regulated.

- 1) Notwithstanding any other provision to the contrary, the following areas shall not be subject to any smoking restrictions contained within this section:
 - a) Private residences, unless the private residence is used as a child care, adult day care, or health care facility;
 - b) Rented motel/hotel rooms that are designated in some manner as smoking allowed rooms by the owners of the establishment renting the rooms;
 - c) Private rooms rented for an occupancy that exceeds one month and that are not located in a private residence used as a child care, adult day care or health care facility;
 - d) Retail tobacco stores.

Section VIII. Posting "no smoking" signs.

- 1) "No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette) shall be clearly, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this ordinance, by the owner, manager, or other person having control of such building or other area, including private residences used as a child care, adult day care or health care facility.
- 2) Every public place where smoking is prohibited shall have posted at every entrance a conspicuous sign stating that smoking is prohibited.

Section IX. Non-retaliation.

No person or 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 ordinance. Any employer who violates this section is also in violation of ORS 659.550

Section X. Smoking in or near entrances to publicly owned buildings.

- 1) No person shall smoke anywhere within any publicly owned building.
- 2) No person shall smoke within 10 feet of any entrance to a publicly owned building.

Section XI. Advertising Placement.

No tobacco product advertising shall be placed below thirty-six (36) inches, as measured from the establishment's natural floor.

Section XII. Vendor-assisted sales.

Except as provided in Section XIII, no person, business, or tobacco retailer may sell, permit to be sold, or offer for sale any tobacco product by means other than vendor-assisted sales.

Section XIII. Scope of Section XII.

Section XII shall not apply to tobacco vending machines regulated by Oregon state law, tobacco retail stores, or to any business, retailer or establishment which is licensed by the Oregon Liquor Control Commission for a dispensing license and required to be posted preventing any minors from access to the premises.

Section XIV. Violations and penalties.

- 1) It shall be a violation of this ordinance for every day any person who owns, manages, operates or otherwise controls the use of any premises, subject to regulation under this ordinance, who fails to comply with any of the provisions herein.
- 2) It shall be a violation of this ordinance for any person to smoke in any area where smoking is prohibited by the provisions of this ordinance.

3) Any person who violates this ordinance shall be guilty of an infraction, punishable by a fine:

- (a) Violation of this ordinance shall be punishable by a fine not to exceed two hundred and fifty dollars.
- (b) Every full business day during which a business activity continues to be conducted in violation of this ordinance shall be considered a separate offense.
- (c) Offenses under this ordinance shall be tried in the Justice Court as a violation and not as a crime.

4) Notwithstanding any other provision of this section, an employee or private citizen may file a citizen complaint to enforce this section under the Tillamook County Citation Ordinance.

Section XV. Severability.

If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section XVI. Other laws.

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section XVII. Referral to Voters.

A. The Board has conducted two public hearings on this matter and is fully apprised of the issues. The Board finds that this ordinance is an appropriate exercise of its police powers, and further, should be referred to the electors for approval or rejection.

B. Pursuant to ORS 203.035 this ordinance is referred to the electors at the election to be held on March 13, 2001.

Section XVIII. Effective Date.

If approved by the electors, this ordinance shall take effect on June 12, 2001 at 12:01 a.m.

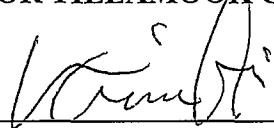
Section XIX. Applicability.

If approved by the electors, this ordinance shall apply within all the unincorporated areas of Tillamook County and within each incorporated city within Tillamook County where the electors of each such city have approved this ordinance by a majority of votes cast at the March 13, 2001 election.

Date of First Reading: December 13

Date of Second Reading: December 27

**THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON**



Tim Josi, Chair

| Aye | Nay | Abstain/absent |
|-------|-------------------------------------|----------------|
| _____ | <input checked="" type="checkbox"/> | _____ / _____ |



Gina Firman, Vice-Chair

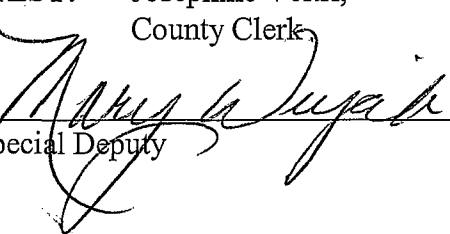
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Sue Cameron, Commissioner

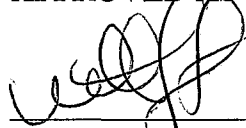
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ATTEST: Josephine Veltri,
County Clerk

By 

Special Deputy

APPROVED AS TO FORM:



William K. Sargent,
County Counsel

