

CITY OF PHILADELPHIA  
DEPARTMENT OF PUBLIC HEALTH  
Board of Health

Regulation Relating to Tobacco Retailing

Approved December 8, 2016

**WHEREAS**, smoking kills an estimated 2,000 people in Philadelphia per year;

**WHEREAS**, smoking rates in Philadelphia are highest in low-income neighborhoods, as are rates of tobacco-related morbidity and mortality;

**WHEREAS**, Philadelphia has significantly more Tobacco Retailers per capita than other comparable cities, and low-income neighborhoods in Philadelphia contain significantly more Tobacco Retailers than do high-income neighborhoods;

**WHEREAS**, high Tobacco Retailer density and ubiquitous tobacco marketing are associated with increased smoking rates among youth and adults;

**WHEREAS**, youth are particularly susceptible to the effects of tobacco marketing;

**WHEREAS**, the Department has identified hundreds of Tobacco Retailers who have each been cited for selling Tobacco Products to children more than ten times since 2010, and the annual citywide rate of youth sales non-compliance consistently exceeds the state average;

**WHEREAS**, Section 9-631(2) of The Philadelphia Code requires that any person who wishes to engage in Tobacco Retailing in Philadelphia obtain a Tobacco Retailer Permit from the Department before doing so;

**WHEREAS**, Section 9-631(2)(a) of The Philadelphia Code deems Tobacco Retailing without a Tobacco Retailer Permit “a nuisance as a matter of law”; and

**WHEREAS**, Section 9-631(2)(c)(7) of The Philadelphia Code empowers the Board of Health to adopt any requirement for the issuance and renewal of Tobacco Retailer Permits that is “appropriate for the protection of public health”;

**NOW, THEREFORE**, the Board of Health hereby adopts this Regulation Relating to Tobacco Retailing, as follows:

## **Section 1. Definitions**

*Department.* The Philadelphia Department of Public Health.

*Electronic Smoking Device.* As defined in Section 9-631(1) of The Philadelphia Code.

*Planning District.* A geographical designation established by the Philadelphia City Planning Commission, including Central, Central Northeast, Lower Far Northeast, Lower North, Lower Northeast, Lower Northwest, Lower South, Lower Southwest, North, North Delaware, River Wards, South, University Southwest, Upper Far Northeast, Upper North, Upper Northwest, West, and West Park.

*Tobacco Product.* As defined in Section 9-631(1) of The Philadelphia Code.

*Tobacco Retailer.* As defined in Section 9-631(1) of The Philadelphia Code.

*Tobacco Retailer Density Limit.* For each Planning District, the number equal to the commuter-adjusted daytime population of the Planning District divided by 1,000, rounded up. The commuter-adjusted daytime population shall be calculated using appropriate data sources and methodologies as determined by the Department.

*Tobacco Retailer Permit.* The permit issued pursuant to Section 9-631 of The Philadelphia Code.

*Tobacco Retailing.* As defined in Section 9-631(1) of The Philadelphia Code.

*Unapproved Nicotine Delivery Product.* As defined in Section 9-631(1) of The Philadelphia Code.

## **Section 2. Tobacco Retailer Permitting**

In addition to the requirements of Sections 9-631(2) and (3) of The Philadelphia Code, the Department shall neither issue nor renew a Tobacco Retailer Permit unless the following requirements are met:

- (a) The location for which the Tobacco Retailer Permit is sought is located in a Planning District in which the number of Tobacco Retailers with active Tobacco Retailer Permits is less than the Tobacco Retailer Density Limit.

- (.1) A current or prospective business owner may at any time request a determination from the Department about the applicability of this Section 2(a) to the location in question.
  - (.2) A properly issued Tobacco Retailer Permit shall be exempt from the requirement of Section 2(a) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.
  - (.3) The Department shall maintain a waiting list ordered by date and time of complete application receipt for each planning district that has reached its Tobacco Retailer Density Limit. When the Tobacco Retailer Density Limit exceeds the number of Tobacco Retailer Permits, the Department shall send a notification to the next eligible applicant from the waiting list at the address the applicant provided to the Department. It is the applicant's responsibility to maintain an accurate address on file with the Department. The eligible applicant shall have 30 days to submit a complete application from the date the Department sends notification of the applicant's eligibility. If the eligible applicant fails to submit a complete application within the time allotted, the eligible applicant will be placed at the end of the waiting list and the Department shall notify the next eligible applicant in accordance with the same procedure.
- (b) The stormwater parcel line of the location for which the Tobacco Retailer Permit is sought is not within 500 feet of the stormwater parcel line of a K-12 school.
- (.1) A current or prospective business owner may at any time request a determination from the Department about the applicability of this Section 2(b) to the location in question.
  - (.2) A properly issued Tobacco Retailer Permit shall be exempt from the requirement of Section 2(b) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.

- (c) The person applying for the Tobacco Retailer Permit has incurred no more than two violations of the provisions of Section 9-622 of The Philadelphia Code at any one location within the 24 months preceding the application. For purposes of this Section 2(c), multiple violations that occur on the same day are treated as one violation.
- (d) Any person applying for a new Tobacco Retailer Permit for a location at which a person has held a Tobacco Retailer Permit within the past 24 months may be required to demonstrate to the Department that the location was acquired through an arm's length transaction (as defined in Section 9-622(6)(e) of The Philadelphia Code). If the applicant does not demonstrate that the location was acquired through an arm's length transaction, the applicant will be required to pay any unpaid Tobacco Retailer Permit fees incurred by the previous permittee and will be subject to Section 2(c) as if the applicant had incurred the violations of the previous permittee.
- (e) The person applying for the Tobacco Retailer Permit and the location for which the Tobacco Retailer Permit is sought are not subject to an order to cease sales or operations pursuant to Section 9-622(6)(e).

### **Section 3. Grace Period**

For purposes of Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing, timely renewal shall include renewals received by the Department before January 1 of the year for which the renewal is sought if accompanied by payment for any accrued late fees.

### **Section 4. Tobacco Retailer Permit Fee**

Pursuant to Section 9-631(4) of The Philadelphia Code, the Tobacco Retailer Permit issuance and renewal fees shall each be \$300.00, except that the fee imposed for late renewal pursuant to Section 9-631(3)(b)(.1) shall remain \$50.

### **Section 5. Standardization of Cease Sales Orders**

Upon a finding of a third violation of the provisions of Section 9-622 of The Philadelphia Code at one location in any 24-month period, the Department shall order the Tobacco Retailer to cease Tobacco Retailing at that location, in accordance with Section 9-622(6)(e), for one year.

## **Section 6. Pre-Operational Permits**

Tobacco Retailer Permits may be granted up to 24 months in advance of the planned initiation of Tobacco Retailing. A pre-operational application for a Tobacco Retailer Permit shall include a copy of an executed contract of sale or lease for the location at which Tobacco Retailing is planned.

## **Section 7. Special Designation**

A Tobacco Retailer who possesses a valid Tobacco Retailer Permit on the date this Regulation Relating to Tobacco Retailing goes into effect whose revenue from Tobacco Retailing at the location the Tobacco Retailer Permit covers has exceeded 75% of total revenue at that location for the 3 preceding tax years may apply for a special designation for the location covered by the Tobacco Retailer Permit. The special designation application must be received by the Department within 180 days of the date this Regulation goes into effect. The special designation will allow for the next applicant for a Tobacco Retailer Permit at that location to qualify for a Tobacco Retailer Permit without meeting the requirements of Sections 2(a) and 2(b). Upon issuance of such a Tobacco Retailer Permit, the location shall no longer be specially designated. Such a Tobacco Retailer Permit will be subject to the ongoing requirement that revenue from Tobacco Retailing exceed 75% of total revenue at the location.

## **Section 8. Effective Date**

This Regulation Relating to Tobacco Retailing shall be enforced upon going into effect pursuant to Section 8-407 of The Philadelphia Home Rule Charter, but not earlier than January 1, 2017, except that Section 2(a) shall be enforced no earlier than February 15, 2017.