

ORDINANCE NO. 3983

AN ORDINANCE ADDING NEW PROVISIONS TO  
CHAPTER FIVE OF THE BEAVERTON CITY CODE AND  
PROHIBITING AN EMPLOYER'S FAILURE TO  
SUPERVISE AN EMPLOYEE'S SALE OF TOBACCO  
PRODUCTS AND PUNISHING VIOLATION THEREOF.

**WHEREAS**, state and federal law prohibit the sale of tobacco products to any person younger than 18 years of age; and

**WHEREAS**, under Oregon law, local governments have the legal authority to enact regulations concerning the sale of tobacco if the local regulations are directed at encouraging compliance with existing state law; and

**WHEREAS**, under federal law, local governments have the legal authority to enact regulations concerning tobacco provided the local regulations do not clearly impose a specific requirement with respect to tobacco that is manifestly in addition to an analogous federal requirement; and

**WHEREAS**, federal law has no specific counterpart regulation or requirement relating to the liability of employers whose employees sell tobacco to minors; and

**WHEREAS**, the City of Beaverton therefore has the legal authority to impose liability upon employers whose employees sell tobacco to minors; now, therefore,

**THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:**

**Section 1.** BC 5.08.510 - 5.08.525 are hereby added to the Beaverton Code and shall read as follows:

"5.08.510 Short Title. 5.08.510 to 5.08.525 shall be known and may be cited as the 'Tobacco Ordinance' and may also be referred to as 'this ordinance.'

"5.08.513 Definitions. For the purpose of this ordinance the following mean:

Employer - Any entity or individual who engages a person to perform work or services for which compensation is given in periodic payments or otherwise, even though the relationship of the person so engaged to the employer may be an independent contractor for other purposes.

Employee - A person who engages to furnish work or services to an employer for remuneration, financial or otherwise. The term includes an independent contractor retained by the employer.

Strict Liability, Without Regard to Fault - A form of liability imposed without regard to a person's mental state and under which the existence

or absence of fault is not material to the determination of a person's legal responsibility.

Tobacco Products - Cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

"5.08.515 Failure to Supervise Sale of Tobacco Products. A person shall be held strictly liable, without regard to fault, for the commission of the offense of failing to supervise the sale of tobacco products if the person is an employer of an employee who distributes, sells or causes to be distributed or sold tobacco products in any form to a person under 18 years of age.

"5.08.517 Affirmative Defense. In a prosecution of a person for violation of BC 5.08.515, it is an affirmative defense to be established by a preponderance of the evidence by the defendant that:

A. prior to the commission of the offense, the person had trained all the person's employees who may sell tobacco products that :

1. the sale and distribution of tobacco products to any person under 18 years of age is illegal; and

2. the age of a person who is purchasing tobacco products must be verified by means of photographic identification containing the bearer's date of birth, unless the purchaser is older than 26 years of age; and

B. at the time of the commission of the offense, the employee who sold or caused tobacco products to be distributed to a person under 18 years of age had appropriately verified the purchaser's age through the examination of photographic identification, but was shown convincingly false or altered identification that a reasonable person would not have determined was altered or inaccurate in its description of the person to whom the tobacco products were sold or distributed.

"5.08.520 Penalty. Any person who violates BC 5.08.515 commits a non-criminal violation punishable by a fine of not more than \$250. Any penalty imposed pursuant to this section is in addition to, and not in lieu of, any other civil, criminal or administrative penalty or sanction otherwise authorized by law.

"5.08.525 Procedure for Trial. The trial of any alleged violation of this ordinance shall be as provided by Oregon Laws 1993, Chapter

379, sections 1 to 5."

**Section 2.** The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid, the remaining parts shall remain in force unless:

A. the remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or

B. the remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

**Section 3.** This ordinance shall take effect and become enforceable 90 days after its adoption by the council and approval by the mayor.

First reading this 28th day of April, 1997.  
Passed by the Council this 9th day of June, 1997.  
Approved by the Mayor this 10th day of JUNE, 1997.

ATTEST:

Darleen Coghurn  
DARLEEN COGBURN, City Recorder

APPROVED:

Rob Drake  
ROB DRAKE, Mayor

Approved by the Governor July 19, 1993  
 Filed in the office of Secretary of State July 19, 1993  
 Effective date - Regular effective date

CHAPTER 379

AN ACT

SB 732

Relating to trial procedures for violations.  
 Be It Enacted by the People of the State of Oregon:

**SECTION 1.** (1) The trial of any violation is by the court without a jury.

(2) The state, municipality or political subdivision has the burden of proving the alleged violation by a preponderance of the evidence.

(3) The pretrial discovery rules in ORS 135.805 to 135.873 apply to violation cases.

(4) The defendant may not be required to be a witness in the trial of any violation.

(5) Notwithstanding any other provision of law, a court, in any trial of a violation, may admit the affidavit of any witness into evidence as testimony in lieu of taking the testimony orally and in court. The authority granted under this subsection is subject to all of the following:

(a) In order to allow testimony to be presented by affidavit in the manner provided by this subsection, a court must adopt rules allowing for the testimony and providing procedures for use of the testimony.

(b) A court shall allow testimony by affidavit under this subsection only upon the written signed waiver of the defendant of the right to have the testimony presented orally in court.

(c) A court may allow testimony by affidavit under this subsection with respect to any matter including, but not limited to, matters described in ORS 40.460.

(d) Nothing in this subsection requires the defendant or any other witness to waive the right to appear if other testimony is taken by affidavit as provided in this subsection.

**SECTION 2.** (1) At any trial involving a violation only, the defendant shall not be provided with defense counsel at public expense.

(2) At any trial involving a violation only, the district attorney may aid in preparing evidence and obtaining witnesses but shall not appear, except upon good cause shown to the court, unless counsel for the defendant appears. The court shall insure that the district attorney is given timely notice if defense counsel is to appear at trial.

(3) As used in subsection (2) of this section, "district attorney" includes, where appropriate, a city attorney and county counsel.

**SECTION 3.** (1) Notwithstanding ORS 131.505 to 131.535, if a person is charged with both a

crime and a violation as part of the same criminal episode, the prosecution for one offense does not bar the subsequent prosecution for the other. However, evidence of the first conviction is not admissible in any subsequent prosecution for the other offense.

(2) Notwithstanding ORS 43.130 and 43.160, no plea, finding or proceeding upon any violation may be used for the purpose of res judicata or collateral estoppel, nor is any plea, finding or proceeding upon any violation admissible as evidence, in any civil proceeding.

**SECTION 4.** A conviction before, on or after the effective date of this Act, of any of the statutory counterparts of offenses designated as violations as defined in ORS 161.565, may not be used to impeach the character of a witness in any criminal or civil action or proceeding.

**SECTION 5.** (1) An appeal from a judgment involving a violation may be taken by either party:

(a) From a proceeding in justice's court or city court, as provided in ORS chapter 53;

(b) From a proceeding in district court, as provided in ORS chapter 46; or

(c) From a proceeding in circuit court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200.

(2) Notwithstanding the provisions of subsection (1) of this section, the state may not appeal from an order of dismissal that results from a police officer's failure to appear at trial.

**SECTION 6.** Sections 1 to 5 of this Act apply to offenses committed on or after January 1, 1994.

Approved by the Governor July 19, 1993  
 Filed in the office of Secretary of State July 19, 1993  
 Effective date - Regular effective date

CHAPTER 380

AN ACT

SB 934

Relating to literacy for blind students; and prescribing an effective date.  
 Be It Enacted by the People of the State of Oregon:

**SECTION 1.** Sections 2 to 6 of this Act are added to and made a part of ORS chapter 343.

**SECTION 2.** As used in sections 2 to 6 of this 1993 Act:

(1) "Braille" means the system of reading and writing through touch commonly known as standard English Braille.

(2) "Individualized education program" means a written statement developed for a student eligible for special education services pursuant to section 602(a)(20) of part A of the

**CITY OF BEAVERTON  
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**Fax Cover Sheet**

DATE: 4/30/98

TIME: 3:20 p.m.

TO: TERRI

PHONE: (503) 227-5635 FAX: (503) 588-0052

FROM: DARLEEN COGBURN      PHONE: 526-2495      FAX: 526-2479

RE: BEAVERTON ORDINANCE No. 3983  
"TOBACCO ORDINANCE"  
CC:

Number of pages including cover sheet: 4

Message