

City of Brookings **WORKSHOP Agenda**

CITY COUNCIL

Monday, February 3, 2014, 4:00pm

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

A. Call to Order

B. Roll Call

C. Topics

1. Brookings Municipal Code (BMC) revisions regarding impoundment of stray dogs.
[Police, pg. 2]
 - a. BMC Section 8.15.020 [pg. 4]
 - b. County dog control regulations [pg. 6]
 - c. Related Oregon Revised Statutes [pg. 13]
2. Brookings Municipal Code Chapter 9.15, Tobacco Sales [F&HR, pg. 19]
 - a. BMC Chapter 9.15 [pg. 21]
 - b. "Access to Tobacco and Youth Possession of Tobacco," Department of Health Services website excerpt. [pg. 25]
3. Update to the Master Fee Schedule. [F&HR, pg. 34]
 - a. 2013 Fee Schedule with proposed updates [pg. 35]

D. Council Member Requests for Workshop Topics

E. Adjournment

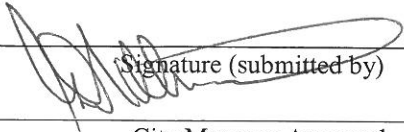
All public City meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 10 days advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: February 3, 2014

Originating Dept: Public Safety



Signature (submitted by)

City Manager Approval

Subject: Animal Control

Recommended Action:

Discussion of changes to Brookings Municipal Code provisions regarding impoundment of stray dogs.

Background/Discussion:

Brookings Municipal Code Section 8.15.020 currently provides regulations for the control of domestic animals, prohibits dogs being allowed to run at large, and prescribes the duties of the Brookings police Department in handling stray dogs (8.15.020(E)). These regulations were first enacted in 1986.

The Police Department does not patrol for stray dogs, but does respond to stray dog calls.

In current practice, when stray dogs are encountered by Brookings police officers they attempt to make contact with the dog owner. If the owner cannot immediately be located, the dog is placed in a temporary “holding cage” located at the City Public Works Maintenance Yard. In the great majority of cases, the stray dog is captured by a resident who takes the dog to the holding cage.

The Police Department then notifies the non-profit organization “Pennies For Pooches” that the dog has been placed at this facility. A P4P volunteer picks up the dog and transports it to the Animal Shelter in Gold Beach, and its disposition is then entirely relinquished to the shelter.

Curry County no longer operates the animal shelter in Gold Beach, and has no County animal control employees. The shelter is now operated by P4P.

P4P has contacted the City with a proposal to respond to dogs at-large calls for a call-out fee of \$25.00 and a transportation fee based upon the IRS mileage rate from Gold Beach and back. P4P has also noted some inconsistencies between the BMC and the County animal control and state animal control regulations relating to requiring sterilization of impounded dogs prior to adoption, licensing, payment of housing for the dog by a new owner, and disposition of impounded dogs after a period of impoundment.

In 1964, Curry County created a “Dog Control District” which provides that the County has jurisdiction for licensing of dogs and prohibiting dogs from running at large in all areas of the County, including within the cities. ORS 609.030 provides that the County “from the general fund or out of funds obtained from dog licenses and from the redemption of dogs impounded” “shall operate a dog pound (shelter)”.

The City has traditionally provided assistance to the County in handling stray dogs through the Police Department. Even when the County had animal control employees, the geographic distances in Curry County often resulted in long delay times between when a stray dog is reported and a then-County animal control officers arrived.

Both the County Code and the ORS address standards for licensing, impounding and disposition of impounded dogs. The ORS also prescribes the minimum length of time for keeping a dog in impoundment.

Attachment(s):

- a. BMC 8.15.020(E) as proposed for modification.
- b. County dog control regulations.
- c. Related ORS sections

8.15.020 Control of domestic animals.

A. No person shall permit any cow, horse, goat, sheep, or other domestic animal kept in any enclosed or unenclosed lot or tract of land within the corporate limits of the city of Brookings to leave said place where said animal is so kept and wander at large within the corporate limits of the city.

B. The owner or keeper of any dog or other domestic animal shall not allow such animal to be a public nuisance. A dog, cat, or other such animal is deemed herein to be a public nuisance if it bites a person; chases persons or vehicles; damages or destroys property of persons other than the animal's owner; scatters garbage; trespasses on private property of persons other than the animal's owner; disturbs any person or neighborhood by frequent or prolonged barking, yelping, howling or any other such noise making; defecates on the property of another or of the public; or is a female in heat and running at large. Such animal shall not be considered a public nuisance if it bites a person who wrongfully is assaulting the animal or the animal's owner or if it bites a person trespassing upon premises owned or occupied by said animal's owner.

C. No person owning or harboring or having the care or custody of a vicious dog or other animal shall permit such animal to go unconfined beyond the premises of such person unless such an animal is securely leashed and muzzled or otherwise restrained. "Vicious" as herein defined means any dog or other animal or fowl with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, any animal which attacks a human being or domestic animal without provocation, or any dog or other such animal owned or harbored primarily or in part for the purpose of dog or animal fighting.

D. No person shall own or harbor any dog for the purpose of dog fighting or train, torment, badger, bait or use any dog for the purpose of dog fighting or for the purpose of causing or encouraging said dog to unprovoked or willfully provoked attacks upon human beings or domestic animals.

E. No dog is allowed to run at large within the corporate limits of the city of Brookings. ~~When a dog is found running at large it may be taken up and impounded by the Brookings police department or said office's designee and, if so impounded, said animal shall be held in any reasonable and adequate shelter which can be provided for such purposes. A reasonable effort shall be made to notify the dog's owner before it is removed from impoundment. If no owner appears to redeem his/her dog within five days after impoundment, the dog may be released to a responsible person upon receiving assurance from that person that he or she will properly license and care for the dog and not allow the dog to run at large or become a nuisance, and upon payment of a sum which will cover the cost of keeping the dog during the impoundment. Any owner redeeming his/her dog shall pay, in addition to any fine imposed, a reasonable charge for the expense of keeping the dog during its confinement. If no owner is found for the dog nor any responsible person found within the above allotted time to whom the dog can be released, then the Brookings police department shall have total discretion and control of the further disposition of the animal.~~

F. The City of Brookings hereby adopts by reference all provisions, as contained in Curry County Code Section 4.01.030 through and including Section 4.01.200 et sec.

G. The Brookings Police Department is authorized and directed to provide mutual aid assistance to County officers, employees and volunteers engaged in animal control activities within the City of Brookings.

H.F. No person shall own, harbor, take care of, or have in custody any dog without it being licensed with Curry County. Said person is responsible for payment of licensing fees, as well as securing any and all shots, vaccinations, or records which may be needed to license the animal.

I.G. No person shall permit the carcass of any animal owned or controlled by him to remain upon the public streets or ways to be exposed on private property for a period of time any longer than is necessary to remove the said carcass. It shall be the duty of such owner or occupant forthwith to cause such carcass to be buried or have other disposition made of the same. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 3; Ord. 86-O-406 § 2.]

ARTICLE FOUR - ANIMAL CONTROL AND PROTECTION

DIVISION ONE

DOG CONTROL REGULATIONS

SECTION 4.01.010

RESERVED

SECTION 4.01.020

RESERVED

SECTION 4.01.030

PURPOSE STATEMENT

The purpose of this division shall be as follows:

- (1) To ensure that all dogs within Curry County are properly licensed; and
- (2) To make certain that all such dogs are vaccinated against rabies; and
- (3) To ensure that dogs shall not become a nuisance to the people within Curry County; and
- (4) To protect livestock from predatory dogs.

SECTION 4.01.040

JURISDICTION

- (1) The provisions of this division dealing with the licensing of dogs, and the prohibiting of dogs from running at large shall apply to all areas of Curry County.
- (2) All other provisions of this division apply only to the unincorporated areas of Curry County.

SECTION 4.01.050

DOG LICENSING

- (1) All dogs which have a set of permanent canine teeth or are six (6) months old, whichever comes first, are required to be duly licensed in accordance with this division by Curry County.
- (2) An owner or keeper who acquires an unlicensed dog must license said dog within thirty (30) days after becoming owner or keeper or the dog.
- (3) An owner who acquires a dog already licensed in Curry County must notify the licensing authority of the change of ownership within ten (10) days after the transfer of ownership. The license shall remain valid until the expiration date, if proper notice was given.
- (4) The license shall be valid for one (1) year from the date of issuance.

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SECTION 4.01.060 PUBLIC NUISANCE

The owner or keeper of any dog shall not allow his/her dog to be a public nuisance.

SECTION 4.01.070 DEFINITIONS OF PUBLIC NUISANCE

Except as provided in Section 4.01.080, a dog is deemed to be a public nuisance if it:

- (1) Bites a person.
- (2) Chases any person or vehicle.
- (3) Damages or destroys property of persons other than the dog's owner.
- (4) Scatters garbage.
- (5) Trespasses on private property of persons other than the dog's owner.
- (6) Disturbs any person by frequent or prolonged noises.
- (7) Is a female in heat and running at large

SECTION 4.01.080 EXCLUSIONS TO PUBLIC NUISANCE

A dog shall not be considered a public nuisance under Section 4.01.070 if it bites a person who is wrongfully assaulting the dog or the dog's owner, or if it bites a person unlawfully trespassing upon premises owned or occupied by the dog's owner after being provoked by that person.

SECTION 4.01.090 PUBLIC NUISANCE PROCEDURE

(1) Any person who has cause to believe a dog is being maintained as a public nuisance may make a complaint either orally or in writing to the County. The complaint shall be considered sufficient cause for the County to investigate the matter and determine if the owner or keeper of this dog is in violation of Section 4.01.070.

(2) When a dog is found to be a public nuisance in accordance with Section 4.01.070, it may be impounded by the Sheriff's Deputy or Animal Control Officer, and the owner or keeper may be cited into court. Should a citation to appear in court be issued to the owner or keeper for keeping a dog which is a public nuisance, that person cited shall be allowed the option of forfeiture of bail in lieu of appearance in court in accordance with ORS. 609.092.

(3) If a dog has been impounded as a public nuisance for killing or injuring a person, it may be killed in a humane manner.

(4) Notwithstanding the provisions of this section, any dog impounded for biting a person shall be held for not less than ten (10) days before redemption

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or destruction to determine if the dog is rabid.

(5) Except as provided in Section 4.01.090 (3) and (4), all dogs taken up and impounded as a nuisance shall be kept for at least three (3) days if the dog is without a license or identification tag and for at least five (5) days if it has a license or identification tag or unless sooner redeemed by the owner. If no owner redeems the dog within the allotted time, the dog may be released to a responsible person upon receiving assurance that the person will properly care for the dog and not allow it to become a nuisance, and upon payment of sum established by the Board of County Commissioners, and purchase of a license if required. Should no person redeem or request the dog within the three or five days, whichever applies, the dog may be disposed of in a humane manner.

(6) If an owner redeems his dog, he shall pay a fee set by the Board of County Commissioners. The owner shall also pay the expense of keeping the dog during its confinement. If the dog is unlicensed, the owner shall purchase a license and pay the applicable penalty, if any, for failure to have a license.

(7) If a dog has been repeatedly found to be a public nuisance under Section 4.01.070, the court may order such disposition of the dog as the court considers necessary for the safety or health of the public.

SECTION 4.01.100

DOG RUNNING AT LARGE

In accordance with that election held by the citizens of Curry County in 1964, Curry County has been declared to be a Dog Control District. No dog is allowed to run at large within the confines of Curry County.

SECTION 4.01.110

EXCLUSIONS TO DOG RUNNING AT LARGE

As used in this Section, running at large does not include:

- (1) Use of a dog under supervision of a person in order to legally hunt, chase or tree wildlife.
- (2) Use to control or protect livestock.
- (3) Use in any other related agricultural activities.

SECTION 4.01.120

DOG RUNNING AT LARGE PROCEDURE

(1) A reasonable effort shall be made to notify the dog's owner before it is removed from impoundment.

(2) If no owner appears to redeem his/her dog within the allotted time (as outlined in Section 4.01.090 (5)), the dog may be released to a responsible person upon receiving assurance from that person that they will properly license and care for the dog and not allow the dog to become a nuisance, and upon payment of a sum set by the Board of Commissioners which will cover the cost of keeping the dog during its impoundment. The person shall

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thereafter be liable as owner of the dog as provided by this section.

(3) Should no person redeem or request the dog within three or five days, whichever applies, the dog may be disposed of in a humane manner.

(4) It is the policy of Curry County that all dogs found running at large shall be returned to the owner or keeper, if at all possible. The Animal Control Officer shall have total discretion in exercising this policy.

(5) If the owner redeems his/her dog, he/she shall pay a fee set by the Board of County Commissioners. The owner shall also pay the expense of keeping the dog during its confinement. If the dog is unlicensed the owner shall purchase a license and pay the applicable penalty, if any, for failure to have a license.

SECTION 4.01.130 ADDITIONAL PROHIBITED ACTIVITY

No person shall own, harbor, or keep any dog with knowledge that, while the dog was off the premises owned or under the control of its owner or keeper and while not acting under the direction of its master or the agents or employees of such master, the dog kills or seriously injures any person.

SECTION 4.01.140 RESERVED

SECTION 4.01.150 DOG INJURING LIVESTOCK

No owner or keeper shall allow or permit his/her dog(s) to kill, wound, injure, worry harass or chase livestock in Curry County.

SECTION 4.01.160 DEFINITIONS

For purposes of Sections 4.01.150-4.01.170, the following definitions apply unless the context otherwise indicates:

(1) "Livestock": Livestock means horses, mules, jackasses, cattle, sheep, goats, swine, domesticated fowl and any fur-bearing animal bred and maintained commercially or otherwise, within pens, cages and hutches.

(2) "Owner": Owner means the person assuming the care and welfare of the dog at the time of the damage.

(3) "Keeper": Keeper means any person assuming the care and welfare of the dog at the time of the damage.

SECTION 4.01.170 DOG INJURING LIVESTOCK PROCEDURE

(1) Any dog whether licensed or not, which while off the premises owned or under the control of its owner or keeper, that kills, wounds or injures any livestock not belonging to the master of such dog is a public nuisance and may be killed immediately by any person, with the following exception: no person shall kill any dog for killing, wounding or chasing chickens upon a public place,

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highway or within the corporate limits of any city.

(2) Any dog not immediately killed in the act of killing, wounding or causing injury to livestock shall be bound over to the County Animal Control Officer or other Law Enforcement Officers and impounded in a shelter to be established under the County General Fund or Dog Licensing Fund.

(3) Any dog impounded under Section 4.01.170 (2) shall not be released until a determination is made by the County Governing Body.

(4) If any dog not under the control of its owner or keeper is found chasing livestock or feeding upon the warm carcass of livestock not the property of such owner or keeper, this shall be deemed Prima Facie evidence that the dog has engaged in killing, wounding or causing injury to livestock.

(5) If there is reason to believe that reasonable testing of the dog is required, the dog will be impounded.

(6) It shall be within the discretion of the County Animal Control Officer to determine if a fecal examination or examination of the teeth of the dog will provide substantial evidence as to whether the dog has been engaged in killing, wounding or chasing livestock. Such examination shall be done by a licensed veterinarian.

(7) The County Governing Body shall determine whether the dog has been engaged in killing, wounding, chasing or causing injury to livestock. If the County Governing Body determines that the dog has been so engaged, the dog shall be killed in a humane manner, and the cost of keeping and testing of the dog during impoundment shall be paid by the owner of the dog.

(8) If the County Governing Body determines that the dog has not been so engaged, the dog shall be released to its owner and no costs assessed against the owner.

(9) If the dog had been impounded upon receipt of evidence from a complainant, and the Governing Body determines that the dog has not been so engaged, the complainant may be ordered to pay the cost of keeping and testing of the dog during impoundment.

(10) There is a disputable presumption that a dog kills, wounds or causes injury to livestock if:

(a) The dog is found chasing livestock not the property of the owner of the dog in an area where freshly killed or damaged livestock are found;

(b) The dog is found feeding upon a warm carcass of a livestock animal;

(c) An examination of the dog's feces indicated ingestion of portions of the anatomy or covering of the anatomy of livestock; or

(d) An examination of the dog's teeth indicate ingestion of the anatomy or covering of the anatomy of the livestock, unless the dog is regularly used for the purpose of herding livestock.

SECTION 4.01.180

KEEPING A DOG WITH KNOWLEDGE IT HAS
KILLED OR INJURED LIVESTOCK

(1) No person shall own, harbor, or keep any dog with knowledge that it has killed or injured any livestock.

(2) However no person shall be liable for harboring or keeping such dog with knowledge that it has killed or injured chickens unless the owner fails to pay full damages within three (3) days after receipt of demand for such damages from the owner.

SECTION 4.01.190

CLAIMS BY OWNERS OF LIVESTOCK

(1) The owner of any livestock killed, chased or injured by any dog may, within ten (10) days after the killing, chasing or injuring occurred or, became known to him, present to the County Governing Body a verified statement containing a full account of the incident stating in detail the amount of damage claimed on account thereof, and the name and address of the owner or keeper of the dog, if known. The claim shall be supported by the affidavit of at least one (1) disinterested person as to all material facts contained in it.

(2) It shall be the livestock owner's responsibility to notify the Curry County Sheriff's Department of the incident as soon as he/she becomes aware of it. The owner shall leave all slain livestock where found until the investigation has been completed.

(3) Upon being contacted by the livestock owner pursuing a claim, the Animal Control Officer shall investigate the claim and submit a written report to the Board.

(4) No claims shall be heard by the County Governing Board until all of the following has been completed:

(a) The livestock owner has submitted to the Board a written claim on the form adopted by the County.

(b) The livestock owner has notified the Curry County Sheriff's Department of the incident.

(c) The Sheriff's Department has completed the investigation and submitted a written report to the board.

(5) All claims presented to the County Governing Board shall be heard at the first regular session after their presentation, or as soon thereafter as may be practicable.

(6) If the Board determines that any livestock has been damaged by being

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injured, chased, wounded or killed, it shall file and enter a record of the value of the livestock and order a warrant drawn for the amount of damages thus found or any portion thereof that is considered just, to be paid by the County Treasurer out of the Dog Fund. If it considers the claim unjust, it shall disallow it and enter that fact upon its record.

(7) No claim shall be allowed where it appears that the injury or damage complained of was caused by a dog owned or controlled by the claimant or the agent of the claimant.

(8) The rate of payment shall be up to the following amounts: Sheep - \$25.00 each; Lambs - \$15.00 each; and all other livestock to be determined by the County Governing Board, but not to exceed \$50.00 each.

(9) In each case where a claim against the Dog Fund of Curry County has been paid by the County Governing Board the County shall be subrogated to all the rights of the owner of the livestock killed, wounded, chased or injured against the owner of the dog for damages. The District Attorney or County Counsel shall proceed properly in a lawful way to collect the damages. Any money so collected shall be paid over immediately to the County Treasurer and credited to the Dog Fund.

SECTION 4.01.200 FEES

The Board of Curry County Commissioners, may by appropriate Order, establish such fees (not previously referenced by this division) which are necessary or expedient for the dog control program. Such fees may include, but shall not be limited to, charges for euthanasia and the renting of live traps.

2011 ORS § 609.090¹**Impounding certain dogs**

- **procedure for county disposition of impounded dogs**
- **impoundment fees and costs**
- **release of dog**

- (1) A law enforcement officer or dog control officer may cite a keeper, impound a dog, or both if:
 - (a) The dog is found running at large in violation of ORS 609.060 (Notice of county prohibition on dogs running at large);
 - (b) The dog is a public nuisance **as** described by ORS 609.095 (Dog as public nuisance); **or**
 - (c) The officer has probable cause to believe that the dog is a dangerous dog as defined in ORS 609.098 (Maintaining dangerous dog).
- (2) All dogs impounded under this section and ORS 609.030 (Establishing dog control district) shall be held in an adequate and **sanitary** pound to be provided by the county governing body from the general fund or out of funds obtained from dog licenses and from the redemption of dogs so impounded. However, in lieu of the establishment of a dog pound, the county governing body may contract for the care of the dogs. Unless claimed by its keeper, a dog shall be impounded for at least three days if the dog is without a license or identification tag and for at least five days if it has a license or identification tag. A reasonable effort shall be made to notify **the** keeper of a dog before the dog is removed from impoundment.
- (3) Unless the dog control board or county governing body provides otherwise, if the keeper appears and redeems the dog, the keeper shall pay a sum of not less than \$10 for the first impoundment and not less than \$20 for each subsequent impoundment and also pay the expense of keeping the dog during the time it was impounded. If the dog is unlicensed the keeper shall also purchase a license and pay the applicable penalty for failure to have a license. If the keeper is not the owner of the dog, the keeper may request that a license purchased by the keeper under this subsection be issued in the name of the dog owner.

- (4) In addition to any payment required pursuant to subsection (3) of this section, a dog control board or county governing body may require as a condition for redeeming the dog that the keeper agree to reasonable restrictions on the keeping of the dog. The keeper must pay the cost of complying with the reasonable restrictions. As used in this subsection, reasonable restrictions may include, but is not limited to, sterilization.
- (5) A keeper of a dog maintains a public nuisance if the keeper fails to comply with reasonable restrictions imposed under subsection (4) of this section or if a keeper fails to provide acceptable proof of compliance to the dog control board or county governing body on or before the 10th day after issuance of the order imposing the restrictions. If the board or governing body finds the proof submitted by the keeper unacceptable, the board or governing body shall send notice of that finding to the keeper no later than five days after the proof is received.
- (6) If no keeper appears to redeem a dog within the allotted time, the dog may be killed in a humane manner. The dog control board or county governing body may release the dog to a responsible person upon receiving assurance that the person will properly care for the dog and upon payment of a sum established by the county governing body plus cost of keep during its impounding, and purchase of a license if required. The person shall thereafter be the keeper of the dog for purposes of ORS 609.035 (Definitions for ORS 609.035 to 609.110 and 609.990) to 609.110 (Dog License Fund).
- (7) If the keeper of a dog is not charged with violating ORS 609.095 (Dog as public nuisance) (2) or (3) or ORS 609.098 (Maintaining dangerous dog), and the dog control board or county governing body finds that the dog has menaced or chased a person when on premises other than the premises from which the keeper may lawfully exclude others or has bitten a person, the dog control board or county governing body may order that the dog be killed in a humane manner. Before ordering that the dog be killed, the board or governing body shall consider the factors described in ORS 609.093 (Considerations prior to disposing of chasing, menacing or biting dog) and issue written findings on those factors. Notwithstanding ORS 34.030 (Jurisdiction to grant writ), if the disposition order issued by the board or governing body provides that the dog is to be killed, a petition by the keeper for a writ of review must be filed no later than the 10th day after the dog control board or county governing body sends notice of the order to the keeper. Notwithstanding ORS 19.270 (Appellate jurisdiction of Supreme Court and Court of Appeals), 19.330 (Stays generally) and 34.070 (Stay of proceedings), the order for the killing of the dog may not be carried out during the period that the order is subject to review or appeal. If the dog is not killed, the board or governing body may impose reasonable restrictions on the keeping of the dog. The keeper must pay the cost of complying with the reasonable restrictions.

- (8) If the keeper of a dog is charged with violating ORS 609.095 (Dog as public nuisance) (2) or (3) or 609.098 (Maintaining dangerous dog), upon conviction of the keeper the court may determine the disposition of the dog as provided under ORS 609.990 (Penalties for ORS 609.060, 609.095, 609.098, 609.100, 609.169 and 609.405).
- (9) Notwithstanding subsections (2), (3), (6), (7) and (8) of this section, any dog impounded for biting a person shall be held for at least 10 days before redemption or destruction to determine if the dog is rabid.
- (10) Notwithstanding subsections (2) and (3) of this section, if the keeper is charged with violating ORS 609.098 (Maintaining dangerous dog), the dog shall be kept in impoundment pending resolution of the charges. A court may order the keeper to post a deposit with the dog control board or county governing body to cover the cost of keeping the dog in impoundment. If the keeper is convicted of violating ORS 609.098 (Maintaining dangerous dog), the court may order the deposit forfeited to the board or governing body.
- (11) A dog control board or county governing body may impose lesser fees or penalties under subsections (3) and (6) of this section for certain senior citizens under certain circumstances. [Amended by 1953 c.571 §2; 1957 c.79 §2; 1963 c.237 §1; 1963 c.585 §1; 1967 c.495 §2; 1969 c.677 §4; 1973 c.655 §3; 1975 c.499 §1; 1977 c.802 §6; 1999 c.658 §§6,6a; 2001 c.636 §7; 2005 c.840 §5]

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Notes of Decisions

Where plaintiff underwent series of rabies shots because defendant city destroyed dog that bit him before determination of whether dog did or did not have rabies, this section could be used to measure standard of care of officials who impounded dog in determining whether conduct of officials was reasonable under existing circumstances. *Jones v. City of Prairie City*, 86 Or App 701, 740 P2d 236 (1987)

Chapter 609

Atty. Gen. Opinions

Possession and administration of sodium pentobarbital by county animal control program, (1982) Vol 42, p 297

Related Statutes³

- 609.093
Considerations prior to disposing of chasing, menacing or biting dog
- 609.155
Impoundment for harming or chasing livestock

¹ Legislative Counsel Committee, *CHAPTER 609—Dogs; Exotic Animals; Dealers*, <http://www.leg.state.or.us/ors/609.html> (2011) (last accessed Mar. 25, 2012).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2011, Chapter 609*, <http://www.leg.state.or.us/ors/annos/609ano.htm> (2011) (last accessed Mar. 25, 2012).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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2011 ORS § 609.030¹**Establishing dog control district**

- **appointment of supervisors**
- **enforcement**
- **county governing body as supervisors**
- **dog control officer**

- (1) The governing body of any county may declare the county a dog control district.
- (2) Upon declaration of the dog control district the county governing body may appoint a board of supervisors, and provide for the terms, compensation and other aspects of service by board members, at least two of whom shall be connected directly or indirectly with the livestock industry.
- (3) The board may issue licenses and enforce all of the county and **state** laws relating to the control of dogs within the county, including that of making arrests and shall perform such other duties as the county governing body may assign to it.
- (4) The county governing body may elect to act as the board of supervisors of the dog control district.
- (5) The county governing body may provide for appointment of a dog control officer and otherwise provide for administration and enforcement of a dog control program. [Amended by 1957 c.79 §1; 1963 c.398 §1; 1975 c.297 §1; 1977 c.189 §9]

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Chapter 609

Atty. Gen. Opinions

Possession and administration of sodium pentobarbital by county animal control program, (1982) Vol 42, p 297

Related Statutes³

- 609.015
Application of ORS 609.030 and 609.035 to 609.110
- 609.035
Definitions for ORS 609.035 to 609.110 and 609.990
- 609.090
Impounding certain dogs
- 609.095
Dog as public nuisance
- 609.100
Dog licenses, tags and fees

¹ Legislative Counsel Committee, *CHAPTER 609—Dogs; Exotic Animals; Dealers*, <http://www.leg.state.or.us/ors/609.html> (2011) (last accessed Mar. 25, 2012).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2011, Chapter 609*, <http://www.leg.state.or.us/ors/annos/609ano.htm> (2011) (last accessed Mar. 25, 2012).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

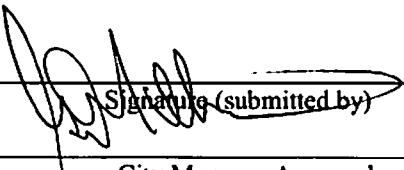
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CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: February 3, 2014

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Review BMC Chapter 9.15 – Tobacco Sales

Recommended Action:

Consider repeal of BMC Chapter 9.15

Financial Impact:

None.

Background/Discussion:

While performing a comprehensive fee review of the Brookings Municipal Code, staff reviewed Chapter 9.15 “Tobacco Sales” which provides, among other things, that the City collect a \$20.00 license fee from any business that sells tobacco products. This fee is in addition to any other business license or state license fee.

It appears that the Ordinance enacting this Chapter was enacted in 2000. The stated purpose of the ordinance is to “prevent the illegal sale of an access to cigarettes and other tobacco products to minors.” In addition to the license fee provisions, the Chapter:

- Prohibits tobacco vending machines in motels.
- Prohibits all types of self-service sale of tobacco products.
- Prohibits placement of tobacco advertising below 36 inches from the floor of a building.

In reviewing this matter with Finance and Police management, it appears that this regulation was never implemented. The City does not currently collect an additional \$20.00 annual license fee from businesses that sell tobacco and does not issue tobacco sales licenses. With the exception of the sign restriction, the above listed regulations are contained in State Law. Specifically:

- ORS 167.402 prohibits the location of vending machines in all locations, except in an establishment where the premises are posted as off limits to minors.
- ORS 167.407 prohibits retailers from placing tobacco products in a location where customers can access the product without the assistance of an employee, unless the store is off-limits to minors.

Retailers are not required to have a State license to sell tobacco.

According to the City Attorney, it is legal for a City to require a retailer to obtain a City license to sell tobacco products.

Policy Considerations:

While the regulation may have been well-meaning at the time, it may no longer be necessary as there is a substantial body of State and Federal regulation regulating the sale and access to tobacco products by minors.

Attachment(s):

- a. BMC 9.15.
- b. "Access to Tobacco and Youth Possession of Tobacco" except from Department of Health Services website.

Chapter 9.15 TOBACCO SALES

Sections:

Article I. Sale and Distribution of Tobacco and Tobacco Products

- [9.15.010](#) Title.
- [9.15.020](#) Purpose.
- [9.15.030](#) Definitions.
- [9.15.040](#) License required.
- [9.15.050](#) Fee.
- [9.15.060](#) Nontransferability.
- [9.15.070](#) Vending machines.
- [9.15.080](#) Vendor-assisted sales.
- [9.15.090](#) Revocation of license.
- [9.15.100](#) Advertising placement.
- [9.15.110](#) Enforcement.

Article II. Vendor-Assisted Tobacco Sales

- [9.15.120](#) Title.
- [9.15.130](#) Findings.
- [9.15.140](#) Purpose.
- [9.15.150](#) Definitions.
- [9.15.160](#) Vendor-assisted sales.
- [9.15.170](#) Scope of provisions.
- [9.15.180](#) Nonretaliation.
- [9.15.190](#) Penalties.

Article I. Sale and Distribution of Tobacco and Tobacco Products

9.15.010 Title.

This ordinance codified in this article shall be known as an ordinance regulating the sale and distribution of tobacco and tobacco products. [Ord. 00-O-537 § 1.]

9.15.020 Purpose.

The city council finds that youth addiction to tobacco products is a public health problem with grave health consequences. More than half of all smokers begin smoking before the age of 14, and 90 percent begin by the age of 19. The average age of first use of tobacco products is now 11 to 15 years of age. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products. Therefore, the purpose of this article is to implement a strict and enforceable system to prevent the illegal sale of and access to cigarettes and other tobacco products to minors. [Ord. 00-O-537 § 2.]

9.15.030 Definitions.

- A. "License" means a license issued by the city of Brookings for the retail sale of tobacco products.
- B. "Licensee" means the holder of a valid license for the retail sale of tobacco products.
- C. "Minor" means any person under 18 years of age.
- D. "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.
- E. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco or any other form of tobacco or tobacco papers which may be utilized for smoking, chewing, inhalation or other means of ingestion.
- F. "Tobacco vending machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, or slugs.
- G. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased. [Ord. 00-O-537 § 3.]

9.15.040 License required.

It shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid license from the city for each location in which tobacco products are sold. All such licenses shall be renewed annually and posted in a conspicuous location. [Ord. 00-O-537 § 4.]

9.15.050 Fee.

The fee for such license shall be \$20.00 per year. [Ord. 00-O-537 § 5.]

9.15.060 Nontransferability.

A tobacco retail license is nontransferable, except a new license, with no fee required, will be issued to a tobacco retailer who changes location. [Ord. 00-O-537 § 6.]

9.15.070 Vending machines.

Tobacco vending machines or any other devices for the sale or distribution of tobacco products are prohibited in any hotel/motel. [Ord. 00-O-537 § 7.]

9.15.080 Vendor-assisted sales.

It shall be unlawful for any person, business, or retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales or a vending machine, where authorized by law. [Ord. 00-O-537 § 8.]

9.15.090 Revocation of license.

Any license holder who violates BMC [9.15.080](#) shall be fined and have their license suspended as follows:

- A. In the case of a first violation, the licensee shall be fined up to \$200.00 and shall be notified in writing of penalties levied for further violations.
- B. In the case of a second violation in a two-year period, the licensee shall be fined up to \$500.00 and the license shall be suspended for not less than 30 consecutive days nor more than three months. Licensee must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

C. In the case of three or more violations within a two-year period, the licensee shall be fined up to \$1,000 and the license shall be revoked not less than six months nor more than 18 months from the date of revocation. Licensee must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. [Ord. 00-O-537 § 9.]

9.15.100 Advertising placement.

No tobacco product advertising shall be placed below 36 inches, as measured from the establishment's natural floor. [Ord. 00-O-537 § 10.]

9.15.110 Enforcement.

Violations of BMC [9.15.040](#) and [9.15.070](#) are subject to a fine of \$500.00 per day for each violation. The city attorney or city manager and the police department shall have the authority to enforce this article. [Ord. 00-O-537 § 11.]

Article II. Vendor-Assisted Tobacco Sales

9.15.120 Title.

This ordinance codified in this article shall be known as the vendor-assisted tobacco sales ordinance. [Ord. 01-O-543 § 1.]

9.15.130 Findings.

The city council finds that:

- A. Youth addiction to tobacco products is a public health problem with grave health consequences;
- B. Tobacco use is the leading preventable cause of death in Curry County;
- C. Each day in Oregon, the equivalent of a classroom full of children begins smoking. In Curry County, 22 percent of students begin smoking before age 13, 28 percent of high school students smoke and six percent chew tobacco;
- D. More than half the tobacco retail outlets in Curry 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;
- E. Cigarettes are the item more frequently taken by shoplifters. [Ord. 01-O-543 § 2.]

9.15.140 Purpose.

The purpose of this article is to limit the sale of tobacco products to minors by way of vendor-assisted tobacco sales. [Ord. 01-O-543 § 3.]

9.15.150 Definitions.

- A. "Minor" means any person under 18 years of age.
- B. "Self-service displays" means open display of tobacco products to which the public has access without the assistance of a store employee.
- C. "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.
- D. "Tobacco retail store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

E. “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 possession of the tobacco product until after it is purchased. [Ord. 01-O-543 § 4.]

9.15.160 Vendor-assisted sales.

Except as provided in BMC [9.15.170](#), no person or business may 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. [Ord. 01-O-543 § 5.]

9.15.170 Scope of provisions.

This article 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. [Ord. 01-O-543 § 6.]

9.15.180 Nonretaliation.

No person or employee may 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 article. [Ord. 01-O-543 § 7.]

9.15.190 Penalties.

Violation of this article shall be punishable by a fine not to exceed \$250.00. The city manager and the police department shall have the authority to enforce this article. [Ord. 01-O-543 § 8.]

I. Access to Tobacco and Youth Possession of Tobacco

I. Access to Tobacco and Youth Possession of Tobacco

Location of Vending Machines

State

Oregon law prohibits vending machines that supply tobacco products from being located in any place except an Oregon Liquor Control Commission-licensed establishment that is posted as off limits to minors with a Number I Minor Posting, which states “No Minors Permitted Anywhere on This Premises.” Such establishments include certain bars, taverns, and cocktail lounges. Selling tobacco from vending machines in any other location is a Class B violation. Local jurisdictions are preempted from passing stronger laws.

Enforcement

Local law enforcement authorities

Citation

ORS 167.402 Locating tobacco vending machines.

(1) As used in this section, “vending machine” means a mechanical, electronic or similar device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco products.

(2) A person may not sell or dispense tobacco products, as defined in ORS 431.840, from a vending machine, except in an establishment where the premises are posted as permanently and entirely off-limits to minors under rules adopted by the Oregon Liquor Control Commission.

(3) Violation of subsection (2) of this section is a Class B violation. Each day of violation constitutes a separate offense. [1991 c.970 §2; 1999 c.1051 §162; 2009 c.600 §1]

www.leg.state.or.us/ors/167.html

Restriction on Free Distribution of Tobacco Products

Federal

The federal Family Smoking Prevention and Tobacco Control Act (2009) prohibits all tobacco sampling except the distribution of free samples of smokeless tobacco in qualified adult-only facilities.

I. Access to Tobacco and Youth Possession of Tobacco

Enforcement

U.S. Food and Drug Administration

Consumers can call FDA at 1-877-CTP-1373, option 4, to report a violation.

Complaints are forwarded to FDA's Office of Compliance, which will follow up with complainants by phone in one to three business days.

State

Oregon law prohibits the distribution of free tobacco products to people under 18 years old. Free samples of *smokeless tobacco* may not be given to anyone under the age of 21 or distributed in any area in which people under the age of 21 are allowed; a violation of this law is a Class A misdemeanor.

Enforcement

Local law enforcement authorities

Citation

ORS 431.840 (1) (a) Free distribution to minors prohibited; restriction on sales; notice.

(1) It shall be unlawful to do any of the following:

(a) To distribute free tobacco products to persons under 18 years of age as part of a marketing strategy to encourage the use of tobacco products.

[1989 c.764 §1; 2001 c.187 §1]

ORS 431.845 Civil penalty for violation of ORS 431.840.

(1) The civil penalty for violation of any provision of ORS 431.840 shall not be less than \$100 nor exceed \$500.

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

www.leg.state.or.us/ors/431.html

ORS 180.486 Prohibited conduct; penalty.

(1) A person may not:

(d) Distribute, in this state, free samples of smokeless tobacco products:

(A) To persons under 21 years of age; or

I. Access to Tobacco and Youth Possession of Tobacco

(B) In any area, unless access by persons under 21 years of age to that area is prohibited.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported smokeless tobacco products that the person knows or should know are intended for sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor. [2009 c.717 §13]

ORS 180.468 Definitions.

As used in ORS 180.465 to 180.494:

(6) "Smokeless tobacco products" has the meaning given that term in ORS 323.810.

www.leg.state.or.us/ors/180.html

ORS 323.810 Definitions for ORS 323.810 to 323.816.

As used in ORS 323.810 to 323.816:

(7) "Smokeless tobacco products" means moist snuff, as defined in ORS 323.500, or chewing tobacco, as defined in section 5702 of the Internal Revenue Code.

ORS 323.500 Definitions for ORS 323.500 to 323.645.

As used in ORS 323.500 to 323.645, unless the context otherwise requires:

(9) "Moist snuff" means:

(a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in a nasal cavity; or

(b) Any other product containing tobacco that is intended or expected to be consumed without being combusted.

<http://www.leg.state.or.us/ors/323.html>

26 U.S.C. § 5702. Definitions

(m) Definitions relating to smokeless tobacco

(3) Chewing tobacco

The term "chewing tobacco" means any leaf tobacco that is not intended to be smoked.

www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00005702----000-.html

I. Access to Tobacco and Youth Possession of Tobacco

Purchase or Possession of Tobacco by Minors

State

Oregon law prohibits a person under the age of 18 from buying or obtaining tobacco products. It is also illegal for a minor to possess tobacco products, except inside a private residence with the consent of the minor's parent or guardian. Any person who violates this law may be required to participate in a tobacco education program, a tobacco use cessation program, or community service that is associated with tobacco-related diseases. Minors acting under the supervision of an adult may engage in "controlled buys" – attempts to purchase tobacco for the purpose of testing retailers' compliance with Oregon's laws concerning retail sales of tobacco.

Enforcement

Local law enforcement authorities

Citation

ORS 167.400 Tobacco possession by minors prohibited.

(1) It is unlawful for any person under 18 years of age to possess tobacco products, as defined in ORS 431.840.

(2) Any person who violates subsection (1) of this section commits a Class D violation. [1991 c.970 §1; 1999 c.1051 §161]

ORS 167.401 Tobacco purchase by minors prohibited; exceptions.

(1) Except as provided in subsection (4) of this section, no person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products as defined in ORS 431.840. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products.

(2) Any person who violates subsection (1) of this section commits a violation.

(3)

(a) In lieu of any other penalty established by law, a person who is convicted for the first time of a violation of subsection (1) of this section may be ordered to participate in a tobacco education program or a tobacco use cessation program or to perform community service related to diseases associated with consumption of tobacco products. A person may be ordered to participate in such a program only once.

(b) In addition to and not in lieu of any other penalty established by law, a

I. Access to Tobacco and Youth Possession of Tobacco

person who is convicted of a second violation of subsection (1) of this section through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this subsection, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors. [1999 c.1077 §8]

www.leg.state.or.us/ors/167.html

Retailer Notice about Sales to Minors

Oregon law requires retailers to post a notice informing the public that selling tobacco products to individuals under 18 is prohibited. Failure to do so will result in a fine ranging from \$100 to \$500.

Enforcement

Local law enforcement authorities

Citation

ORS 431.840 (1) (b) Free distribution to minors prohibited; restriction on sales; notice.

(1) It shall be unlawful to do any of the following:

(b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3) of this section in a location clearly visible to the seller and the purchaser that sale of tobacco products to persons under 18 years of age is prohibited.

I. Access to Tobacco and Youth Possession of Tobacco

(3) The notice shall be substantially as follows:

NOTICE

The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits the crime of endangering the welfare of a minor, pursuant to ORS 163.575.

[1989 c.764 §1; 2001 c.187 §1]

ORS 431.845 Civil penalty for violation of ORS 431.840.

(1) The civil penalty for violation of any provision of ORS 431.840 shall not be less than \$100 nor exceed \$500.

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

www.leg.state.or.us/ors/431.html

Sale of Tobacco to Minors

State

Oregon law prohibits selling or distributing tobacco or devices used to burn tobacco to individuals under the age of 18. The minimum fine for each violation is \$100.

Enforcement

Local law enforcement authorities

Citation

ORS 163.575 Endangering the welfare of a minor.

(1) A person commits the crime of endangering the welfare of a minor if the person knowingly:

(d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or

(e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined in ORS 475.005, is

I. Access to Tobacco and Youth Possession of Tobacco

burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

(A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corn cob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) Carburetion tubes and devices, including carburetion masks;

(C) Bonges;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

(2) Endangering the welfare of a minor by violation of subsection (1)(a), (b), (c) or (e) of this section, involving other than a device for smoking tobacco, is a Class A misdemeanor.

(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section or by violation of subsection (1)(e) of this section, involving a device for smoking tobacco, is a Class A violation and the court shall impose a fine of not less than \$100. [1971 c.743 §177; 1973 c.827 §20; 1979 c.744 §8; 1981 c.838 §1; 1983 c.740 §31; 1991 c.970 §5; 1995 c.79 §52; 1999 c.1051 §153]

www.leg.state.or.us/ors/163.html

Locating Tobacco Products in Retail Stores

State

Under Oregon law, retail store owners may not place tobacco products in a location where customers can access the product without the assistance of an employee, unless the store is off limits to individuals under 18 years of age. It is a Class B violation to break this law.

Enforcement

Local law enforcement authorities

Citation

ORS 167.407 Locating tobacco products where customers can access without store employee prohibited.

I. Access to Tobacco and Youth Possession of Tobacco

(1) A person having authority over the location of cigarettes and other tobacco products in a retail store may not locate cigarettes or other tobacco products in a location in the store where the cigarettes or other tobacco products are accessible by store customers without assistance by a store employee.

(2) Violation of subsection (1) of this section is a Class B violation. Each day of violation constitutes a separate offense.

(3) Subsections (1) and (2) of this section do not apply if the location at which the cigarettes or tobacco products are sold is a store or other establishment at which persons under 18 years of age are prohibited. [2003 c.804 §84]

www.leg.state.or.us/ors/167.html

Tobacco Seller Licensing State

In Oregon, tobacco distributors must obtain licenses in order to distribute tobacco products. Typically, *distributors* sell tobacco to *retailers*, who then sell to the public. Retailers, such as individual stores, are not required to have licenses to sell tobacco products.

Enforcement

Oregon Department of Revenue

Citation

OAR 150-323.105. When Distributor's License Required

(1) A distributor's license is required for each place of business at which a person engages in the distribution of cigarettes as defined in ORS 323.015(2). A distributor's license is required for any person distributing cigarettes in Oregon, including:

- (a) every cigarette manufacturer selling cigarettes in this state to persons other than licensed distributors;
- (b) Every person who imports cigarettes into this state for sale;
- (c) Every person who obtains untaxed cigarettes from a cigarette manufacturer for resale; and
- (d) Common carriers engaged in interstate or foreign passenger service, who sell cigarettes on their facilities in Oregon, and persons authorized to sell cigarettes on the facilities of such common carriers. For the purpose of this rule "facilities of a common carrier" are limited to the mobile equipment of the carrier used for the transportation of passengers.

I. Access to Tobacco and Youth Possession of Tobacco

ARCWEB.SOS.STATE.OR.US/RULES/OARS_100/OAR_150/150_323.HTML

Sales of Tobacco through Mail Order or Internet Sales

Federal

Pursuant to the PACT Act of 2009, federal law prohibits the sale of untaxed tobacco products through the Internet or by mail order and makes tobacco products nonmailable matter (subject to minor exceptions). Internet- and mail-order sellers may not deliver their merchandise through the U.S. Postal Service, but may continue to use private common carriers and other delivery services. They must also verify the age of customers both at the time of purchase and at the point of delivery.

Enforcement

The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives for the most part, with the U.S. Postal Service in charge of the nonmailable matter section of PACT.

State

Oregon law forbids the delivery sale of tobacco products to underage individuals. Delivery sellers must obtain signed written certifications that their customers meet the minimum age, as well as a copy of each customer's valid, government-issued identification showing age or date of birth, prior to shipping any tobacco products. Sellers may only accept payment issued in the name of the prospective purchaser (*i.e.*, a debit/credit card or personal check issued in that individual's name) for each sale, and must use a shipping method that requires a signature and photo identification from the customer or another non-minor individual residing at the same address. All delivery sellers must obtain a distributor's license prior to making delivery sales.

Enforcement

Oregon Department of Justice

Citation

ORS 323.703 Delivery sales to persons under legal minimum purchase age prohibited. A person may not make a delivery sale of tobacco to a person who is under the legal minimum purchase age. [2003 c.804 §74]

ORS 323.706 Requirements for persons accepting delivery sale purchase orders. A person accepting a purchase order for a delivery sale, prior to the first mailing,

CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: February 3, 2014

Originating Dept: City Manager



Signature (submitted by)



City Manager Approval

Subject: Review of proposed Master Fee Schedule Update

Background/Discussion:

The City Council last updated the Master Fee Schedule under Resolution 12-R-993, in August, 2012. The schedule was updated once in May 2013, by Resolution 12-R-993, which provided a new fee for non-land use vacations.

Following is a summary of proposed changes to the existing fee schedule by category.

Administrative/General

- Converting the Records Search fee from actual labor to a flat fee of \$36.00 at an estimated low-average cost for providing this service.
- Adding a new GIS section to cover the increasing scope of services available since the City added its GIS position to include modifying the three, existing GIS fees.

Parks Use

- Moving Capella Use Fees under Park Facilities Daily Use Fees to bring all park use fees under one heading, and creating a new subheading for all other park use fees.

Planning

- Adds Home Occupation Permit Fee

Public Works

- Adding clarifying language to plan review, inspection and right to use permit fees to agree with the Brookings Municipal Code and Engineering Standards and Specifications.
- Lowering the Plan Review fee from \$100 to \$75 per plan sheet.
- Adding a Hydrology Report Review fee.

Sewer & Water (new heading)

- Updating and adding new meter and service extension fees and moving them from the Public Works category.
- Adding new sewer connection fees and updating existing sewer connection fees which were previously adopted with Sewer Rates.

CPI-U Adjustment

- The Master Fee resolution provides that Council may adjust fees based on the latest available Consumer Price Index (CPI) for the Brookings area. The updated schedule provides a separate column applying the December 2013 CPI-U of 1.5% to existing fees, rounded to the nearest dollar. The last CPI update was applied in August, 2012.

Staff is seeking direction from City Council regarding a CPI adjustment and the proposed changes.

Attachment(s):

- a. 2013 Master Fee Schedule with proposed updates.

ADMINISTRATIVE - GENERAL

ADMINISTRATIVE - GENERAL		FEE	W/CPI-U
Building Code Violation Appeal Fee		\$150.00	152.00
Business Licenses			
Annual fee based on total number of employees reported on Form 132			
0-10		\$61.00	62.00
11-25		\$101.00	103.00
26-50		\$152.00	154.00
51-75		\$303.00	307.00
76-100		\$607.00	616.00
101-200		\$1,011.00	1,026.00
>200		\$1,517.00	1,540.00
Annual fee for businesses located outside City limits		\$76.00	77.00
Carnival and circus/per day		\$35.00	36.00
Temporary 90-Day	\$25.00 or 1/4 annual fee, whichever is greater		
Copying of City Records < 200 pages (based on 8-1/2 x 11 side) (1)	\$.025 B&W/\$0.35 Color		
Copying City Records using off-site services (when necessary)	Actual costs + staff time		
Certified copies of City records (for notarized copies – see Notary fee)			
First page + copy costs	B&W \$1.00/Color \$1.10		
Each additional page (per side) + copy costs	B&W \$0.50/Color \$0.60		
Driver’s License Sanctions	\$15.00		
Duplication of City audio/video recordings to CD or DVD			
Personal Copy	\$15.00		
Certified Copy	\$20.00		
Electronic document preparation (10)			
Electronic documents or files copied to CD or DVD	\$14.00		
Electronic documents, <10MB and 10 files, sent electronically	No additional cost		
Electronic documents, ≥10MB and/or 10 files, sent electronically	\$12.00		
Paper to electronic conversion (per side) to PDF format, ≤ 11” x 17”	\$0.15 per side		
Event Permit Request			
Event Permit	\$36.00		37.00
Barricade and Cone Delivery	Determined by permit		
Refundable Barricade/Cone Use	\$303.00		308.00
Fax - per page (single sided – 8-1/2 x 14 max)	\$1.00		
GIS Maps – Regular	\$12.00		
GIS Maps – Ortho Background	\$25.00		
GIS Mapping Research/Reports	\$180.00		
GIS			
8-1/2 x 11 Curry County Print (per single sided page)	B&W \$0.25; Color \$0.35		
11 x 17 Curry County Print (per single sided page)	B&W \$2.40; Color \$2.50		
Large Format Print (> 11x17; based on square footage)	B&W \$0.50; Color \$1.00		
Large Format Scanning (> 11 x 17, per single side sheet)	\$20/sheet		
Digital Lidar Map	\$35.00/hr		
Research/Analysis/Development	\$35.00/hr		
Legal review of public records for exempt determination (2)	Actual legal costs		
Lien Search	\$25.00		
Liquor License Application – New/Annual Renewal	\$25.00		

Liquor License Application – Temporary/Annual	\$25.00	
Monitoring of public review of City files	\$35.00/hour	36.00
Meeting Room Rental – Council Chambers	\$20.00/hour	
Meeting Room Rental – Fire Hall	\$10.00/hour	
Notary Services – each signature	\$10.00	
Payment Agreement- Set-up		
Set-Up Fee	\$101.00	103.00
Late Fee	\$35/mth	36.00
Loan Rate	9%	
Records Search	Actual Labor \$36.00/hr	
Re-issue check due to loss by payee	\$35.00	
Returned (NSF) Check	\$35.00	36.00
Taxicab Driver's Permit/ Bi-Annual	\$30.00	
Taxicab License/ Per Vehicle/Annual	\$66.00	67.00
Taxicab Photo Update	\$10.00	
Vacation – General (12)	\$1,218.00	1,236.00

CAPELLA USE FEES Moved to Park Facility Daily Use Fees	<u>FEE</u>	<u>W/CPI-U</u>
Basic Use Fee	\$101.00 /hr w/2 hr min	
Musical Event Fee (non-profit only – minimum 3 event series)	\$20.00/hr w/2 hr min	
Security Deposit	\$202.00 /event	

<u>FIRE</u>	<u>FEE</u>	<u>W/CPI-U</u>
Burn Permits	\$10.00	
Burn to Learn	\$4,046.00	4,107.00
Insurance Company Report	\$25.00	
Copies of County Road Directory	\$15.00	
Roadway Wash Down	\$101.00	103.00

<u>PARK FACILITY DAILY USE FEES (3)(4)</u>	<u>FEE</u>	<u>W/CPI-U</u>
Capella Use Fees		
Basic Use Fee	\$101.00 /hr w/2 hr min	102.00
Musical Event Fee (non-profit only - minimum 3 event series)	\$20.00/hr w/2 hr min	
Security Deposit	\$202.00/event	205.00

Other Park Facilities		
Bandshell/Stage Use: <i>non-resident add 50%, non-profit subtract 50%</i>	\$40.00	
Concession Stand w/restrooms	\$76.00	77.00
Concession Restrooms Only	\$25.00	
Folding Picnic Table / each, per event (8)	\$20.00	
Key replacement	\$25.00	
Park Use/Commercial		
City Resident		
1-100	\$40.00	41.00
>Each additional 100	\$40.00	41.00
Non-City Resident		
1-5	\$101.00	103.00
6-30	\$152.00	154.00

31-60	\$303.00	308.00
61-100	\$405.00	411.00
>Each additional 100	\$51.00	52.00

PLANNING

	<u>FEE</u>	<u>W/CPI-U</u>
Annexation (5)	\$5,027.00	5,102.00
Appeal to City Council (9)	Equal to Application Fee	
Appeal to Planning Commission	\$152.00	154.00
Combined Preliminary/Final Plat Approval	\$809.00	821.00
Comprehensive Plan Amendment (5)	\$3,631.00	3,685.00
Conditional Use Permit	\$2,574.00	2,612.00
Detailed Development Plan (5)	\$7,209.00	7,317.00
Extension of Time SUB/CUP	\$51.00	52.00
Home Occupation	\$40.00	
Lot Line Adjustment/Lot Line Vacation	\$142.00	144.00
LU Compatibility Statements	\$40.00	41.00
Master Plan Development (5)	\$8,496.00	8,623.00
Minor Change	\$991.00	1,006.00
Partition	\$1,982.00	2,012.00
Mural Application	\$76.00	77.00
Permit Clearance Review	\$167.00	170.00
Planned Unit Development (5)	\$4,428.00	4,494.00
Pre-Application Services (6)	\$521.00	529.00
Re-Notification	\$137.00	139.00
Sign Approval	\$131.00	133.00
Subdivision (5)	\$3,034.00	3,080.00
Subdivision Final Approval	\$152.00	154.00
Subdivision Replat (5)	\$2,023.00	2,053.00
Variance	\$2,412.00	2,448.00
Vacation – Land Use (12)	\$2,437.00	2,474.00
Workforce Housing Accessory Dwelling Registration Fee	\$51.00	52.00
Zone Change (without Comp Plan Amendment)	\$2,720.67	2,761.00

POLICE

	<u>FEE</u>	<u>W/CPI-U</u>
Fingerprinting – per card	\$10.00	
Intoxilizer	\$5.00	
Police Reports/per report	\$10.00	
Urinalysis	\$5.00	

PUBLIC WORKS

	<u>FEE</u>	<u>W/CPI-U</u>
Meter Drop-In Fee Connection (moved to Water under Sewer & Water)	\$130.00	
Public Works / Right-of-Way Plan Review (5) (13)	\$100 \$75/plan sheet	
Public Works / Right-of-Way Permit and Inspection (7)	\$80.00 or 5% of project value, whichever is greater	81.00
Right to Use/Encroachment Permit	\$40.00	41.00
Hydrology report review (5)	\$200.00	

SEWER & WATER

FEE W/CPI-U

Sewer

4" Sewer Tap-in (14)	Actual time & materials with estimated deposit.	
6" Sewer Tap-in (w/o existing lateral to property line) (14)	Actual time & materials with estimated deposit.	
BOD/SS Compiler (15)	\$150.00/week	
Flow Meter Data Logger (15)	\$150.00/week	

Water

Annual Backflow Inspection	\$100.00	
Meter Drop-in Connection Fee		
5/8 x 3/4"	\$245.00	
3/4"	\$275.00	
1"	\$275.00	
1-1/2"	\$1,579.00	
2"	\$1,879.00	
4" (14)	Actual time & materials with estimated deposit.	
Service Pipe Extension and Meter Installation inside City limits		
3/4 inch — inside City limits	\$2,832.00	
3/4 inch — outside City limits	\$4,304.00	
1 inch single service	\$3,285.00 \$3,736.00	
1 — 1/2 inch	\$5,324.00	
2 inch single service	\$7,362.00 \$5,066.00	
2 inch dual service	\$5,925.00	
4" Service and larger	Contractor only	
Service Extension Outside City Limits	Add 20% to inside City limit fees	
4" Service and larger	Contractor only	

SWIMMING POOL USE

Established annually by City Manager or designee.

Notes:

- (1) All copy charges are calculated based on a single-sided 8 1/2 x 11 page. An 8-1/2 x 14 page will be charged at one and one-half (1-1/2) the cost of singled sided page, and 11 x 17 pages will be charged as two (2) single sided pages. Large copying projects (>200 single sided pages or >100 double sided) will be charged actual copying and labor costs, with prior notification to, and acknowledgement of the requestor.
- (2) Determination of need for legal review must be made by the City Manager.
- (3) A refundable deposit will be charged equaling the total daily use fee, per application.
- (4) Non-profit groups holding events in City Parks during City wide events fully supported by Public Works staff and or considered a City sponsored event, such as the Azalea Festival, American Music Festival and Natures Coastal Holiday, will have the standard park use, concession stand, and bandshell fees waived.

- (5) Base fee. If the City cost for processing the application exceeds the base fee, the applicant will be liable for, and billed monthly, for staff and/or consultant's time and other associated costs incurred with processing the application (including but not limited to planning, public works, engineering, City administration, legal and inspection services).
- (6) Fee for the first meeting is applied to the application fee. Each pre-application meeting increases the application fee by \$515.00.
- (7) Fee is collected at time of permit issuance.
- (8) Tables may be rented at a reduced 50% rate with a minimum of 5 tables when both pick-up and delivery are handled by the applicant.
- (9) Appeal fee will be equal to the applicable application fee and adjusted, up or down, based on final cost recovery.
- (10) Fees noted are in addition to applicable records search fees. Any request requiring more than 1 hour of staff time for conversion, copying to disc, etc., will be charged the records search rate, in addition to standard fees, with prior notification to, and acknowledgement of the requestor. Sending and receiving of electronic files, and conversion of paper documents to PDF format, is limited to current available in-house technology.
- (11) Fee to be determined per event; based on staff requirements for pick-up, delivery and placement of barricades and cones.
- (12) Vacations requiring an additional hearing before the Planning Commission will be charged at twice the standard fee. (Standard fee includes a hearing before the City Council).
- (13) **One-time fee. Incomplete submittals will not be accepted.**
- (14) **Deposit based on estimate to be applied to actual cost of time and materials. Any deposit amount exceeding actual costs will be refunded upon project completion. Amounts in excess of the deposit will be billed at the earliest known stage in the project, or upon project completion.**
- (15) **Subject to availability.**