

## **Title 5**

### **BUSINESS REGULATIONS**

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## Chapter 5.04

### CLATSOP COUNTY AMBULANCE SERVICE AREA

#### Sections:

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- 5.04.020 Definitions.**
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#### **5.04.010 Policy and purpose.**

- A. ORS 823.180 requires Clatsop County to develop and adopt a plan for the County relating to the need for a coordination of emergency ambulance services and to establish an ambulance service area (ASA) consistent with the plan to provide efficient and effective emergency ambulance services.
- B. This chapter, together with the document known as the Clatsop County Ambulance Service Area Plan (ASA Plan) make up the complete plan for emergency ambulance services for Clatsop County.
- C. The provisions of ORS 221.485 and 221.495, 478.260(3), and 823.020 through 823.320 require Clatsop County to develop and adopt a plan for emergency ambulance services that recognizes the authority of cities and rural fire protection districts to operate and regulate emergency ambulance services within their own territories subject to the ASA Plan. That the provision of effective and efficient emergency ambulance services pursuant to the Clatsop County ASA Plan within cities and rural fire protection districts must be accomplished primarily on a cooperative basis. Clatsop County will employ formal sanctions and litigation to enforce the provisions of the Clatsop County ASA Plan when voluntary compliance cannot be obtained. (Ord. 95-6 § 3)

#### **5.04.020 Definitions.**

“Administrator” means a person designated by order of the Board to administer this chapter and the duly authorized deputy or assistant of such person.

“Ambulance service area (ASA)” means a geographical area which is served by one ambulance service provider, and may include all or a portion of a county, or all or portions of two or more contiguous counties.

“Ambulance Service Area Advisory Committee (Committee)” means the group that will advise the Board as it pertains to the ASA Plan.

“Board” means the Clatsop County Board of Commissioners for Clatsop County, Oregon.

“Franchise” means a franchise to provide emergency ambulance service issued by the Board pursuant to this chapter.

“Persons” means and includes individuals, corporations, associations, firms, partnerships, joint stock companies, cities, rural fire protection districts, and special service districts formed and existing pursuant to Oregon Revised Statute. (Ord. 95-6 § 4)

#### **5.04.030 Exemptions.**

This chapter shall not apply to:

- A. Ambulances owned or operated under the control of the United States Government;
- B. Vehicles and aircraft being used to render temporary assistance in the case of a major catastrophe or emergency with which the ambulance services of the surrounding locality are unable to cope, or when directed to be used to render temporary assistance by an official at the scene of an accident;
- C. Vehicles operated solely on private property or within the confines of institutional grounds, whether or not the incidental crossing of any public street, road or highway through the property or grounds is involved; or
- D. Ambulances or vehicles transporting patients from outside the County to a health care facility within the County, or which are passing through without a destination in the County. (Ord. 95-6 § 5)

#### **5.04.040 Administration.**

The administrator, under the supervision of the Board and with the assistance of the Committee, shall be responsible for the administration of this chapter. In order to carry out the duties imposed by this chapter, the administrator, or persons authorized by the administrator, are hereby authorized to enter on the premises of any person regulated by this chapter at reasonable times and in a reasonable manner to determine compliance with this chapter and regulations promulgated pursuant thereto. The administrator shall also have access to records pertaining to ambulance service operations of any person regulated by this chapter. These records shall be made available within five working days to the administrator at the person’s place of business, or copies made and provided as requested by the administrator. (Ord. 95-6 § 6)

#### **5.04.050 Ambulance service area.**

For the efficient and effective provision of emergency ambulance services in accordance with the ASA Plan, the ASA shown on the map attached thereto as Appendix #1, is adopted as the ASA for Clatsop County. The Board, after notice to the affected ASA providers and by the adoption of an order, may adjust the boundaries of an ASA from time to time as necessary to provide efficient and effective emergency ambulance services. (Ord. 95-6 § 7)

**5.04.060 Ambulance service providers regulated.**

Effective July 1, 1995, no person shall provide emergency ambulance service in Clatsop County, Oregon, unless such person is franchised in accordance with the applicable provisions of this chapter. (Ord. 95-6 § 8)

**5.04.070 Application for ambulance service franchise.**

- A. Applications for franchises shall be on forms provided by the administrator. In addition to information required on the forms, the Board may require additional information it deems necessary to insure compliance with this chapter.
- B. The applicant shall provide the following information:
  - 1. The name and address of the person or agency applying.
  - 2. The ASA the person desires to serve, the location(s) from which ambulance services will be provided, and the level of service to be provided.
  - 3. A statement as to whether or not the person will subcontract for any service to be provided. If some service will be provided by subcontract, a copy of that proposed subcontract shall be provided.
  - 4. A list of vehicles to be used in providing emergency ambulance services including year, make and model, and verification that each vehicle is or can be licensed as a basic life support and/or advance life support ambulance by the Oregon Health Division.
  - 5. A statement that all equipment and supplies in each ambulance will conform to Oregon Health Division standards.
  - 6. A list of personnel to be used in providing emergency ambulance service and their current emergency medical technician level and certificate number, or other appropriate certification.
  - 7. Proof of financial ability to operate, including an operating budget for public bodies or financial statement for private entities, references and/or statement of past ambulance service. Private companies must include a profit and loss statement in addition to the above materials. Other appropriate financial information, such as income, tax returns, or reports by governmental authorities shall also be submitted upon request. Public bodies must provide information regarding the sources and amounts of funding for emergency ambulance services.
  - 8. Proof of public liability insurance in the amount of not less than the tort liability limits set forth in ORS 30.272 and 30.273. Applicants may be self-insured. All policies shall be in a form satisfactory to the administrator and name Clatsop County as an additional insured.
  - 9. A statement of experience in providing emergency ambulance service of a comparable quality and quantity to insure compliance with this chapter, regulations promulgated thereunder, any franchise issued, and the ASA Plan.
  - 10. Proof of ability to comply with the terms and conditions of the ASA Plan and applicable County ordinances, in the form of a narrative summary.
  - 11. A description of any prepaid ambulance service plan, including number of members, number of years of operation, funding and term.
  - 12. Information, in the form of run logs, medical records, supervising physician correspondence, audit reports, training records, policy and procedure manuals and equipment records and inventories, and any other records or materials requested.

13. In the case of an application to transfer or take over an already assigned franchise:
  - a. A detailed summary of how the proposed change will improve emergency ambulance response time, and the quality and level of services to the ASA. It shall include an assessment of how the proposed change will impact the existing first response system.
  - b. Evidence that the call volume in the ASA is sufficient to financially or otherwise justify the change in service.
  - c. Information, in the form of run logs, medical records, supervision physician correspondence, audit reports, training records, policy and procedure manuals and equipment records and inventories, and any other records or materials requested.
- C. The Board may from time to time, by order, adopt fees to defray the actual reasonable costs incurred by Clatsop County in processing applications, and adopt annual franchise fees to defray the reasonable costs of Clatsop County in administering this chapter. (Ord. 95-6 § 9)

**5.04.080 Existing ambulance service providers.**

Persons who meet the application requirements of Section 5.04.070 and who were providing service on the effective date of the ordinance codified in this chapter shall be franchised to provide emergency ambulance service for the ASA they were serving on such effective date. (Ord. 95-6 § 10)

**5.04.090 Review of application for franchise.**

- A. Applications shall be reviewed by the administrator, who shall make such investigation as he or she deems appropriate, and who may request assistance of other persons as necessary.
- B. The administrator shall notify the holder of a franchise for providing emergency ambulance service to an ASA of any applications by another person to take over that franchise.
- C. Unless the time is extended by the Board for good cause, the administrator shall make his or her recommendation to the Board to grant, deny, modify or attach appropriate conditions to the application. The administrator shall transmit his or her recommendation within 90 days after the application and any required supplemental information has been received. (Ord. 95-6 § 11)

**5.04.100 Board action on application for franchise.**

Upon receipt of the administrator's recommendation, the Board:

- A. Shall publish notice of its intent to hold a public hearing on the application and recommendations at least ten days, but not later than 30 days following publication of notice.
- B. May require additional investigation by the administrator if it finds that there is insufficient information on which to base its action.
- C. Shall, upon the basis of the application, the administrator's recommendation, such other information as is permitted by this chapter, and such information as is presented to the Board at the public hearing make an order granting, denying or modifying the application or attaching conditions thereto.
- D. Shall not make an order adverse to the applicant or to the holder of, or applicant for, another franchise effective less than 30 days after the date of such order and shall notify such persons in writing of the order. The Board may suspend operation of this subsection and enter an emergency order if it finds that

there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

- E. After the Board makes an order granting an emergency ambulance service franchise, with or without conditions, and the franchisee finds he or she is unable to provide a particular service, the administrator may permit the franchisee to subcontract such service to another person if the administrator finds that the quality and extent of the service would not be jeopardized. The administrator may require the filing of such information as he or she deems necessary. (Ord. 95-6 § 12)

**5.04.110 Franchise terms and renewals.**

- A. The initial ambulance service franchise in an ASA shall be valid for a period of seven years from the date of issuance.
- B. Thereafter, unless the Board finds that a longer or shorter term is required in the public interest, the term of an ambulance service franchise shall be five years.
- C. Unless grounds exist for refusal to renew a franchise under provisions for suspension or revocation as set forth in Section 5.04.140, or unless the franchise is to be given to a new person, franchises shall be renewable. Application for renewal shall be made on forms provided by the administrator.
- D. Not more than 180 days and not less than 120 days prior to the expiration of the franchise, a franchisee wanting to renew the franchise and any person desiring to take over the franchise shall submit an application to the administrator.
- E. Review of all applications for renewal or take over of a franchise shall be conducted in the same manner as for an application pursuant to Sections 5.04.070, 5.04.090 and 5.04.100. (Ord. 95-6 § 13)

**5.04.120 Early discontinuance of service by franchisee.**

- A. If a franchisee discontinues service before the expiration of his or her franchise, the Board shall set a time by which applications must be submitted for a new franchise in the ASA.
- B. The administrator shall develop an interim plan for coverage of the ASA, using existing franchisees and/or other available resources until the ASA can be reassigned.
- C. The administrator shall issue a temporary certificate valid for a stated period not to exceed six months, entitling a person to provide emergency ambulance service in all or part of the ASA. The administrator may renew a temporary certificate for one additional six-month period. (Ord. 95-6 § 14)

**5.04.130 Transfer of franchises.**

A franchisee may transfer his or her franchise to another person only upon written notice to and approval by the Board. Review of an application for transfer of a franchise shall be conducted in the same manner as for an application pursuant to Sections 5.04.070, 5.04.090 and 5.04.100. (Ord. 95-6 § 15)

**5.04.140 Enforcement of franchise provisions.**

- A. Subject to the policies stated in Section 5.04.010, and in addition to the remedy provided in Section 5.04.150, and penalties provided elsewhere in this chapter or at law, the administrator shall, upon reasonable cause, make an investigation to determine if there is sufficient reason and cause to suspend, modify, revoke or refuse to renew a franchise as provided in this subsection.

- B. If in the judgment of the administrator, there is sufficient evidence to constitute a violation of applicable local, state or federal law, this chapter, ORS Chapter 823 or the rules promulgated thereunder, the ASA Plan, or if the franchisee has materially misrepresented facts or information given in the application for the franchise, the administrator shall notify the franchisee in writing, by certified mail, return receipt requested, or by personal service, as is provided by law for the service of a summons, of the violation and what steps he or she must take to cure the violation. The administrator shall send a copy of the notice to the Board and to the Committee.
- C. Ten days following the receipt of notice of violation, the Board may enter its order of revocation, modification, suspension or non-renewal, and may thereby revoke, modify, suspend, or not renew the franchise, unless prior thereto the franchisee shall file with the Board his or her request for a hearing on the administrator's notice of violation. If said request is timely filed, or if the Board so moves on its own, revocation, modification, suspension, or non-renewal will be stayed until the Board can, at its earliest convenience, hold a public hearing thereon. Notice of said hearing shall be given to the franchisee by mail and to all others by publication in a newspaper of general circulation in the County or the ASA at least ten days prior to such hearing. The burden of proof at the hearing held hereunder shall be upon the franchisee.
- D. In lieu of the suspension or revocation of the franchise, the Board may order that the violation be corrected and make the suspension or revocation contingent upon compliance with the order within the period of time stated therein. Notice of the Board action shall be provided by mail to the franchisee. The notice shall specify the violation, the action necessary to correct the violation, and the date by which the action must be taken. The franchisee shall notify the Board of the corrective action taken. If the franchisee fails to take corrective action within the time required, the Board shall notify the franchisee by certified mail, return receipt requested, or by personal service that the franchise is suspended or revoked upon service of the notice.
- E. Should the franchisee fail to comply with the Board's order, then the Board may take any steps authorized by law to enforce its order. (Ord. 95-6 § 16)

#### **5.04.150 Preventing interruption of service.**

Whenever the Board finds that the failure of service or threatened failure of service would adversely impact the health, safety or welfare of the residents of this County, the Board shall, after reasonable notice, but not less than 24 hours' notice to the franchisee, hold a public hearing. Upon appropriate findings after the hearing, the Board shall have the right to authorize another franchisee or other person to provide services. (Ord. 95-6 § 17)

#### **5.04.160 Appeals, abatement and penalties.**

- A. All the decisions of the Board under this chapter shall be reviewable by the Circuit Court of the State of Oregon for the County of Clatsop, only by way of writ of review.
- B. The provision of emergency ambulance service by any person in violation of this chapter, or regulations promulgated thereunder, is a nuisance and the Board may, in addition to other remedies provided by law or by this chapter, institute injunctive abatement or other appropriate legal proceedings to temporarily or permanently enjoin or abate such emergency ambulance service.

- C. Any person who violates any of the provisions of this chapter is guilty of a violation. Failure from day to day to comply with the terms of these provisions shall be a separate offense for each day. Failure to comply with any provision shall be a separate offense for each such provision.
- D. Violations of these provisions are punishable, upon conviction, by a fine of not more than \$500.00 for a non-continuing offense; i.e., an offense not spanning two or more consecutive calendar days. In the case of a continuing offense, i.e., an offense which spans two or more consecutive calendar days, violation of the provisions is punishable by a fine of not more than \$500.00 per day up to a maximum of \$1,000.00 as provided by law. (Ord. 95-6 § 18)

**5.04.170 Duties of ambulance service franchisee.**

The franchisee:

- A. Shall conduct its operation in compliance with all applicable state and federal laws, rules and regulations, the terms of this chapter and the Clatsop County ASA Plan.
- B. Shall not fail or refuse to respond to an emergency call for service when an ambulance is available for service.
- C. Shall not respond to a medical emergency located outside its assigned ASA except:
  - 1. When a request for specific emergency ambulance service is made by the person calling for the ambulance and the call does not dictate an emergency response;
  - 2. When the franchisee assigned to the ASA is unavailable to respond and the franchisee is requested by another franchisee or 9-1-1 dispatch to respond; or
  - 3. When the response is for supplemental assistance or mutual aid.
- D. Shall not voluntarily discontinue service to his or her assigned ASA until he or she has:
  - 1. Given 90 days' written notice to the administrator, or
  - 2. Obtained written approval of the Board.
- E. Subsection D of this section shall not apply to:
  - 1. Change, restriction or termination of service when required by any public agency, public body or court having jurisdiction; or
  - 2. Transfer of franchises pursuant to Section 5.04.130 of this chapter. (Ord. 95-6 § 19)

**5.04.180 Ambulance Service Area (ASA) Advisory Committee.**

- A. There is hereby created an Ambulance Service Area (ASA) Advisory Committee.
- B. Members shall be appointed by and serve at the pleasure of the Board. The Board may appoint additional persons to the Committee to serve as ex-officio members or advisors. The Board may appoint or approve designation of alternates to serve in the absence of persons appointed to the Committee.
- C. Except for the ASA administrator and other Clatsop County staff, appointments shall be for staggered terms on the initial Committee for a term not to exceed three years. Subsequent appointments shall be for two-year terms. Members shall serve until their successors are appointed and qualified. Vacancies shall be filled by the Board for the balance of the unexpired term. Persons may be appointed to successive terms.

- D. The Committee shall elect a chairperson. The Committee shall meet at such times as it deems necessary or as called by the Administrator or the Board. The chairperson or any of the seven members of the Committee may call a special meeting with five days' notice to other members of the Committee; provided however, that members may waive such notice.
- E. Fifty percent plus one constitute a quorum for the transaction of business. A majority vote of those present and voting is required to pass motions.
- F. In addition to other duties prescribed by this chapter the Committee shall:
  - 1. Review and make recommendations to the Board regarding the selection criteria for determining a franchise to provide emergency ambulance service.
  - 2. Regularly provide information to the Board from prehospital care consumers, providers and the medical community.
  - 3. Periodically review the ASA Plan and make recommendations to the Board, including, but not limited to:
    - a. Review the standards established in the Plan and make recommendations regarding improvement of or new standards as required by OAR 333-260-050;
    - b. Monitor the coordination between emergency medical service resources;
    - c. Review dispatch procedures and compliance; and
    - d. Review the effectiveness and efficiency of the ASA boundaries.
  - 4. Implement the quality assurance program outlined in the ASA Plan to insure compliance with the ASA Plan.
  - 5. Perform such other duties as directed by the Board.
- G. Committee members shall avoid acting in any matters where a conflict of interest may arise. Any Committee member having a direct or indirect financial or pecuniary interest in any matter before the Committee for consideration shall withdraw from participation in any action by the Committee in said matter. Nothing in this section shall limit the ability of any person to provide testimony to the Committee. (Ord. 95-6 § 20)

**5.04.190 Regulations of ambulance service.**

Upon its own motion or upon a recommendation of the Committee, the Board may adopt ordinances, resolutions or orders regulating emergency ambulance service or implementing this chapter. Such regulations shall not conflict with ORS 823 and rules promulgated pursuant thereto. (Ord. 95-6 § 21)

**5.04.200 Initial responder.**

Nothing in these provisions prohibits a 9-1-1 agency, responsible for the dispatching of emergency services, from dispatching an initial responder to the scene of a medical emergency in addition to dispatching an emergency ambulance service provider. (Ord. 95-6 § 22)

## Chapter 5.08

### REGULATIONS OF SECURITY ALARMS

#### Sections:

- 5.08.010 Definitions.**
- 5.08.020 Alarm user permits.**
- 5.08.030 Automatic dialing devices restricted.**
- 5.08.040 Restrictions on audible alarms.**
- 5.08.050 Penalties—Hearings.**
- 5.08.060 Response to alarm.**
- 5.08.070 Liability.**
- 5.08.080 Confidentiality, statistics.**
- 5.08.090 Allocation of revenues and expenses.**
- 5.08.100 Coordination with city permits.**

#### **5.08.010 Definitions.**

“Alarm business” means a business by any individual, partnership, corporation or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed, any alarm system in or on any building, structure or facility.

“Alarm system” means any assembly of equipment, mechanical or electrical, arranged to signal, audible or otherwise, the occurrence of any illegal entry, fire or any other activity requiring urgent attention and to which police are expected to respond, including both silent and audible alarms.

“Alarm user” means the person, firm, partnership, association, corporation, company or organization of any kind, in control of any building, structure or facility wherein an alarm system is maintained.

“Automatic dialing device” is a device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or code signal an emergency message indicating a need for emergency response.

“False alarm” means an alarm signal eliciting a response by police when a situation requiring a response by police does not in fact exist; but does not include an alarm signal caused by violent conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm business operator or alarm user.

“Sheriff” means the Sheriff of Clatsop County or his/her designated representative. (Ord. 89-8 § 3)

#### **5.08.020 Alarm user permits.**

- A. Every alarm user shall obtain an alarm user permit, for each system the user intends to install in the unincorporated areas of Clatsop County. Such permit shall be obtained from an alarm business or from the Clatsop County Sheriff’s Department.
- B. The owner of all alarm systems existing the date of passage of the ordinance codified in this chapter shall have 60 days to obtain a permit.

- C. No fee or other changes shall be required to obtain this permit for any application made prior to December 31, 1989, for any alarm system in use on or prior to that date. Thereafter, the fee for each permit shall be \$25.00, payable to Clatsop County and mailed to the Clatsop County Sheriff with the alarm user permit application.
- D. All alarm businesses shall, upon the sale of any alarm system for use within Clatsop County, require the purchase to complete and sign an alarm user permit. The alarm business shall retain a copy of the permit and mail the original to the Clatsop County Sheriff's Department, together with a check for \$25.00. The Clatsop County Sheriff shall supply the alarm business with the appropriate permit forms.
- E. The alarm user shall report to the Clatsop County Sheriff in writing, any changes in the information on the permit within 15 days of the change.
- F. An alarm user permit shall be good only for the calendar year in which it is issued and must be renewed by February 1st of the following year to remain in effect; provided that any permit applied for prior to February 1, 1990, shall be valid until February 1, 1991; provided, however, that any permit applied for on or after October 1st of any given year shall be considered valid for the subsequent calendar year. Renewal shall be accomplished by submitting the same application required for an alarm user permit together with a required fee of \$25.00 to the Clatsop County Sheriff no later than February 1st annually. (Ord. 89-8 § 4)

**5.08.030 Automatic dialing devices restricted.**

- A. It is unlawful for any person to program an automatic dialing device to select any telephone line assigned to the Clatsop County Sheriff's Department, including 9-1-1. It is also unlawful for an alarm user to fail to disconnect any such device within 12 hours of receipt of a written notice from the Clatsop County Sheriff's Department.
- B. Within 60 days after the effective date of the ordinance codified in this chapter, all existing automatic telephone dialing devices programmed to select a Clatsop County Sheriff's Department telephone number shall be disconnected or reprogrammed. (Ord. 89-8 § 5)

**5.08.040 Restrictions on audible alarms.**

- A. It is unlawful for any person to use an alarm system which emits an audible sound similar to the siren sound made by police, fire, ambulance or other emergency vehicles.
- B. It is unlawful for any person to use an alarm system which emits an audible sound for longer than 15 minutes upon activation. (Ord. 89-8 § 6)

**5.08.050 Penalties—Hearings.**

- A. In the event that an alarm user fails to obtain or renew a permit and/or fails to pay any fine assessed herein or otherwise fails to comply with an order of the Sheriff and/or Board of Commissioners, the County shall be under no obligation to acknowledge or in any way respond to any alarm calls received until the fine has been paid and/or a permit obtained. No permit may be issued to a person until all fines assessed against the person have been paid.
- B. No governmental unit shall be subject to the provisions of Section 5.08.040 or be required to pay a permit fee. Governmental unit shall mean any county, state or federal government or any district located in whole or in part in Clatsop County.

- C. Violation of this ordinance is a Class B violation.
- D. If a property owner incurs more than two false alarms in a 12-month period, there will be a response penalty of \$100.00. (Ord. 96-15; Ord. 89-8 § 7)

**5.08.060 Response to alarm.**

Upon arrival at the place of the alarm, the responding officer shall make a visual inspection to determine if entry to the premises has been made. If entry has been made, the officer shall check the premises for unauthorized occupants. If the premises are found secure or if entry has been determined but no occupants found on the premises, the responding officer shall so notify the Sheriff's Department. Thereafter, the responding officer shall be under no obligation to remain at the premises; nor shall Clatsop County, the Sheriff, its officers, employees or agents be liable for any damage alleged to have occurred after the officer leaves the premises. It shall be the responsibility of the alarm user to discontinue any audible alarm. (Ord. 89-8 § 8)

**5.08.070 Liability.**

Clatsop County has limited resources and staff. Clatsop County cannot and does not warrant that its officers will respond to all alarms received. Response and response time will depend upon officer availability. The person or alarm service monitor reporting an alarm shall be advised when an officer can be expected to arrive. However such persons will also be advised that subsequent emergency calls may force the responding officer elsewhere, delaying or preventing his or her response altogether. Neither Clatsop County, the Sheriff, its officers, employees or agents shall be held liable for failure to respond to a report of an alarm. (Ord. 89-8 § 9)

**5.08.080 Confidentiality, statistics.**

- A. All information submitted in compliance with this chapter shall be held in the strictest confidence and shall be deemed public record exempt from disclosure pursuant to state statute. Any violation of confidentiality shall be deemed a violation of this chapter. The Sheriff shall be charged with the sole responsibility for the maintenance of all records of any kind whatsoever under this chapter.
- B. Subject to the requirements of confidentiality, the Sheriff shall develop and maintain statistics having the purpose of assisting alarm system evaluation for use by members of the public. (Ord. 89-8 § 10)

**5.08.090 Allocation of revenues and expenses.**

All fees, fines and forfeitures of bail collected pursuant to this chapter shall be general fund revenue of Clatsop County. (Ord. 89-8 § 11)

**5.08.100 Coordination with city permits.**

Alarms located within the city limits of any municipality shall not be required to obtain a permit from Clatsop County. (Ord. 89-8 § 12)

## Chapter 5.12

### SHORT-TERM RENTALS (EXCLUDING AR-RCR ZONE)

#### Sections:

- 5.12.010 Short title.**
- 5.12.020 Purpose and findings.**
- 5.12.030 Separability.**
- 5.12.040 Conformance of state law.**
- 5.12.050 Inconsistent provisions.**
- 5.12.060 Applicability.**
- 5.12.070 Definitions.**
- 5.12.080 Standards.**
- 5.12.090 Permits required.**
- 5.12.100 Fees established.**
- 5.12.110 Complaints.**
- 5.12.120 Compliance, revocation and appeals.**

#### **5.12.010 Short title.**

This chapter shall be known as the “Clatsop County Short-Term Rental Ordinance” and may be cited and pleaded as such. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 1)

#### **5.12.020 Purpose and findings.**

- A. The purpose of this chapter is to regulate short-term rentals in order to enhance public safety and livability within Clatsop County.
- B. The findings attached as Exhibit “A” to the ordinance codified in this chapter are incorporated herein by reference. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 2)

#### **5.12.030 Separability.**

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this chapter. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 3)

#### **5.12.040 Conformance of state law.**

This chapter shall not substitute for nor eliminate the necessity for conformity with any and all laws or rules of the State of Oregon, or its agencies, or any ordinance, rule, or regulation of Clatsop County. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 4)

#### **5.12.050 Inconsistent provisions.**

This chapter shall supersede, control and repeal any inconsistent provision of any County ordinance as amended or any other regulations made by Clatsop County except Chapter 5.24 of this code, which will take

precedence within the Arch Cape Rural Community Zones. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 5)

#### **5.12.060 Applicability.**

This chapter shall apply within the unincorporated areas of Clatsop County including within urban growth boundaries, but shall not apply within the boundaries of any incorporated city. Provided, for short term rentals located within an urban growth boundary, and subject to an Urban Growth Boundary Management Agreement, the requirements in the Urban Growth Boundary Management Agreement will apply. This chapter does not apply to hotels, motels, bed and breakfast facilities, hostels, licensed or registered campgrounds or RV parks, or other traveler's accommodation which are inspected and licensed pursuant to Oregon Administrative Rule. (Ord. 2022-03 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 6)

#### **5.12.070 Definitions.**

The following definitions apply to this chapter:

“Certified installer” means a person who is certified by DEQ to construct or install or oversee the construction or installation of onsite sewage disposal systems.

“Certified maintenance provider” means a person who is certified by DEQ to inspect, maintain, or certify or supervise maintenance on onsite systems using alternative treatment technologies, recirculating gravel filters, sand filters, or pressurized distribution systems.

“Cesspool” means a lined pit that receives raw sewage, allows separation of solids and liquids, retains the solids, and allows liquids to seep into the surrounding soil through perforations in the lining.

“Contact person” means the owner, or if designated on the application for a permit, the agent of the owner, authorized to act for the owner.

“DEQ” is the Oregon Department of Environmental Quality.

“Dwelling unit” means a permanent structure constituting a separate independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and sanitation facilities.

“Enforcement Officer” is the Building Official, code compliance specialist, and/or person designated by the Clatsop County Manager to enforce the provisions of this chapter.

“Holding tank system” means an alternative system consisting of the combination of a holding tank, service riser, and level indicator (alarm), designed to receive and store sewage for intermittent removal for treatment at another location.

“On-site wastewater treatment system” means any existing or proposed subsurface on-site wastewater treatment and dispersal system, including, but not limited to, a standard subsurface, alternative, experimental, or non-water-carried sewage system.

“Owner” is the owner or owners of a short-term rental.

“Permit” means a short-term rental permit.

“Person” means every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government or any other group or combination acting as a unit.

“Rental” means an agreement granting the use of a dwelling unit to a person. Use of a dwelling unit by a recorded owner or other person or persons without monetary consideration shall not be considered to be a rental under this chapter.

“Rented” means the use of a dwelling unit granted to a person in exchange for monetary consideration.

“Renter” is a person who rents a short-term rental.

“Serious fire or life safety risk” means a building code or ordinance violation involving those construction, protection and occupancy features necessary to minimize danger to life from fire, including smoke, fumes or panic as well as other considerations that are essential to life safety.

“Sewage disposal provider” means a person with a valid license issued by DEQ to perform those services.

“Short-term rental” is a dwelling unit (including any accessory guest house on the same property) that is rented to any person or entity for a period of up to 30 consecutive nights.

“Sleeping area” is a fully enclosed habitable space within a dwelling unit designed, intended, or used for sleeping. The sleeping room shall have a permanent heat source and an emergency egress or rescue opening within the sleeping room itself. The emergency egress and rescue opening shall meet the minimum standards of the current Oregon Residential Specialty Code. Tents and recreational vehicles shall not be considered a sleeping area and shall not be used as a short-term rental unit. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 7)

#### **5.12.080 Standards.**

All short-term rentals shall comply with the following standards:

- A. No more than one dwelling unit may be rented on a single lot or parcel.
- B. All applicable County transient room taxes shall be paid pursuant to County Code of Regulations Chapter 3.16.
- C. The hours of 10:00 p.m. until 7:00 a.m. the next day are required quiet time. Renters who violate this standard may be issued a citation and be subject to a fine pursuant to Clatsop County Code Chapters 1.11 and 8.12.
- D. The owner or contact person shall notify every renter, in writing, of the quiet times and that a renter may be fined for violations under this chapter.
- E. The owner or contact person shall attempt to contact a renter by phone, text, email and/or other method within 20 minutes of receiving any complaint concerning the conduct of a renter.
- F. The current short-term rental permit and “Good Neighbor” flyer shall be permanently and prominently displayed inside and near the front entrance of the short-term rental and provided to adjacent property owners within 300 feet of the property, and shall list the following:
  - 1. The name, address, email and phone number of the owner and designated agent;
  - 2. The maximum occupancy and vehicle limits for the short-term rental unit;
  - 3. Identification of the number and location of parking spaces available;
  - 4. A map showing the property boundaries;
  - 5. For properties within a tsunami inundation zone, the tsunami evacuation route.

6. Emergency information regarding power outages, wildfires and landslides, in addition to tsunamis
  7. The County shall, within seven calendar days of the issuance of the short-term rental permit, provide a copy of the permit, "Good Neighbor" flyer and contact information for the designated agent to property owners within 300 feet of the subject property. The property owner shall provide the required payment, as established by the Clatsop County Board of Commissioners.
- G. The owner shall provide covered garbage containers that can be secured. All garbage must be placed and be kept in secured containers provided for that purpose. Containers shall not block access to the property or dwelling unit. Garbage shall be removed a minimum of one time per week unless the short-term rental is not rented. Owners shall provide guests with information about recycling opportunities.
  - H. At least one functioning fire extinguisher shall be accessibly located on each floor within the dwelling unit.
  - I. All plug-ins and light switches shall have face plates.
  - J. The electrical panel shall have all circuits labeled.
  - K. Ground fault circuit interrupter (GFCI) protected receptacles shall be provided at outdoor locations and at kitchen and bathroom sinks.
  - L. A smoke detector must be provided and maintained in each sleeping area, outside each sleeping area in its immediate vicinity and in each additional story and basement without a sleeping area.
  - M. All fireplaces, fireplace inserts and other fuel burning heat sources shall be properly installed and vented.
  - N. All interior and exterior stairways with four or more steps and that are attached to the structure, must be equipped with a hand railing.
  - O. All interior and exterior guardrails, such as deck railings, must be able to withstand a 200 pound impact force.
  - P. Emergency Escape and Rescue Openings.
    1. Sleeping areas in premises rented as a short-term rental shall have at least one operable emergency escape and rescue opening. Sill height shall not be more than 44 inches above the floor. Openings shall open directly into a public way or to a yard or court that opens to a public way.
    2. Minimum net clear opening at grade floor openings shall be five square feet and 5.7 square feet at upper floors. Minimum net clear height is 24 inches and net clear width is 20 inches. If the emergency escape or rescue opening does not meet these standards, then an alternative may be accepted by the Clatsop County Building Official that meets the standards of the Oregon Residential Specialty Code.
    3. A sleeping area in a short-term rental that lacks the required emergency escape opening shall not be used as a sleeping area. Where equipped with a door, it shall remain locked at all times when the dwelling is being used as a short-term rental. Such a noncompliant sleeping area shall not be included in the maximum occupancy calculation for the short-term rental. The owner or contact person shall notify every renter, in writing, that the noncompliant sleeping area may not be used for sleeping.

- Q. Exterior hot tubs shall have adequate structural support and shall have a locking cover or other barrier to adequately protect against potential drowning when a hot tub is not available for permissive use.
- R. The maximum occupancy for a short-term rental unit shall be calculated on the basis of the lesser of either: (1) the maximum onsite sanitary capacity, as approved by the Clatsop County Environmental Health Division; or (2) an average of two persons per sleeping area, up to a maximum of 14 persons. For the purpose of maximum occupancy, those under two years of age shall not be counted. Tents and recreational vehicles shall not be used to increase the number of people approved to occupy a short-term rental.
- S. There shall be at least one off-street parking space available for each approved sleeping area in short term rental, plus one additional parking space. If otherwise permitted, trailers for boats and all-terrain vehicles will be allowed in available off-street parking spaces. Parking shall not, under any circumstances, hinder the path of any emergency vehicle. Renters may be cited and fined under existing state law in the event they park illegally.
- T. The owner or contact person shall notify every renter in writing of the required off-street parking and other parking spaces available to serve the short-term rental.
- U. A house number, visible from the street, shall be maintained.
- V. If the property is not connected to a public sewer the on-site wastewater treatment system must be able to handle the capacity of the number of bedrooms of the home and the total number of occupants. The owner must either provide an existing system evaluation report for on-site wastewater systems completed by a DEQ qualified evaluator, or provide current DEQ records showing appropriate capacity. Cesspools are prohibited for use with short-term rentals. A holding tank may be used if the owner has a signed pumping contract with a DEQ licensed sewage disposal service, and an alarm system that meets DEQ requirements.
- W. The owner shall provide annual water sampling results for non-regulated water supplies, including private wells and springs. The results should include bacteria and nitrate levels, results for inorganic materials and volatile organic chemicals. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 8)

**5.12.090 Permits required.**

- A. An owner shall obtain and maintain a current permit whenever a dwelling unit is used as a short term rental.
- B. Before commencing or continuing operation of a short-term rental the owner shall apply for and pay the appropriate fee for a permit. Following receipt of a completed application, the required permit fee and supporting documents as listed on the application checklist, inspections will be scheduled by Clatsop County Environmental Health and Building Codes Division. Upon final approval Clatsop County Environmental Health and Building Codes Division, a permit shall be issued to the owner which shall be good for two years from the date issued, or such period as provided in subsection G below.
- C. Any new short-term rental owner shall obtain a permit prior to using a dwelling for that purpose.
- D. An application for a short-term rental permit shall be completed and submitted to Clatsop County by the owner of the short-term rental on forms provided by Clatsop County and shall include, or be followed by, the following information:

1. A list of all property owners of the short-term rental including names, address and telephone numbers. Property ownership, for the purposes of this chapter, shall consist of those persons listed on the Clatsop County tax records.
  2. An application for certification by the Clatsop County Building Official to verify that the short-term rental complies with standards found in Section 5.12.080.
  3. A development permit from the Clatsop County Planning Department verifying that the proposed use is permitted in the zone where the building is located, that all required parking is provided on site, and that no violations exist on the property.
  4. The name, address and telephone numbers of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
  5. Proof of liability insurance coverage on the short-term rental.
  6. A statement that the owner of the short-term rental has met and will continue to comply with the standards and other requirements of this chapter.
  7. If the proposed short-term rental utilizes a non-public supply for potable water (i.e., well, cistern, etc.) applicant must submit water testing results for both bacteria and nitrates that have been taken within the last 90 days. The water testing results must be from a currently-licensed potable water testing lab in the State of Oregon.
- E. When a certification application is received by the County Building Codes Division, the inspection will be scheduled for the next available regular inspection day. A permit shall not be issued until a short-term rental passes inspection.
- F. The County will have inspection checklists available so that owners can determine what improvements, if any, will be needed before an inspection is scheduled. An owner should ensure that all items on the checklist have been completed prior to calling for an inspection. All reinspections due to incomplete items will be subject to a reinspection fee.
- G. All short-term rental permits shall be renewed every two years on their application anniversary date and are subject to a permit fee on renewal. A permitted short-term rental shall be reinspected every two years of operation. An interim inspection will be required in the following cases:
1. There has been a fire, flood, earthquake, landslide, tsunami or other event that caused substantial damage to the structure;
  2. The permit was revoked; or
  3. There has been an addition or substantial modification to the structure.
- H. The short-term rental permit is not transferable. New owners will be required to submit a new application pursuant to the requirements of this chapter.
- I. If the contact person of record for a short-term rental changes, the property owner shall notify the County within 30 days of the change. The County shall, within seven calendar days of the receipt of notice of the change, provide a copy of the updated permit and contact information for the designated agent to property owners within 300 feet of the subject property. The property owner shall provide the required payment, as established by the Clatsop County Board of Commissioners. County staff shall also notify Code Compliance, Building Codes, and Public Health of any changes to the contact of record. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 9)

**5.12.100 Fees established.**

The Board of Commissioners of Clatsop County may, by Board Order, establish fees for applications for permits, licenses, appeals, and services provided for in this chapter. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 10)

**5.12.110 Complaints.**

All complaints shall proceed as follows:

- A. The complaining party shall first attempt to communicate with short-term rental complaint hotline or the contact person designated on the permit and describe the problem.
- B. The contact person shall respond to all complaints via phone, email, text and/or other method within 20 minutes. The contact person shall physically respond to complaints as required below:
  1. Level 1 and Level 2 complaints: Physical response within 60 minutes.
  2. Level 3 complaints: Physical response within 24 hours.

Delayed responses due to traffic congestion/accidents and/or acts of nature will be considered on a case-by-case basis.
- C. If the initial contact does not resolve the complaint, the complaining party may lodge a complaint with the County by submitting a signed written complaint including the time, date and nature of the alleged violation. If photos or video are available, those may be included with the complaint form in order to document the violation.
- D. The Following receipt of a signed written complaint, the County may investigate and determinate determine whether a violation of this chapter has occurred. The property owner shall allow the County to inspect any records related to the short-term rental dwelling unit upon request of the County.
- E. Short-term rental complaints shall be investigated based on the following priorities:
  1. Level 1:
    - a. Septic Violations;
    - b. Operation without a permit.
  2. Level 2:
    - a. Over-occupancy.
  3. Level 3 (General code violations not inherent to STRs):
    - a. Parking violations;
    - b. Lighting violations;
    - c. Garbage complaints;
    - d. Outdated contact information.
  4. Level 4 (activities outside the jurisdiction of Code Compliance shall be referred to the appropriate enforcement agency):
    - a. Trespassing;
    - b. Animal complaints;

- c. Burning/fires without a permit or in violation of burn bans;
  - d. Noise.
- F. If a violation is determined to have occurred a notice of violation or a notice of warning may be issued, based upon the priority level of the complaint.
- G. If the alleged complaint is not observed by the code compliance specialist; or is determined not to have occurred; or if the complaint has been resolved, the complaint shall be logged, the result noted, and the case file shall be closed. Notices of warning or violation shall not be issued for complaints that are not observed, are determined not to have occurred, or that have been resolved prior to the County code compliance specialist visiting the property.
- H. Unsubstantiated Complaints and False Reporting. The County may impose a fine for filing a false complaint regarding the condition, operation, or conduct of occupants of a short-term rental or their guests. Per Section 1.11.010, Clatsop County Code, the submittal of a false complaint is a Class B violation and may be subject to fines as specified in Section 1.11.010(C). (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 11)

#### **5.12.120 Compliance, revocation and appeals.**

- A. Compliance.
  - 1. Owners of short-term rental units shall comply with this chapter and obey all applicable ordinances and regulations of the County, and shall be subject to the enforcement and penalty proceedings contained in this chapter.
  - 2. If a violation of this chapter is found by the County Code Compliance Specialist to have occurred, the County may issue a citation pursuant to Clatsop County Code Chapter 1.11, or initiate enforcement action pursuant to Clatsop County Code Chapter 1.12.
  - 3. In addition to any other remedy allowed under Chapters 1.11 and 1.12 of the Clatsop County Code, the County code compliance specialist may: (a) attach conditions to the existing short-term rental permit; (b) require another inspection; (c) suspend the short-term rental permit until conditions are met; or (d) revoke the short-term rental permit.
- B. Suspension or Revocation of Permit. Permits may be suspended or revoked based upon the following:
  - 1. If the property owner fails to submit required water testing results on an annual basis, the property owner's short term rental permit shall be revoked.
  - 2. Level 1 violations shall result in the immediate suspension of the short-term rental permit and/or immediate cessation of use of the dwelling unit as a short-term rental.
  - 3. Issuance of the first notice of violation may result in the permit being flagged and the permit holder being placed on a 90-day probation period.
  - 4. Issuance of the second notice of violation within 365 days of the first notice of violation may result in the suspension of the short-term rental permit for 90 days. A mandatory reinspection shall be required to reinstate the permit. The cost of the reinspection fee shall be paid by the property owner.
  - 5. Issuance of the third notice of violation within 365 days of the first notice of violation may result in the suspension of the short-term rental permit for 90 days. A mandatory reinspection shall be

required to reinstate the permit. The cost of the reinspection fee shall be paid by the property owner.

6. Issuance of the fourth notice of violation with 365 days of the first notice of violation may result in revocation of the short-term rental permit for one year. A mandatory reinspection shall be required to reinstate the permit. The cost of the reinspection fee shall be paid by the property owner.
7. Issuance of two notices of warning within a 90-day period may result in the permit being flagged and the permit holder being placed on a 30-day probation period.
8. Issuance of three notices of warning within a 90-day period may result in the suspension of the short-term rental permit for 30 days. A mandatory reinspection shall be required to reinstate the permit. The cost of the reinspection fee shall be paid by the property owner.
9. Issuance of four or more notices of warning within a 90-day period may result in the revocation of the short-term rental permit for 365 days. A mandatory reinspection shall be required to reinstate the permit. The cost of the reinspection fee shall be paid by the property owner.
10. Emergency Revocation.
  - a. In the sole discretion of the County Building Official, when a building code violation exists at a short-term rental that presents an immediate serious fire or life safety risk, the County Building Official may immediately revoke the short-term rental permit as a fire or life safety risk. The Building Official shall provide written documentation (in layman's terms) of the violation, and notification of a property owner's right to appeal, prior to leaving the inspection site.
  - b. In the sole discretion of the County Public Health Director, when annual water testing results indicate that testing levels may precipitate an acute public hazard, the County Public Health Director may immediately revoke the short-term rental permit as a public safety risk. The Public Health Director shall provide written documentation (in layman's terms) of the hazard, and notification of a property owner's right to appeal.
  - c. Upon an emergency revocation, the short-term rental shall not be rented or used as short term rental unless the revocation is lifted and the permit reinstated or a new short-term rental permit is obtained.
  - d. At any time following the emergency revocation of a short-term rental permit pursuant to this subsection, the County Building Official may reinstate the permit upon a reinspection by the County Building Official verifying that the subject building code violation has been corrected.
  - e. Notice of any conditions, suspension, or revocation established by the Enforcement Official shall be delivered by personal service or certified mail to the address of the property owner on the permit and to the contact of record. The notice shall contain a provision on the appeal rights and date by which an appeal must be filed.
  - f. Should a short-term rental permit be revoked, the owner may not obtain any short-term rental permit sooner than one year after the date of revocation.

#### C. Appeal.

1. If an application for a permit or the renewal of a permit is denied, or an owner disagrees with a decision of the County Code Compliance Specialist, the owner may appeal the decision to a hearings officer by filing a request with the County Code Compliance Specialist within 20 days of the date of the notice of conditions, suspension or revocation. The appearance by the property owner, hearing procedure, and decision of the hearings office shall follow the process of Clatsop County Code Chapter 1.14. If an application for a permit or renewal of a permit is denied, or a permit is revoked, the owner may appeal to the Board of County Commissioners by written notice delivered within 30 days of denial or revocation by the hearings officer.
  2. Except in cases of an emergency revocation by the Building Official or Public Health Director, a short-term rental may continue to operate unless and until a permit is otherwise revoked in a final decision.
- D. Costs. Any property owner found in violation of the provisions of this chapter shall be required to reimburse the County for its costs of enforcement including reimbursement of staff time, investigation costs, mailings, service fees, mileage and other costs related to the investigation and prosecution of the violation in question.
- E. Additional Remedies. The provisions of this section are in addition to and not in lieu of any other enforcement and penalty remedies contained in this chapter or other County ordinance or State law. (Ord. 2022-03 § 1; Ord. 2019-04 § 1; Ord. 2018-09 § 1; Ord. 2018-01 § 12)

## Chapter 5.16

### CLATSOP COUNTY MARIJUANA CODE

#### Sections:

- 5.16.010 Policy and purpose.**
- 5.16.020 Definitions.**
- 5.16.030 Applicability.**
- 5.16.040 Standards applicable to all marijuana activities.**
- 5.16.050 Marijuana production.**
- 5.16.060 Marijuana processing.**
- 5.16.070 Marijuana wholesaling.**
- 5.16.080 Marijuana retailing.**
- 5.16.090 Marijuana research and testing.**
- 5.16.100 Examination of premises.**
- 5.16.110 Enforcement.**

#### **5.16.010 Policy and purpose.**

The purpose of this chapter is to establish reasonable time, place, and manner requirements for medical and recreational marijuana production, processing, wholesaling, retailing, research and testing in unincorporated Clatsop County. This is accomplished by providing clear and objective standards for marijuana businesses that minimize conflicts with other uses in underlying zoning districts, as well as protect the public health, safety, and general welfare of the citizens of Clatsop County. (Ord. 18-05 § 1)

#### **5.16.020 Definitions.**

“Marijuana facility” means a business engaged in the production, processing, wholesaling, retailing, research or testing of marijuana substances.

“Processing” means the compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts at a marijuana processing site registered with the OHA or licensed by the OLCC. Processing does not include packaging or labeling.

“Production” means the manufacture, planting, cultivation, growing, trimming or harvesting of marijuana or the drying of marijuana leaves and flowers at a location registered under ORS 475B.810 where medical marijuana is produced for use by an Oregon Health Authority (OHA) registry identification cardholder, or produced by a marijuana producer issued a production license by the Oregon Liquor Control Commission (OLCC).

“Research” means those activities specified in an OLCC-approved research proposal that are conducted by qualified public or private researchers that are in possession of a valid OLCC marijuana research certificate pursuant to OAR 845-025-5300.

“Retail” means the selling of marijuana items to a consumer at site registered as a marijuana dispensary by the OHA or licensed as a retail location by the OLCC.

“Testing” means the testing of marijuana in a laboratory certified by the authority under ORS 438.605 to 438.620 and for the purposes specified within OAR 845-025.

“Wholesale” means the purchasing of recreational marijuana items for resale to a person other than a consumer at a site licensed by the OLCC. (Ord. 18-05 § 1)

#### **5.16.030 Applicability.**

- A. Marijuana production, processing, wholesaling, retailing, research, and testing are allowed as a use permitted outright or a use permitted through a Type II review in specific zoning districts as shown on Table 1.
- B. Marijuana uses are subject to the applicable standards as described in this chapter, the underlying zoning district standards, and general provisions of the Land and Water Development and Use Ordinance #80-14. Where a provision of this chapter is not consistent with another provision of the Land and Water Development and Use Ordinance #80-14, the more restrictive standards apply.
- C. The requirements of this chapter do not affect the provisions regarding personal use of recreational marijuana found in ORS Chapter 475B and OAR Chapter 845, Division 25 or personal use of medical marijuana under the Oregon Medical Marijuana Program, as allowed by state law.
- D. The requirements of this chapter, except Section 5.16.080(A)(5) apply to existing marijuana facilities in operating with land use approval as of the effective date of the ordinance codified in this chapter. Marijuana facilities in operation on the effective date shall have until February 1, 2019 to comply with any applicable permit requirements for the zone the facility is located in.
- E. Conditions, length, and time periods for compliance for any applicable permit will be governed by the code requirements for the zone in which application is made. (Ord. 18-05 § 1)

#### **5.16.040 Standards applicable to all marijuana activities.**

- A. The following standards shall apply to all production, processing, wholesaling, retailing, research and testing facilities and activities:
  - 1. Odor. As used in this chapter, building means the building, or portion thereof, used for indoor production, processing, wholesaling, retailing, research or testing. This chapter does not apply to a building approved as part of outdoor production.
    - a. A marijuana facility shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building first passes through an activated carbon filter that complies with current building codes for the activity proposed.
    - b. The filtration system shall be maintained in working order and shall be in use.
    - c. Negative air pressure shall be maintained inside the building.
    - d. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
  - 2. Noise. A permit applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that generators, as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any property line of the subject property, exceeds 50 dB(A). No marijuana activity will create sound that exceeds 50 dB(A) at the property line.
  - 3. Security Cameras. If security cameras are used, they shall be directed to record only the subject property and public right-of-way, except as required to comply with licensing requirements of the

Oregon Liquor Control Commission (OLCC) or registration requirements of the Oregon Health Authority (OHA).

4. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant. Outdoor storage of marijuana waste is prohibited. Marijuana waste burning is prohibited. (Ord. 18-05 § 1)

#### **5.16.050 Marijuana production.**

A. Marijuana production is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

1. Setbacks. Outdoor production shall be a minimum of 100 feet from all property lines. Any structure used for indoor production shall comply with the structural setback standards of the underlying zone or be located a minimum of 100 feet from an existing dwelling that is not located on the same property as marijuana production use, whichever is greater.
2. Access. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property. However, the easement standard will be waived if the property takes access via a private road or easement which also serves other properties and evidence is provided by a permit applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production described in a permit application. Such evidence shall include any conditions stipulated in the agreement.
3. Lighting. Lighting shall be regulated as follows:
  - a. Light cast by light fixtures inside a building used for marijuana production shall not be visible outside the building between the hours of 7:00 p.m. to 7:00 a.m.
  - b. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m.
  - c. Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject property.
4. Water. A permit applicant shall submit:
  - a. A water right permit or certificate number for the proposed marijuana production;
  - b. A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or
  - c. Proof from the Oregon Water Resources Department that the water to be used for marijuana production is from a source that does not require a water right.
5. Fencing. Fencing, walls, or other barriers, as required by state law, shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc. Fencing shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security features designed to discourage ingress through the potential of bodily harm.
6. Sketch. Pursuant to OAR 845-025-1030(6)(c), a map or sketch showing the defined boundaries of the premises and location of any primary residence located on the same tax lot is required to be submitted as part of an application for outdoor marijuana production.

7. Size. Marijuana production is subject to the size limitations found in OAR 845-025-2040. (Ord. 18-05 § 1)

#### **5.16.060 Marijuana processing.**

Marijuana processing is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

- A. No on-site retail sales are allowed.
- B. No outdoor storage of marijuana in any form, including remnants, by-products, and waste is allowed.
- C. All marijuana processing shall be located entirely within one or more completely enclosed building(s).
- D. Marijuana processing is subject to the lighting, odor, noise, security camera, water, and waste management criteria and standards described in Section 5.16.040 of this chapter.
- E. Marijuana processing is permitted only on properties located within the boundaries of a fire protection district. (Ord. 18-05 § 1)

#### **5.16.070 Marijuana wholesaling.**

Marijuana wholesaling is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

- A. Wholesale of marijuana to the general public is prohibited.
- B. A sample of usable recreational marijuana or a cannabinoid product, concentrate, or extract may be provided to a marijuana wholesaler, retailer, or processor licensee for the purpose of licensee determining whether to purchase the product. The product may not be consumed on the property. (Ord. 18-05 § 1)

#### **5.16.080 Marijuana retailing.**

- A. Marijuana retailing is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:
  1. Hours. A marijuana retailer may only sell to consumers between the hours of 10:00 a.m. and 8:00 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 10:00 a.m. and 8:00 p.m.
  2. Window Service. The use shall not have a walk-up window or drive-thru window service.
  3. Minors. No one under the age of 21 shall be permitted to be present in the building space occupied by the marijuana retailer, except as allowed by State law.
  4. On-Site Consumption. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building or on the property occupied by a marijuana retailer.
  5. Minimum Separation Distances. Minimum separation distances shall apply as follows:
    - a. 1,500 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.020, including any parking lot accessory to and any property used by the school; or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot accessory to and any property used by the school.

- b. 1,500 feet from a public park, public playground, government-owned recreational use, licensed treatment center, transit stop, bus stop, or a multifamily dwelling owned by a public housing authority.
- c. 1,500 feet from a licensed daycare facility or licensed preschool, including any parking lot accessory to any property used by the daycare facility or preschool.
- d. 1,500 feet from a house of worship, including any parking lot accessory to and any property used by the house of worship.
- e. 100 feet from a residentially zoned property, unless the property has frontage on a principal arterial, minor arterial, or major collector, as identified in the Clatsop County Transportation System Plan.
- f. Pursuant to ORS 475B.486, a marijuana retail facility shall be located a minimum of 1,000 feet from any other medical marijuana dispensary.
- g. Pursuant to ORS 475B.858, a medical marijuana dispensary shall be located a minimum of 1,000 feet from any other medical marijuana dispensary.
- h. For purposes of paragraphs (a) through (e) of this subsection, distance shall be measured from the lot line of the affected property (e.g., a school) to the closest point of the building space occupied by the marijuana retailer.
- i. For purposes of paragraphs (f) through (g) of this subsection, distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
- j. Subsection (5)(a) through (g) does not apply to any medical marijuana dispensary or marijuana retailer that has obtained land use approval to operate the facility on or before the adoption date of this chapter.
- k. A change in use, including a zone change, on another property to a use identified above after a complete application for a marijuana retailing facility has been filed shall not result in the marijuana retailer being in violation of this section. (Ord. 18-05 § 1)

#### **5.16.090 Marijuana research and testing.**

Marijuana research and testing shall be limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

- A. Marijuana testing laboratory use must be conducted entirely indoors.
- B. Marijuana research may be conducted in conjunction with marijuana production and processing or as a standalone use as specified in the applicable zoning districts. (Ord. 18-05 § 1)

#### **5.16.100 Examination of premises.**

The marijuana facility shall be open for inspection and examination by the persons designated in Section 1.12.060 of the Clatsop County Code during all operating hours. (Ord. 18-05 § 1)

#### **5.16.110 Enforcement.**

- A. This chapter may be enforced pursuant to Chapter 1.12, Code Compliance, of the Clatsop County Code. Any marijuana facility, premises, house, building, structure or place of any kind where mari-

juana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of State law or this chapter, or any place where marijuana is kept or possessed for sale, barter, distribution or gift in violation of State law or this chapter, is a public nuisance and enforcement action may be taken pursuant to Chapter 1.12, Code Compliance, of the Clatsop County Code.

- B. The County may institute an action in circuit court in the name of the City to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The County shall not be required to give bond in such an action.
- C. In addition to the other remedies provided in this chapter, the County may institute any legal proceedings in circuit court necessary to enforce the provisions of this chapter. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of a licensed activity, and any use or occupation of any building or structure used in violation of this chapter.
- D. The remedies provided in this chapter are not exclusive and shall not prevent the County from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under City ordinance or State law. (Ord. 18-05 § 1)

Table 1

Zone	Production	Processing	Wholesale	Retail	Research / Testing
<b>Agriculture Forestry (AF)</b>	<b>Type I</b>	<b>Type I*</b>	<b>Type I</b>	Prohibited	Prohibited
Arch Cape Rural Community Residential (AC-RCR)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Aquatic Natural (AN)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Coastal Beach Residential (CBR)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Coastal Residential (CR)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
<b>Conservation Shorelands (CS)</b>	<b>Type I</b>	Prohibited	Prohibited	Prohibited	Prohibited
<b>Exclusive Farm Use (EFU)</b>	<b>Type I</b>	<b>Type I*</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Forest 80 (F-80)</b>	<b>Type II</b>	<b>Type II*</b>	<b>Type II</b>	Prohibited	Prohibited
<b>General Commercial (GC)</b>	Prohibited	<b>Type II</b>	<b>Type II</b>	<b>Type II</b>	Prohibited
<b>Heavy Industrial (HI)</b>	<b>Type II</b>	<b>Type II</b>	<b>Type II</b>	Prohibited	<b>Type II</b>
<b>Knappa-Svensen Rural Community Residential (KC-RCR)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Light Industrial (LI)</b>	<b>Type II</b>	<b>Type II</b>	<b>Type II</b>	<b>Type II</b>	<b>Type II</b>
Lake and Wetland (LW)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Marine Industrial (MI)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Military Reserve (MR)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
<b>Neighborhood Commercial (NC)</b>	Prohibited	Prohibited	Prohibited	<b>Type II</b>	Prohibited
Natural Shorelands (NS)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Natural Upland (NU)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
<b>Open Space Parks &amp; Recreation (OPR)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Quarry Mining (QM)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Residential Agriculture 1 (RA-1)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Residential Agriculture 2 (RA-2)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Residential Agriculture 5 (RA-5)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Residential Agriculture 10 (RA-10)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
<b>Rural Community Commercial (RCC)</b>	Prohibited	Prohibited	Prohibited	<b>Type II</b>	Prohibited
<b>Rural Community Light Industrial (RCI)</b>	Prohibited	<b>Permitted</b>	<b>Permitted</b>	<b>Permitted</b>	Prohibited
Rural Community Multi Family Residential (RC-MFR)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
<b>Rural Community Residential (RCR)</b>	<b>Type I</b>	<b>Type I</b>	<b>Type I</b>	Prohibited	Prohibited
Recreation Management (RM)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Rural Service Area - Multi Family Residential (RSA-MFR)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Single Family Residential 1 (SFR-1)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
<b>Tourist Commercial (TC)</b>	Prohibited	Prohibited	Prohibited	<b>Type II</b>	Prohibited
Urban Growth Boundary (UGB)	Consult with Cities				

\* Small scale processing in accordance with ORS 215.213(1)(u) and 215.283(1)(r).

(Ord. 18-05 § 1)

## Chapter 5.20

### RETAIL SALE OF TOBACCO PRODUCT LICENSING

#### Sections:

- 5.20.010 Definitions.**
- 5.20.020 License required.**
- 5.20.030 Prohibition within 1,000 feet of school.**
- 5.20.040 License conveys a limited, conditional privilege.**
- 5.20.050 Grounds for denial of license.**
- 5.20.060 License renewal and expiration.**
- 5.20.070 Licenses nontransferable.**
- 5.20.080 Prohibitions.**
- 5.20.090 Enforcement and monitoring.**
- 5.20.100 Administrative penalties, license suspension or revocation.**
- 5.20.110 Tobacco retailing without a valid license.**
- 5.20.120 Additional remedies.**

#### **5.20.010 Definitions.**

The following words and phrases, whenever used in this chapter, shall have the meanings defined herein unless the context clearly requires otherwise:

“Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of any violations of this chapter is not an arm’s length transaction.

“Cigar” means any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, and that is not defined as a cigarette under Oregon Revised Statutes Section 323.010.

“Department” means Clatsop County Public Health and any agency or person designated by the Department to enforce or administer the provisions of this chapter.

“Flavored product” means any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

“Inhalant delivery system” means a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device, or a component of such a device or a substance in any form sold for the purpose of being vaporized or aerosolized by such a device, whether the component or substance is sold separately or is not sold separately. “Inhalant delivery system” does not

include tobacco products and does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any therapeutic purpose, if the product is marketed and sold solely for that approved purpose.

“Licensed product” collectively refers to any tobacco product, tobacco paraphernalia, or inhalant delivery system.

“Listed or non-discounted price” means the higher of the price listed for a licensed product on its package or the price listed on any related shelving, posting, advertising or display at the place where any such products are sold or offered for sale. Listed or non-discounted price includes all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.

“Person” means any natural person, business, partnership, cooperative association, employer, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, excluding a government agency.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can, does have, or shares ultimate control over the day-to-day operations of a business.

“School” means any public school, including any kindergarten, elementary, middle, junior high, or high school.

“Tobacco paraphernalia” means cigarette papers, wrappers, pipes, cigarette rolling machines, and any other item designed for the consumption, use, or preparation of any tobacco product.

“Tobacco product” means any bidi, cigarette, as defined in Oregon Revised Statutes, Section 323.010 (definitions for ORS 323.005 to 323.482), cigar, cheroot, stogie, perique, granulated, plug cut, crimp cut, ready rubbed, pipe tobacco and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobacco, snus, short, refuse scrap, clipping, cutting, and sweeping of tobacco. “Tobacco product” also means any device that can be used to deliver tobacco products to a person using the device. “Tobacco product” does not include any drug, device, or combination product authorized by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

“Tobacco retailer” means any proprietor or entity, as defined in Oregon Revised Statutes Section 60.001 that sells, offers for sale, or exchanges or offers to exchange, for any form of consideration, any tobacco product, tobacco paraphernalia, or inhalant delivery system. “Tobacco retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco products, tobacco paraphernalia, or inhalant delivery systems sold, offered for sale, exchanged, or offered for exchange. (Ord. 2019-03 § 4)

#### **5.20.020 License required.**

- A. A tobacco retailer license is required for each address at which any tobacco product, tobacco paraphernalia, or inhalant delivery system is sold, exchanged, or offered for sale or exchange.

- B. Each applicant for a tobacco retailer license must meet all requirements of this chapter and all rules adopted pursuant to this chapter, and all federal, state, and local laws relating to the retail sale of tobacco products, tobacco paraphernalia, or inhalant delivery systems.
- C. A tobacco retailer may only make tobacco products available from a licensed, fixed location. Tobacco retailing by natural persons on foot or from vehicles or mobile units is prohibited.
- D. Application for a tobacco retailer license shall be made on forms provided by Clatsop County and shall be submitted in the name of each proprietor proposing to conduct tobacco retailer sales and signed by each proprietor or an authorized agent thereof. It shall be the responsibility of each proprietor to be informed about all applicable laws affecting a tobacco retailer license. All applications for a tobacco retailer license shall contain the following information:
  - 1. The name, address, and telephone number of each proprietor of the business seeking a license;
  - 2. The business name, address, and telephone number of the single fixed location for which a license is sought;
  - 3. A single name and mailing address authorized by each proprietor to receive all communications and notices (“the authorized address”) required by, authorized by, or convenient to the enforcement of this chapter, provided that, if an authorized address is not provided, each proprietor will be understood to consent to the provision of notice at the business address specified in subsection (D)(2);
  - 4. Proof that the location for which a tobacco retailer license is sought has been issued a valid state license for the sale of tobacco products, tobacco paraphernalia and inhalant delivery device if the tobacco retailer sells products that require state licensure;
  - 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years; and
  - 6. Such other information as the Department deems necessary for the administration and enforcement of this chapter, as specified on the required application form.
- E. A licensed tobacco retailer shall inform the Department, in writing, of any change in the information submitted on an application for a tobacco retailer license within ten business days of any such change.
- F. A license fee shall be submitted with an application for a new license or the renewal of a license. The fee shall be established from time to time by resolution of the Clatsop County Board of Commissioners and shall be calculated so as to recover the costs of administration and enforcement of this chapter, including, but not limited to, issuing a license, administering the tobacco retailer license program, providing tobacco retailer education, conducting tobacco retailer inspections and compliance checks, documenting violations, and prosecuting alleged violators. The fee established shall not exceed the costs of the administration and enforcement of this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the costs of the administration and enforcement of this chapter.
- G. All information specified in an application pursuant to this section is subject to disclosure under the Oregon Public Records Act or any other applicable law, subject to the laws’ exemptions.
- H. All tobacco retailer licenses issued are valid for one calendar year from the date of issuance.
- I. Each tobacco retailer license shall be prominently displayed in plain view of the general public at each licensed location and shall be exhibited to any person upon request.

- J. As part of program administration, the Department shall provide educational resources to licensed tobacco retailers to support compliance with the license requirements. Upon request, the Department shall provide educational materials in the preferred language of a tobacco retailer. In addition to the provision of educational materials, the Department, in its discretion, may offer tobacco retailers, including managers or other employees, annual, free, culturally responsive training on federal, state, and local laws affecting tobacco retailers and tobacco retailing to support clerks, managers, and owners in meeting applicable legal requirements. The Department shall update its educational resources when federal, state, or local laws are enacted and provide the updated resources to tobacco retailers in a timely manner. (Ord. 2019-03 § 4)

**5.20.030 Prohibition within 1,000 feet of school.**

No license will be issued to a tobacco retailer located within 1,000 feet of any school as follows:

- A. Except as provided in subsection B, no tobacco retailer license will be issued within 1,000 feet of a school as measured by a straight line from the nearest point of the property line of the lot or parcel on which the school is located to the nearest point of the property line of the parcel on which the applicant's business is located. For the purposes of this subsection, a "school" is a public kindergarten, elementary, middle, junior high or high school.
- B. A tobacco retailer that has been in operation, or whose predecessor in interest has been in operation, at a location governed by subsection A consistently since January 1, 2019, is exempt from the requirements of subsection A. A tobacco retailer that has been in operation, or whose predecessor in interest has been in operation, at a location governed by subsection A consistently since January 1, 2019, that would otherwise be ineligible to receive or renew a tobacco retailer license due to the creation or relocation of a school is exempt from the requirements of this subsection. (Ord. 2019-03 § 4)

**5.20.040 License conveys a limited, conditional privilege.**

Nothing in this chapter grants any proprietor obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location identified on the face of the license. Nothing in this chapter renders inapplicable, supersedes, or applies in lieu of any other provision of applicable law, including, but not limited to, any provision of this chapter, or any condition or limitation on smoking in an enclosed place of employment under ORS 433.847 and OAR 333-015-0068 or other federal or local ordinances. Obtaining a tobacco retailer's license does not make the tobacco retailer a certified smoke shop under ORS 433.847 and OAR 333-015-0068. (Ord. 2019-03 § 4)

**5.20.050 Grounds for denial of license.**

Upon receipt of a complete application for a tobacco retailer license and the license fee required by this chapter, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- A. The information presented in the application is inaccurate, misleading, or false. Intentionally supplying inaccurate, misleading, or false information shall be a violation of this chapter;
- B. The application seeks authorization for a tobacco retailer license at a location for which this chapter prohibits issuance of a tobacco retailer license. This subsection shall not constitute a basis for denial of a license if the applicant provides Clatsop County with clear and convincing evidence that the appli-

cant has acquired, or is acquiring, the location or business in an arm's length transaction from a tobacco retailer that is exempt from all applicable location prohibitions in this chapter;

- C. The application seeks a tobacco retailer license for a proprietor to whom this chapter prohibits a license to be issued;
- D. The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products, or any other violation of law related to retailing that the Department deems disqualifying;
  - 1. The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application;
- E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license; or
- F. The application seeks a tobacco retailer license for activities that are prohibited by law or municipal ordinance including, without limitation, a zoning ordinance, building code, or business license, or that is unlawful pursuant to any other local, state, or federal law. (Ord. 2019-03 § 4)

#### **5.20.060 License renewal and expiration.**

- A. A tobacco retailer license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. Each tobacco retailer shall apply for the renewal of the license and submit the license fee no later than 30 days prior to expiration of the one-year license term.
- B. A tobacco retailer license that is not timely renewed will expire at the end of its one-year term. To renew a license not timely renewed as described herein, the tobacco retailer must:
  - 1. Submit the license fee and application renewal form; and
  - 2. Submit a signed and notarized affidavit affirming that the tobacco retailer:
    - a. Has not sold and will not sell any tobacco product, tobacco paraphernalia, or inhalant delivery system after the license expiration date and before the license is renewed; or
    - b. Has waited the period of time required by Section 5.20.100 of this chapter, for the violation of tobacco retailing without a valid license, before seeking renewal of the license. (Ord. 2019-03 § 4)

#### **5.20.070 Licenses nontransferable.**

Tobacco retailer license may not be transferred from one tobacco retailer to another or from one location to another. Any prior violation of this chapter at any location will continue to be counted against a location unless the location has been transferred to new proprietors(s) in an arm's length transaction and the new proprietors provide the Department with clear and convincing evidence, that the business has been acquired in an arm's length transaction. (Ord. 2019-03 § 4)

#### **5.20.080 Prohibitions.**

- A. No proprietor who holds a tobacco retailer license issued under this chapter, nor any employee or agent of same, shall make available, dispense, sell, offer to sell, or cause to be sold any tobacco product, tobacco paraphernalia, or inhalant delivery system:
  - 1. Without a valid tobacco retailer license.

2. Outside original packaging containing health warnings required under federal law.
  3. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.
- B. No person shall sell, exchange, transfer, offer to sell, exchange or transfer, or otherwise distribute any tobacco product, tobacco paraphernalia, or inhalant delivery system to any person under the minimum legal sales age of 21.
1. No proprietor who holds a tobacco retailer license issued under this chapter, nor any employee or agent of same, shall sell, exchange, transfer, offer to sell, exchange or transfer, or otherwise distribute a tobacco product, tobacco paraphernalia, or inhalant delivery system to another person who appears to be under the age of 30 years without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least the minimum legal sales age to purchase and possess the tobacco product, tobacco paraphernalia, or inhalant delivery system.
  2. No proprietor engaged in tobacco retailing shall locate any tobacco products, tobacco paraphernalia, or inhalant delivery systems in any location in a retail store or other establishment where such products are accessible by a customer without the assistance of a tobacco retailer or an employee or agent of the tobacco retailer. This prohibition does not apply to a person in a licensed establishment that is permanently and entirely off-limits to persons under the age of 21 and that prohibits persons under 21 from entering the establishment at any time.
- C. No tobacco retailer with a license issued under this chapter, nor any employee or agent of same, shall:
1. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept, redeem, or offer to accept or redeem any coupon that provides any tobacco product, tobacco paraphernalia, or inhalant delivery system without charge or for less than the listed or non-discounted price; or
  2. Sell, offer to sell, or cause to be sold any tobacco product, tobacco paraphernalia, or inhalant delivery system to any person through any multi-pack discounts, such as a buy-two-get-one-free discount or a cents- or dollars-off discount, or otherwise provide or distribute to any person any tobacco product, tobacco paraphernalia, or inhalant delivery system without charge, or for less than the listed or non-discounted price, in exchange for the purchase of any other tobacco product, tobacco paraphernalia, or inhalant delivery system; or
  3. Distribute, or cause to be distributed, any free or nominally-priced sample of any tobacco product, tobacco paraphernalia, or inhalant delivery system at any retail location or at any other public place within Clatsop County.
- D. A person without a valid tobacco retailer license, including, but not limited to, a person whose license has been suspended, revoked, or not renewed shall keep all tobacco products, tobacco paraphernalia, and inhalant delivery systems out of public view, and shall not display any indoor outdoor advertisement or otherwise publish or distribute any advertisement relating to a tobacco product, tobacco paraphernalia, or inhalant delivery system that promotes the sale or distribution of such products from the tobacco retailer location or that could lead a reasonable consumer to believe that such products can be obtained at that location. The public display of any tobacco product, tobacco paraphernalia, or inhalant delivery system in violation of this provision shall constitute tobacco retailing without a license.
- E. It is a violation of this chapter to fail to comply with license provisions or rules adopted pursuant to this chapter and federal, state, and local laws relating to tobacco retailing. (Ord. 2019-03 § 4)

**5.20.090 Enforcement and monitoring.**

- A. The Department will monitor and enforce compliance with this chapter. In addition, any peace officers may enforce the penal provisions of this chapter and Clatsop County Code Compliance Specialist may enforce compliance with this chapter.
- B. The Department will endeavor to inspect each tobacco retailer at least one time per 12-month period. Nothing in this subsection creates a right of action in any licensee or other person against the County, Department or its agents. (Ord. 2019-03 § 4)

**5.20.100 Administrative penalties, license suspension or revocation.**

- A. In addition to any other penalty authorized by law, a tobacco retailer shall be charged an administrative penalty and the tobacco retailer's license shall be suspended or revoked if a court of competent jurisdiction determines, or the Department finds, based on a preponderance of the evidence, after the tobacco retailer is afforded notice and an opportunity to be heard, that the tobacco retailer, or any agent or employee of the licensee, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 5.20.080.
  - 1. Upon a finding by the Department of a first violation of this chapter at a location within any 24-month period, the tobacco retailer shall be charged an administrative penalty of \$500.00 for a first violation.
  - 2. Upon a finding by the Department of a second violation of this chapter at a location within any 24-month period, the tobacco retailer shall be charged an administrative penalty of \$2,500.00 and the tobacco retailer's license shall be suspended for 30 days.
  - 3. Upon a finding by the Department of a third violation of this chapter at a location within any 24-month period, the tobacco retailer shall be charged an administrative penalty of \$5,000.00 and the tobacco retailer's license shall be suspended for 90 days.
  - 4. Upon a finding by the Department of four or more violations of this chapter at a location within any 24-month period, the tobacco retailer shall be charged an administrative penalty of \$7,500.00 and the tobacco retailer's license shall be revoked.
- B. A decision of the Department to assess a penalty and suspend or revoke a license is appealable to the Clatsop County Manager. Any appeal must be filed in writing with the County Manager within ten days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the County Manager is not available for a revocation made pursuant to subsection C.
- C. A tobacco retailer license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under this chapter existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of Clatsop County. Such a revocation shall be without prejudice to the filing of a new license application.
- D. A tobacco retailer whose license has been revoked due to violation of this chapter shall not be able to reapply until five years have passed from the date of violation. (Ord. 2019-03 § 4)

**5.20.110 Tobacco retailing without a valid license.**

- A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds, based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer license, either directly or through any agent or employee of the person, the person shall be ineligible to apply for, or to be issued, a tobacco retailer license as follows:
1. After a first violation of this section at a location within any 24-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 30 days have passed from the date of the violation.
  2. After a second violation of this section at a location within any 24-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 90 days have passed from the date of the violation.
  3. After of a third or subsequent violation of this section at a location within any 24-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until five years have passed from the date of the violation.
- B. Tobacco products, tobacco paraphernalia, and inhalant delivery systems offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of any tobacco products, tobacco paraphernalia, and inhalant delivery systems seized is given reasonable notice and an opportunity to demonstrate that the tobacco products, tobacco paraphernalia, and inhalant delivery systems were not offered for sale or exchange in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 5.20.100(B). Forfeited tobacco products, tobacco paraphernalia, and inhalant delivery systems shall be destroyed after all internal appeals have been exhausted.
- C. For the purposes of the civil remedies provided by this chapter, each day on which a tobacco product, tobacco paraphernalia, or inhalant delivery system is offered for sale in violation of this chapter, or each individual tobacco product, tobacco paraphernalia, or inhalant delivery system that is distributed, sold, or offered for sale in violation of this chapter, shall constitute a separate violation of this chapter. (Ord. 2019-03 § 4)

**5.20.120 Additional remedies.**

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Violations of this chapter are hereby declared to be public nuisances and may be abated pursuant to Chapter 1.12 of the Clatsop County Code, state law, or any applicable municipal ordinance.
- C. In addition to other remedies provided in this chapter, municipal code, or by other law, any violation this chapter may be remedied by a civil action including, for example, through administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. (Ord. 2019-03 § 4)

## Chapter 5.24

### SHORT-TERM RENTALS (AC-RCR ZONE)

#### Sections:

- 5.24.010 Purpose.**
- 5.24.020 Permit required.**
- 5.24.030 Short-term rental permit application requirements.**
- 5.24.040 Short-term rental standards.**
- 5.24.050 Conformity required; display of permits.**
- 5.24.060 Compliance, hearings and penalties.**

#### **5.24.010 Purpose.**

The purpose of this section is to regulate short-term rentals to enhance livability and safety in the Arch Cape and Coastal Residential zone neighborhoods. Rentals of a short-term dwelling unit shall be limited to either a minimum period of seven nights or, if for fewer than seven nights, then to no more than one rental within a seven night period. Use of a short-term rental by a record owner of a property shall not be considered to be a rental under this section. (Ord. 2022-03 § 1)

#### **5.24.020 Permit required.**

An owner shall obtain a revocable short-term rental permit whenever a dwelling unit (as defined in Section 1.0500, LAWDUC) is to be used for short-term rental purposes and shall comply with the requirements of the County's transient room tax ordinance.

- A. A short-term rental permit shall be obtained prior to using the unit as a short-term rental.
- B. Short-term rental permits are issued and renewed per Section 5.12.090(G) of this code.
- C. Short-term rental permits are non-transferable, new owners will be required to attain new permits.
- D. The short-term rental permit does not relieve the owner of the obligation to pay county room taxes.
- E. If the terms of the short-term rental permit are not met, the short-term rental permit may be revoked and the owner subject to penalties per Section 5.24.060. (Ord. 2022-03 § 1)

#### **5.24.030 Short-term rental permit application requirements.**

An application for a short-term rental permit shall be completed on the form provided by the County and shall provide the following information:

- A. A list of all the property owners of the short-term rental including names, addresses and telephone numbers. Property ownership, for the purposes of this section, shall consist of those individuals who are listed on the Clatsop County Assessor's tax records.
- B. The applicant shall provide proof of payment for county room taxes annually pursuant to County Code Chapter 3.16.
- C. An application for certification by the Clatsop County Building Official to verify that the short-term rental complies with standards found below:

1. There shall be one functioning smoke detector in each sleeping room, with a minimum of two functioning smoke detectors in each dwelling unit. There shall also be one functioning fire extinguisher at each exit;
  2. Exterior doors shall be operational. All passageways to exterior doors shall be clear and unobstructed.
  3. Electrical systems shall be serviceable with no visible defects or unsafe conditions.
  4. All fireplaces, fireplace inserts or other fuel burning heaters and furnaces shall be vented and properly installed.
  5. Each sleeping room shall have an exterior exit that opens directly to the outside, or an emergency escape or rescue window.
  6. The number of sleeping rooms within the short-term rental, as defined in Section 5.24.040(D).
  7. The number of parking spaces on the subject property that meet the standards of Section 5.24.040(E).
- D. A site plan, drawn to scale, showing the location of buildings and required parking.
- E. The name, address and telephone number of a contact person, who shall be responsible, and authorized, to act on the owner's behalf to promptly remedy any violation of these standards.
- F. The contact person may be the owner or the designated agent who shall serve as a contact person.
- G. Statement that the applicant has met and will continue to comply with the standards in this section.
- H. Other information as requested by the County. (Ord. 2022-03 § 1)

**5.24.040 Short-term rental standards.**

All short-term rentals shall meet the following standards:

- A. A Short-term rental dwelling unit shall be limited to either a minimum period of seven nights or, if for fewer than seven nights, then to no more than one rental within a seven night period.
- B. One rental (as defined in Section 1.0500, LAWDUC) per lot or parcel, excluding a caretaker residing in the residence or ADU. A guesthouse is not considered a dwelling unit and shall not be rented separately.
- C. All applicable County room taxes shall be paid pursuant to County Code Chapter 3.16.
- D. The maximum occupancy for each short term rental unit shall be calculated on the basis of two persons per sleeping room plus an additional four persons, up to a maximum of 14 persons. For this purpose, a sleeping room is defined as fully-enclosed habitable space with a heat source, and an emergency escape or rescue opening.
- E. Off-street parking shall be used if physically available and comply with Sections 3.0050 through 3.0100, LAWDUC, applicable to single-family or two-family dwellings. On-street parking shall be used only when off-street parking spaces are not physically available. Parking is "physically available" when a garage or driveway can be emptied or materials removed so as to allow for the parking. The owner shall notify every renter in writing of these requirements and shall advise the renter where the off-street parking spaces to serve the unit are located. If on-street parking must be used, the renter shall use the parking along the frontage of the rental unit.
- F. A house number visible from the street shall be maintained.

- G. Provisions shall be made for weekly garbage removal during rental periods. Garbage containers shall be secured with tight-fitting covers at all times to prevent leakage, spilling or littering and placed where they are not clearly visible from the street except between 5:00 a.m. on the day prior to pickup and 5:00 p.m. on the day of pickup. (Ord. 2022-03 § 1)

**5.24.050 Conformity required; display of permits.**

- A. The issuance of the short-term rental permit shall be subject to the continued compliance with the requirements of this section.
- B. The current short-term rental permit shall be permanently and prominently displayed inside and near the front entrance of the short term rental. The County shall provide a copy of the permit to property owners within 300 feet of the property, and shall list the following:
  - 1. The name, address and phone number of the owner and designated agent;
  - 2. The maximum occupancy and vehicle limits for the short-term rental unit;
  - 3. Identification of the number and location of parking spaces available;
  - 4. A statement regarding how the parking standards under Section 5.24.040(E) are to be met;
  - 5. A statement that it is illegal to leave litter on the beach (OAR 736-021-0090(4));
  - 6. A statement that all fires on the beach must be extinguished before leaving the site of the fire (OAR 736-021-0120(4));
  - 7. A statement that the short-term rental permit may be revoked for violations;
  - 8. A statement regarding how the garbage removal standards under Section 5.24.040(G) are to be met; and
  - 9. Such other information as may be required by the County.
- C. The owners are responsible to ensure that current and accurate information is provided to the County. (Ord. 2022-03 § 1)

**5.24.060 Compliance, hearings and penalties.**

Owners of short-term rental units shall obey all applicable ordinances and regulations of the County and shall be subject to the enforcement and penalty proceedings contained in the applicable County ordinances. Any property owner who operates a short-term rental in violation of this section may be subject to the abatement and penalty provisions of ORS Sections 203.065, 203.810, and ordinances adopted under the Clatsop County Charter. The enforcement provisions of Clatsop County Code Compliance Ordinance, Chapter 1.12 of the Clatsop County Code shall also apply, except where modified by this section. The following process shall be followed in the event of a complaint alleging a violation of this section or a permit issued under this section:

- A. The complaining party shall first attempt to contact the contact person designated on the permit and the notice posted on the short-term rental, describe the problem and indicate the desired remedy.
- B. The contact person shall promptly respond to the complaint and remedy any situation that is out of compliance with this section or permit.
- C. If the response is not satisfactory to the complaining party, the complaining party may lodge a complaint with the County by submitting a written complaint including the time, date and nature of the al-

leged violation. The property owner shall allow the County to inspect any records related to the short-term rental dwelling unit upon request of the County.

- D. The County may initiate enforcement under Chapter 1.12 of the Clatsop County Code.
- E. In addition to any other remedy allow under Chapter 1.12 of the Clatsop County Code, the hearings body may do any of the following:
  - 1. Take no action on the request for the revocation of the short-term rental permit;
  - 2. Attach conditions to the existing short-term rental permit;
  - 3. Require a new home inspection under Section 5.24.030(C);
  - 4. Suspend the short-term rental permit;
  - 5. Revoke the short-term rental permit; and/or
  - 6. Prohibit an owner from obtaining a short-term rental permit for a period of up to five years.
- F. Should a permit be revoked, the owner may not obtain any short-term rental permit sooner than one year after the date of revocation.
- G. Any property owner found in violation of the provisions of this ordinance shall be required to reimburse the County for its costs of enforcement including reimbursement of staff time, investigation costs, mailings, service fees, mileage and other costs related to the investigation and prosecution of the violation in question. (Ord. 2022-03 § 1)