

BEFORE THE BOARD OF COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

TASSI O'NEIL
COUNTY CLERK

In the Matter of an Amendment to Ordinance)
#58 Exempting Bars and Taverns and Declaring) ORDINANCE #60
an Emergency)

The Board of Commissioners for Tillamook County ordains as follows:

Section I. Findings. The Board of Commissioners hereby finds:

A. On December 27, 2000 Ordinance #58 was enacted by the Board of Commissioners prohibiting smoking in public places and places of employment, regulating the sale and distribution of tobacco products, and ordering referral to the voters.

B. On March 13, 2001, Ordinance #58 passed by a "yes" vote of 3644 compared to a "no" vote of 3417, with 48% of eligible voters casting ballots on the measure.

C. The measure did not pass in the incorporated cities of Garibaldi, Bay City and Nehalem, but it did pass within the incorporated cities of Manzanita, Wheeler, Rockaway Beach, and Tillamook as well as within the unincorporated areas of Tillamook County.

D. Ordinance #58 by its terms became effective at 12:01 a.m. on June 12, 2001.

E. Over the past several weeks since Ordinance #58 became effective, the County Commissioners and staff have received a number of phone calls and complaints from Manzanita, Rockaway Beach and Tillamook bar and tavern owners stating that their smoking clientele ("regulars") have migrated the short distances to the nearest drinking establishments in non-regulated cities.

F. Within north and central Tillamook County the distance between regulated and non-regulated establishments varies from as little as 2 miles apart (i.e. Manzanita to Nehalem, Wheeler to Nehalem). None are farther than 12 miles apart (i.e. Oceanside to Bay City). A number are situated between these distances.

G. The regulated bar and tavern owners are reporting a drastic drop in clientele with corresponding losses in income from food, beverage and video lottery receipts, claiming that their loss in business has gone to nearby non-regulated establishments.

H. The proximity of such regulated and non-regulated bars and taverns together with reports of corresponding increases in business to non-regulated establishments since June 12, 2001 leads the Board to conclude that unintended inequities have resulted from the non-uniform passage of Ordinance #58.

I. As a consequence of Ordinance #58's non-uniform application, a system of financial winners and losers has resulted for bars and taverns within Tillamook County.

J. The mounting evidence of economic hardship on local bars and taverns is consistent with the 1999 Oregon Health Division study on the Corvallis smoking ban and the migration of bar patrons to the nearby unregulated towns of Philomath and Albany. This study showed for Corvallis:

- (1) A decrease of 39 in the daily number of customers per establishment;
- (2) Gross sale declines of over \$5,600 per month per establishment;
- (3) A monthly decline in lottery sales of \$4,565 per establishment;
- (4) Eight establishments forced to reduce staff size by an average of seven employees and no establishments increased the number of employees; and
- (5) 32% of the employees reported a decrease in tip income.

K. The 1999 Health Division Study also showed that in the unregulated areas surrounding Corvallis:

- (1) 27% of the bar patrons in Philomath and Albany were from Corvallis;
- (2) Daily customer counts and monthly revenues increased in the surrounding areas, with those establishments just outside Corvallis showing the highest increases; and
- (3) Increases in lottery sales in the surrounding areas.

L. Following the Corvallis smoking ban, Oregon Lottery sales declined over \$267,000 inside the city limits with an average annual decline of over \$19,000 per establishment. Lottery sales at the five establishments outside the city limits increased over \$8,500 per establishment annually at a time when the average retailer across the state saw a 4% decline.

M. Documented sales from OLCC liquor stores showed over a \$43,000 decline to Corvallis bars and taverns and more than a \$14,000 increase in Albany during 1998-1999.

N. A letter to the Albany City Council from "Drugs. Drinking. Driving, Don't" cited an Oregon State Police report showing a 91% increase of DUII arrests from 1998 to 1999 in Linn and Benton Counties following the Corvallis smoking ban.

O. A number of the local regulated bar and tavern owners have complained that with the current level of reduced income it is unlikely that they will be able to continue in business for much longer.

P. The closure of such regulated establishments would likely mean the further loss of jobs, business losses and economic hardship to those affected by the closures.

Q. The above-cited inequities between regulated and non-regulated bars and taverns within Tillamook County would not exist were it not for the non-uniform application of Ordinance #58.

R. The Board concludes that the non-uniform application of Ordinance #58 has created financial inequities for local bars and taverns, increased public safety risks from the likelihood of drinking drivers traveling greater distances and forebodes economic losses and hardships associated with possible business closures in regulated areas.

S. Based on the above and the record of public hearing herein, the Board further concludes that immediate Board action is required and that Ordinance #58 be amended as follows:

Section II. Places where smoking is not regulated. Section VII of Ordinance #58 is amended to read as follows:

- 1) Notwithstanding any other provision to the contrary, the following areas shall not be subject to any smoking restrictions contained within this [section] **Ordinance:**
 - a) Private residences, unless the private residence is used as a child care, adult day care, or health care facility;
 - b) Rented motel/hotel rooms that are designated in some manner as smoking allowed rooms by the owners of the establishment renting the rooms;
 - c) Private rooms rented for an occupancy that exceeds one month and that are not located in a private residence used as a child care, adult day care or health care facility;
 - d) Retail tobacco stores.
 - e) **Cocktail lounges, taverns and those restaurants or areas of restaurants posted as off-limits to minors under rules promulgated by the Oregon Liquor Control Commission.**

Section III. Emergency Clause. The Board of Commissioners finds that the enactment of this Ordinance is necessary for the public health, safety, and general welfare, that an

emergency exists, and this ordinance shall take effect immediately upon passage by the Board of Commissioners.

Ordinance Reading: July 18, 2001

DATED THIS 18th DAY OF July, 2001.

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

Paul A. Hanneman
Paul Hanneman, Chair

Aye Nay Abstain/absent
 /

Charles J. Harliman
Charles Harliman, Vice-Chair

 /

Tim Josi
Tim Josi, Commissioner

 /

ATTEST: Tassi O'Neil,
County Clerk

APPROVED AS TO FORM:

By Lorrie G. McKibbin
Special Deputy

William K. Sargent
William K. Sargent, County Counsel

