

**CHAPTER 17
SALE OF TOBACCO
ADMINISTRATION**

17.005 Definitions. As used in BCC Chapter 17:

- (1) **“Electronic smoking device”** means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use of inhalation of which may resemble smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or under any other product name or descriptor and any cartridge or other component of the device.
- (2) **"License"** means a license issued by the County for the retail sale of tobacco products.
- (3) **"Licensee"** means the holder of a valid license for the retail sale of tobacco products.
- (4) **"Minor"** means any person under eighteen (18) years of age.
- (5) **“School”** means any public or private elementary, middle, junior high or high school.
- (6) **"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.
- (7) **"Tobacco Product"** means any product that contains tobacco or is derived from tobacco and is intended to be introduced into the human body. “Tobacco Product” includes any electronic smoking device. “Tobacco Product” does not mean any product that the United States Food and Drug Administration has approved as a tobacco use cessation product.
- (8) **"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 physical possession of the tobacco product until after it is purchased. [Ord. 97-0129; Ord. 2016-0277]

IDENTIFICATION

17.010 Identification Required. It shall be a violation of BCC Chapter 17 for a retailer to sell or permit to be sold any tobacco products to an individual under the age of 27 without requesting and examining photographic identification establishing the purchaser's age as eighteen years or greater. [Ord. 97-0129]

LICENSES

17.015 License Required.

(1) It shall be a violation of BCC Chapter 17 for a retailer to sell any tobacco products unless that retailer holds and maintains a valid license from the County for each location in which tobacco products are sold. All such licenses shall be renewed annually on or before June 30.

(2) No license may be issued to authorize tobacco retailing at a non-fixed location. For the purposes of this section, a non-fixed location means any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or non-motorized vehicle.

(3) No license may be issued to authorize tobacco retailing at a temporary event. For example, a tobacco retail license will not be issued for use at a farmer's market or fair.

(4) No license may be issued to authorize tobacco retailing at any location within 1,000 feet of a school, as measured by the shortest distance traveled from any entrance of the proposed location for tobacco retailing to the parcel boundary of the school, provided, however, that the prohibition contained in this subsection (4) shall not apply to any tobacco retailer operating lawfully on the date immediately prior to this ordinance becoming effective.

(5) No license may be issued to authorize tobacco retailing at a location which is within 1,000 feet of a location occupied by another tobacco retailer, as measured by the shortest distance traveled from any entrance of the proposed location to any entrance of the existing location, provided, however, that the prohibition contained in this subsection (5) shall not apply to existing tobacco retailers operating lawfully on the date immediately prior to this ordinance becoming effective.

(6) Any exemption granted to a tobacco retailer pursuant to this section shall cease to apply if the tobacco retailer fails to timely renew the tobacco retailer license pursuant to subsection (1). [Ord. 97-0129; Ord. 2016-0277]

17.017 License Renewal. Licensees shall renew licenses annually. [Ord. 97-0129]

17.020 License Fee. The fee for the license shall be established by the Benton County Board of Commissioners by order and shall be sufficient to fund the administration, implementation, and enforcement of BCC Chapter 17. The fee for renewing tobacco licenses shall be determined by the Board by order and shall be sufficient to fund the administration, implementation, and enforcement of BCC Chapter 17. No fees shall be collected in excess of what is necessary for administration, implementation, and enforcement of BCC Chapter 17. No license is valid unless and until the fee is paid in full. [Ord. 97-0129]

17.025 Non-transferability. A tobacco retail license is non-transferable, except a replacement license will be issued, without charge, to a licensee who changes location during the valid term of the licensee's license. [Ord. 97-0129]

17.026 Display of License. Each license shall be prominently displayed in a publicly visible location at the licensed location. [Ord. 2016-0277]

SALES

17.030 Sales to Minors. It shall be a violation of BCC Chapter 17 for any tobacco retailer to sell, permit to be sold, or offer for sale any tobacco products to minors. [Ord. 97-0129]

17.035 Vendor-Assisted Sales. It shall be a violation of BCC Chapter 17 for any tobacco retailer to 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. 97-0129]

17.036 Lawful Business Operation. It shall be a violation of BCC Chapter 17 for a licensee to violate any local, state, or federal law applicable to tobacco products or tobacco retailing in the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license is issued. [Ord. 2016-0277]

17.037 Minimum Age for Persons Selling Tobacco. It shall be a violation of BCC Chapter 17 for minors to engage in tobacco retail sales. [Ord. 2016-0277]

PENALTIES

17.040 Licensee Penalties.

(1) Any licensee who violates any provision of BCC Chapter 17 shall be assessed penalties and/or have their license suspended as follows:

(a) In the case of a first violation within two years of any previous violation, the licensee shall be fined five hundred dollars (\$500) and shall be notified in writing of penalties levied for further violations.

(b) In the case of a second violation within two years of a violation under subsection (a), the licensee shall be fined one thousand dollars (\$1,000) and the license shall be suspended for 45 days. Tobacco retailers may not sell tobacco products and must remove all tobacco products from all retail areas while the license is suspended.

(c) In the case of three or more violations within two years of a violation under subsection (b), the licensee shall be fined one thousand five hundred dollars (\$1,500) and the license shall be revoked. The former licensee shall not be eligible to reapply for a license for a period of six months from the date of revocation. Tobacco retailers may not sell tobacco products and must remove all tobacco products from all retail areas while the license is suspended.

(d) Failure to pay a fine levied under Section 17.040 within thirty (30) days of the date the fine is levied shall result in the suspension of the licensee's license until the fine is paid.

(e) Any new application for a license or renewal, during the period a license is suspended pursuant to Section 17.040, shall be held in abeyance pending payment of the fine and

termination of the suspension period. Any new application for a license, during the period a license is revoked pursuant to Section 17.040, shall be denied.

(2) Any retailer violating Section 17.015 shall be subject to a fine of \$500 per day for each violation.

(3) The County Department of Health and County Sheriff's Office shall have the authority to impose penalties pursuant to Section 17.040.

(4) The Health Administrator may enforce any provision of this Chapter pursuant to Chapter 26 of the Benton County Code. [Ord. 97-129; Ord. 99-0147; Ord. 2016-0277]

APPEALS

17.045 Notice and Hearing.

(1) Prior to the suspension or revocation of a license pursuant to Section 17.040, the County shall provide notice to the licensee. This notice shall be sufficient to apprise the licensee of

(a) the date of issuance of the notice,

(b) the proposed penalty,

(c) the reason for the proposed imposition of the penalty, and

(d) licensee's right to request a hearing regarding the proposed penalty and the request procedure in Section 17.045(2).

(2) To appeal, a licensee shall request a hearing as follows:

(a) The request shall be in writing, directed to the Benton County Health Administrator, and must be accompanied by a non-refundable hearing fee, the amount of which fee shall be established by an order of the Board of Commissioners, and

(b) The request must be received by the Benton County Health Administrator within ten (10) days of issuance of the notice.

(3) If a hearing is properly requested pursuant to Section 17.045, a hearing shall be conducted before a hearings officer designated by the Board. The hearings officer shall have full authority to set hearing dates and hearing procedures. All actions of the hearings officer are final and any penalties imposed by the hearings officer shall take effect immediately. For purposes of Section 17.040(l)(d), a contested fine is levied as of the date the hearings officer imposes penalties.

(4) Should the licensee fail to request a hearing within the time and in the manner set out in this Section, licensee has waived the right to a hearing and the penalty shall be imposed at the expiration of the ten (10) day period established in Section 17.045(1)(f). For purposes of Section 17.040(1)(d), a fine is levied as of the date of the expiration of this ten (10) day period. [Ord. 97-0129]