

Report on public hearing held October 17, 2016 by the Philadelphia Board of Health
Regarding
Regulation Relating to Tobacco Retailing

Submitted by: Thomas A. Farley Date: 12/13/16
Department of Public Health
Thomas A. Farley, MD, MPH
Health Commissioner

Approved by: Martha Johnston Date: 12/14/16
Law Department
Martha Johnston
Senior Attorney

CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH
Board of Health

Report Concerning Public Comments on Regulation Relating to Tobacco Retailing

I. Procedural Background

The Board of Health (the “Board”) approved the Regulation Relating to Tobacco Retailing (the “Regulation”) on September 8, 2016 at a public meeting by unanimous vote of the seven members present.¹ The Law Department approved the Regulation on September 12, 2016. The Department of Public Health (“PDPH”) submitted the Regulation to the Department of Records for publication on September 12, 2016. The Department of Records received a request for public hearing and the Board scheduled a hearing for October 17, 2016. PDPH notified members of the public who requested a hearing or submitted comment on the Regulation and various retailers’ associations² of the public hearing. PDPH also published notice of the hearing in the Philadelphia Daily News and on social media, www.smokefreephilly.org, and on the official City website. The public hearing occurred on October 17, 2016 at 5:30 PM in the Municipal Services Building, 1401 John F. Kennedy Boulevard.

II. October 17, 2016 Hearing

Five representatives of the Board of Health³ and one member of the City Solicitor’s office⁴ appeared at the October 17, 2016 hearing.⁵ Approximately 50 members of the public attended. The following individuals testified:⁶ Ed O’Donnell of the Winthrop Foundation; Jada Rasulallah of the Advocacy Institute; Alan Karpo; Mark Harrell of the Southwest Community Development Corporation; Ilycia Boatwright; Bhagwant Bhatti; Ken Margulies of the American Heart Association; Reverend Jesse Brown; John Rocco of the Newsstand Association of Philadelphia; and Anton Moore.

¹ Thomas A. Farley, MD, MPH; Tyra Bryant-Stephens, MD; Marla J. Gold, MD; Jennifer Ibrahim, PhD, MPH; Amid I. Ismail, BDS, DrPH, MBA; A. Scott McNeal, DO; John A. Rich, MD, MPH.

² These included the Philadelphia Dominican Grocers Association, the Korean American Grocers Association of Philadelphia, the Greater Philadelphia Chinese Restaurant Association, the Pennsylvania Food Merchants Association, the African American Chamber of Commerce of PA, the Asian American Chamber of Commerce of Greater Philadelphia, FINANTA, the Greater Northeast Philadelphia Chamber of Commerce, and the Urban Affairs Coalition, among others.

³ Thomas A. Farley, MD, MPH; Amid I. Ismail, BDS, DrPH, MBA; A. Scott McNeal, DO; Marla J. Gold, MD; Ana Diez-Roux, MD, PhD, MPH.

⁴ Martha Johnston, Senior Attorney, Appeals and Legislation.

⁵ Transcript attached as Exhibit D.

⁶ Affiliations are as provided.

III. Written Comments

In addition to oral testimony provided at the Board's October 17, 2016 hearing, the Board received written comments on the Regulation submitted to the Department of Records while the Regulation was available for public inspection.⁷ The following individuals and entities submitted comment:⁸ Sukesh Anam; Uri Benabou; Christopher Gheysens of Wawa, Inc.; Tariq Jalil; Kathleen Furdella of AB Wholesale Distribution Services; Kira Hendricks; Alan Karpo of Second St. Wholesale; Susan Lee of the Children's Hospital of Philadelphia; Salwinder Malhi; Thomas Briant of the National Association of Tobacco Outlets; Herman Nyamunga of the Welcoming Center for New Pennsylvanians; Mijul Patel; Donna Cooper of Public Citizens for Children and Youth; Jasmine Santos of the Children's Hospital of Philadelphia; and John Valkovec.

IV. Responses to Testimony and Comments

The Board heard testimony from 10 individuals and received 15 written comments on the Regulation. Nearly half of all testimony and comments encouraged the Board to finalize the Regulation as the Board had approved it on September 8, 2016. The remaining comments included requests for accommodations, clarifications, and, in some cases, outright rescission of the Regulation. The following is a summary of public testimony and comment grouped by topic, along with the Board's responses.

A. Supportive Testimony and Comments

Supportive comments highlighted the importance of ensuring that minors are not able to purchase tobacco products and addressing the excessive amount of tobacco marketing and tobacco retailers in Philadelphia, especially in lower-income communities. Public comment noted that tobacco use is the leading cause of death in Philadelphia and that Philadelphia has more tobacco retailers per capita than other major cities. Public comment also pointed out that tobacco is a unique consumer product, because it severely injures and kills users and bystanders to its use, even when used exactly as intended. As one young woman put it:

I pass by about ten stores on my way to school and I see about six of them that are heavily marketed with tobacco products. And I know that their marketing doesn't go to adults, it's directed towards the youth. . . . [T]hey place their tobacco products right next to the candy counters where young kids can see them. And they call kids replacement smokers

⁷ Written comments attached as Exhibit E.

⁸ Affiliations are as provided.

*because . . . each day 1,300 people die from cigarette smoking . . . and so they need people to replace these people that are dying[.]*⁹

RESPONSE: The Board appreciates the expressions of support from the public, and agrees that the Regulation is an appropriate and reasonable mechanism to address the ongoing threat tobacco poses to Philadelphia. The Board has decided to make certain limited changes to the Regulation in consideration of concerns from business owners, outlined in Section IV(B) below and reflected in the final Regulation, but the Regulation remains consistent with the spirit of the supportive comments received.

B. Testimony and Comments Resulting in Changes to Regulation

Some individuals noted that the value of their businesses would decrease as a result of the Regulation because permits would not be available to new owners upon sale or transfer. One individual who reported that he owned and managed a tobacco shop claimed that tobacco sales comprise more than 90% of his business's revenue, which he said meant that his business would be essentially valueless upon sale.

RESPONSE: The overwhelming majority of tobacco retailers sell many products beside tobacco products, and tobacco represents a small fraction of their revenue. For the small number of existing retailers that sell little else other than tobacco, the Board finds it reasonable to allow a new permit to be issued after the first time a business is transferred to a new owner. The final version of the Regulation reflects this change.

Some individuals sought clarification of the rule surrounding renewal and grandfathering of permits for purposes of the retailer density limit and the 500-foot zone around schools in which new permits will not be available. One individual expressed concern that a permit could lose grandfathered status if a school opened within 500 feet of the permitted location.

RESPONSE: The Board agrees that it would be preferable to allow permits issued both before and after the Regulation goes into effect to retain grandfathered status upon renewal for purposes of the retailer density limit and the 500-foot zone around schools in which new permits will not be available. The final version of the Regulation reflects this change.

One individual requested clarity about the earliest point at which an applicant could receive a permit, and specifically asked that pre-operational permits be granted upon the showing of a contract for sale or lease. The same individual requested that applications for permits be responded to within 30 days.

⁹ Testimony of Jada Rasulallah, p. 12 of October 17, 2016 Transcript Hearing, attached as Exhibit D.

RESPONSE: The Board agrees that pre-operational permit issuance is necessary for reasonable business expectations to be met. The Board agrees that an executed contract for sale or lease should be necessary for pre-operational permits, and finds that 24 months in advance of planned operation is an acceptable outside limit for the issuance of pre-operational permits. The final version of the Regulation reflects this change. The Board agrees that 30 days should generally be enough time for the Department to reply to an application, but recognizes that some applications will require additional investigation. The Department will respond in a reasonable amount of time, telling applicants whether they will receive a permit, are denied a permit (if they do not meet eligibility criteria), or will be placed on a waiting list (if they meet eligibility criteria but the district is above the retailer density limit).

One individual requested that the Board clarify the type of population data to be used in calculating tobacco retailer density limits and suggested that residential population data may not be the most appropriate type of data.

RESPONSE: The Board agrees that it would be helpful to provide additional detail about the type of population data to be used in calculating tobacco retailer density limits. The Board finds that commuter-adjusted daytime population is a reasonable proxy for economic activity in a district and an appropriate type of population data for calculating density limits. The final version of the Regulation reflects this change.

C. Testimony and Comments Not Resulting in Changes to Regulation

One individual requested that the Board consider banning menthol tobacco products.

RESPONSE: The Board agrees that menthol and other flavored tobacco products are public health problems, particularly because they entice youth and can make quit attempts more challenging, but this request falls outside of the current regulatory process.

Some individuals complained about the increased permit fee.

RESPONSE: The Board finds that the increased permit fee accurately reflects the costs of administering and enforcing applicable law effectively.

One individual sought additional clarity about arm's length transactions.

RESPONSE: The Board finds that it is reasonable to make reference in the Regulation to relevant language concerning arm's length transactions in The Philadelphia Code. The final version of the Regulation reflects this change. To reiterate, in some cases, the Department may seek proof of an arm's length transaction because of concern that the new permit application is actually an attempt to avoid accrued fees or violations attached to the last permit. Failure to demonstrate an arm's length transaction would not itself make an applicant ineligible for a permit.

Some individuals expressed concern about excise taxes on cigarettes, and one individual expressed concern that Philadelphians will buy tobacco products from surrounding municipalities as regulations become increasingly strict in Philadelphia.

RESPONSE: The Board does not find comments about excise taxes relevant to the current regulatory process, and the Board does not agree that the Regulation would make an individual less likely to purchase a tobacco product from a given permitted retailer.

One individual requested that the retailer density limit implementation be delayed for five years.

RESPONSE: Smoking is estimated to cause 2,000 deaths per year in Philadelphia. The Board does not believe a five-year implementation delay is consistent with its public health mission.

One individual expressed that as a business owner he was not responsible for his employees' failures to comply with youth sales laws, and another individual noted that better enforcement, rather than more regulation, was the answer to the issue of youth sales violations.

RESPONSE: By law, tobacco retailers are responsible for the actions of their employees in tobacco sales. Retailers must train and supervise their employees to ensure that they do not sell tobacco products to minors. The Department is responsible for enforcing this law, but many retailers repeatedly violate youth sales laws, despite fines. The increased permit fee will provide resources to strengthen this enforcement.

V. Final Action

The Board hereby files with the Department of Records for final action this Report and the final Regulation, attached as Exhibit A, both of which the Board approved on December 8, 2016. For reference, changes from the version of the Regulation approved on September 8, 2016 to the final version approved on December 8, 2016 can be reviewed in the version attached as Exhibit B, wherein strikethrough reflects deletion and underlining reflects addition. The version of the Regulation approved on September 8, 2016 is attached as Exhibit C.

EXHIBIT A

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.

EXHIBIT B

CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH
Board of Health

Regulation Relating to Tobacco Retailing

Approved _____

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 ~~operating~~ 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) ~~Any~~ A properly issued Tobacco Retailer Permit held before the enactment of this Regulation Relating to Tobacco Retailing shall be exempt from ~~this~~ 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) ~~Any~~ A properly issued Tobacco Retailer Permit held before the enactment of this Regulation Relating to Tobacco Retailing shall be exempt from ~~this~~ 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 68. Effective Date

~~Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than January 1, 2017, and Sections 2(c), 2(d), 2(e), 4, and 5 of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than November 2, 2016. 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.~~

EXHIBIT C

CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH
Board of Health

Regulation Relating to Tobacco Retailing

Approved September 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:

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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 population of the Planning District divided by 1,000, rounded up.

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 operating 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) Any Tobacco Retailer Permit held before the enactment of this Regulation Relating to Tobacco Retailing shall be exempt from this Section 2(a) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.
- (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) Any Tobacco Retailer Permit held before the enactment of this Regulation Relating to Tobacco Retailing shall be exempt from this 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. 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. Effective Date

Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than January 1, 2017, and Sections 2(c), 2(d), 2(e), 4, and 5 of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than November 2, 2016.

EXHIBIT D

BOARD OF HEALTH REGULATION
RELATING TO TOBACCO RETAILING
PUBLIC HEARING

TRANSCRIPT OF TESTIMONY, taken in the
above-captioned matter, by and before ERICA HEARN,
Court Reporter and Notary Public, at 1401 John F.
Kennedy Boulevard, Room 1450, Philadelphia,
Pennsylvania, on Monday, October 17, 2016
commencing at 5:35 p.m.

- - -

ERSA COURT REPORTERS
30 South 17th Street
United Plaza - Suite 1520
Philadelphia, PA 19103
(215) 564-1233

1 A P P E A R A N C E S:

2

3 BEFORE:

4 THOMAS FARLEY, M.D., HEALTH COMMISSIONER

5 SCOTT MCNEAL, D.O.,

6 AMID ISMAIL, BDS, MPH, DrPH, MBA

7 MARLA J. GOLD, M.D.

8 ANA DIEZ-ROUX, M.D, Ph.D., MPH

9

10 ALSO PRESENT: JOSHUA ROPER, ESQ.

11 MARTHA JOHNSTON, ESQ.

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1 DR. FARLEY: Welcome to the
2 Public Hearing of the Board of Health.

3 This is a public hearing
4 regarding Regulations that were passed by
5 the Board of Health at its September
6 meeting. There are copies available. If
7 you haven't already gotten one, I suggest
8 you get one. It is about a three-pager
9 here.

10 I will just summarize very
11 briefly what's in the Regulations, but I
12 want you to really just refer to the
13 Regulations themselves to know the details
14 about them. These have to do with permits
15 for being able to sell tobacco products in
16 Philadelphia.

17 The Regulations, the key parts
18 are four. One of them is that we put a
19 cap on the number of retailers per
20 thousand population in each planning
21 district.

22 Second, is it would prohibit
23 retailing within 500 feet of a school, but
24 for both the cap and for retailing,

1 existing retailers would be grandfathered,
2 that is to say if they have an existing
3 permit they would be able to keep that
4 permit.

5 And the third thing is that there
6 would be an increase in the permit fee
7 from \$50 to \$300, additional revenue for
8 which would be used for additional
9 compliance checks to ensure that retailers
10 are not selling tobacco products to
11 children.

12 And the final was a regulation
13 that would make it so that if a retailer
14 was found to be selling cigarettes to
15 minors on compliance checks for three
16 times over a two-year period, than that
17 permit would be revoked for a period of 12
18 months.

19 Again, that's my summary of it,
20 but in case that wasn't totally accurate,
21 I strongly suggest you read the
22 Regulations themselves.

23 The purpose of this hearing
24 tonight is to hear from you, the people

1 who want to address the Board on this.
2 There will be no deliberation by the Board
3 members tonight, and no decisions made
4 tonight about the regulations. This is
5 just an opportunity for us to receive your
6 feedback.

7 In a minute, Josh Roper, the
8 attorney for the Board, is going to talk
9 about how we're going to run the hearing,
10 what the process will be, but let me just
11 summarize a little bit about what the
12 process will be after tonight.

13 Go ahead, come on in.

14 The Regulations, as I said, were
15 passed by the Board at its September
16 meeting. There was a comment period that
17 has been open since then, so the Board has
18 been receiving any written comments. The
19 Board will be receiving those written
20 comments in addition to the oral comments
21 that we'll hear tonight, and then the
22 Board members will consider those comments
23 at a subsequent meeting and determine
24 based upon its considerations whether it

1 wants to continue the Regulations as
2 written, whether it wants to rescind the
3 Regulations, or whether it wants to amend
4 the Regulations. That consideration and
5 decision will probably take place at the
6 November meeting which is currently
7 scheduled for November 10th, but check
8 back with us if you're interested in the
9 timing of that. But, again, the purpose
10 for tonight is really to hear from you.

11 So everybody who wants to speak,
12 if you're interested, please sign up with
13 Jean who I guess was outside the door, and
14 I'm going to turn it over to Josh Roper to
15 talk a little bit about exactly how we do
16 this.

17 MR. ROPER: Thanks for coming,
18 everybody.

19 A few process notes. So
20 Dr. Farley is going to call your name if
21 you signed up to testify. You can just
22 head over here where you'll speak. You'll
23 see up here there's a three minute timer
24 to count down so you know how much time

1 you have. It will make a beep when your
2 time is up. If you have any written
3 testimony that you want to share, either
4 in lieu of or in addition to oral
5 testimony, you can give it to Jean who is
6 outside at the sign-in table. She will
7 put it in a folder and it will be given to
8 the Board of Health. You can do that
9 before you leave if you'd like to submit
10 that with the testimony.

11 When you testify, please state
12 your name so that the court reporter can
13 write it down. Also, for the court
14 reporter, Martha Johnston is here from the
15 Law Department in accordance with the Home
16 Rule Charter requirement.

17 That's it.

18 DR. FARLEY: And let me just
19 reiterate, the Board is here to listen
20 tonight, and, so, in general, the Board is
21 not going to be engaging you, asking
22 questions, but we will be listening. But
23 if there are burning questions that the
24 Board members have, I won't stop them from

1 doing that. But, for the most part, we'll
2 probably just go through one person after
3 another. And we're going to take people
4 in the turn in which they arrived and
5 signed up.

6 So pardon me if I have trouble
7 reading your handwriting or mispronouncing
8 your name, the first name seems to be Ed
9 O'Donnell from the Winthorp Foundation.

10 State your name and your
11 organization before you give us your
12 comments.

13 - - -

14 MR. O'DONNELL: Yes, Ed
15 O'Donnell, Winthorp Foundation, which is a
16 charity which engages in public health
17 work. And Google me, I was on the ballot
18 in the New Hampshire primary. I'm a third
19 party candidate for president of the
20 United States.

21 I support everything you
22 recommend, and I'm going to tell you why.
23 For those who smoke cigarettes, they get
24 headaches, lung disease and cancer. For

1 those who are subjected to secondhand
2 cigarette smoke, especially if they're
3 allergic, like I am, they get headaches,
4 emphysema, lung disease, and can get
5 cancer. Secondhand cigarette smoke can
6 create serious illnesses, cancer and death
7 in other people who are just walking on
8 the street.

9 Former Delaware Governor
10 Peterson, a great environmentalist, said
11 secondhand cigarette smoke is the single
12 greatest cause by volume, cubic volume, of
13 air pollution. Cigarette butts litter the
14 countryside making a mockery out of
15 America the beautiful. The money which
16 cigarette smokers spend on cigarettes,
17 they should be giving to their families
18 and to charity. Science can be used for
19 good or for ill. It's used for a lot of
20 good purposes, but then it created the
21 atomic boom and cigarette smoking took off
22 when the filter was invented. And I have
23 noticed, frankly, that cigarette smokers
24 tend to be more verbally abusive and more

1 angry than the average citizen, and one of
2 the reasons is they don't feel well. It
3 gets in the way of a good night's sleep,
4 it gets in the way of eating a healthy
5 diet, and, to finish, I've dealt with
6 people who are addicted to various things.
7 And it is a wonderful thing to observe
8 them when they kick these addictions and
9 start feeling good. They start feeling
10 like a national football player in August,
11 it's a beautiful thing. So anything you
12 can do to get people to stop putting
13 unhealthy things in the body is good.

14 You've noticed the candidates for
15 President of the United States have not
16 mentioned cigarette smoking, it's a very
17 serious public health issue. The
18 President, the Vice President, never
19 mention it. I've known the Vice President
20 for years, I write him letters to his
21 home, he reads them, he's on this cancer
22 moonshot, and I pointed out to him one of
23 the greatest causes of cancer is cigarette
24 smoke.

1 So thank you for doing this. My
2 father was a doctor, and went to Yale and
3 Yale Med, my mother was a nurse, niece is
4 a nurse, and anything I can do to help,
5 let me know.

6 DR. FARLEY: Thank you very much.

7 Next on our list is Jada
8 Rasulallah, I may not have your name
9 right, from the Advocacy Institute.

10 - - -

11 MS. RASULALLAH: Good evening.

12 My name is Jada Rasulallah, I'm
13 15-years-old and I've been involved with
14 tobacco prevention work for about a year
15 now. And so I've been in an effort to
16 help drop the youth smoking rate down from
17 seven percent to zero percent because
18 cigarettes takes people's lives in
19 general. And I have a father that smokes
20 and a grandmother that smokes, so I can
21 relate to seeing people struggle for air
22 when they walk up the steps and I don't
23 like how that feels. And so I support the
24 Regulations and I hope that you continue

1 to support the Regulations because I know
2 that the tobacco industry continues to
3 target youth. I pass by about ten stores
4 on my way to school and I see about six of
5 them that are heavily marketed with
6 tobacco products. And I know that they're
7 marketing doesn't go to adults, it's
8 directed towards the youth. And I see
9 that their tactics, they place their
10 tobacco products right next to the candy
11 counters where young kids can see them.
12 And they call kids replacement smokers
13 because -- excuse me. Each day 1,300
14 people die from cigarette smoking in the
15 U.S. alone, and so they need people to
16 replace these people that are dying, and
17 they go directly to the youth.

18 There was a quote by one of the
19 tobacco executives that said that they
20 don't smoke cigarettes, but they reserve
21 the right for the young, the poor, the
22 black, and the stupid, and, of course,
23 young people that are uneducated are
24 vulnerable and victimized by the tobacco

1 industry and they fall for their targets
2 and their schemes. And they say that
3 smoking cigarettes can help relieve
4 stress, which absolutely is false, because
5 it helps -- it gets you addicted and it
6 numbs your throat so you continue to smoke
7 the cigarettes.

8 And, so, I just hope that the
9 policies stay in place. Thank you.

10 DR. FARLEY: Thank you very much.

11 (Applause.)

12 DR. FARLEY: I now see Alan
13 K-A-N-O, Kano, just listed as a citizen.

14 Thank you very much.

15 - - -

16 MR. KARPO: Hello, everybody.

17 My name is Alan Karpo and I own a
18 cigarette store and a wholesale business
19 I've owned for 27 years. I put my son
20 through college, take care of my family
21 with it. I have no problem with the
22 objective here. I don't want kids to
23 smoke, but I want kids to do things that
24 are healthy all around the board, not just

1 not smoke, but I'll get to that in a
2 moment.

3 The problem I see with this
4 regulation is two fold. The first problem
5 I see is that the execution of the plan is
6 unfair to business people that sell a
7 legal product. Everything that everyone
8 said so far, it all sounds good, but this
9 is a legal product and people use it for a
10 variety of reasons that I guess we can't
11 elaborate on now, but it's a legal
12 product. Many of these people are small
13 business which employ people and pay
14 taxes. These people work hard to care for
15 and feed their families just like everyone
16 that's in this room. Specifically, the
17 Regulation that will take the permit away
18 when I am ready to sell my business will
19 dramatically reduce the value of the
20 business that I've worked 27 years to
21 build.

22 Cigarettes represent over 90
23 percent of my profits. Without the
24 ability of a potential buyer to continue

1 selling cigarettes, my business will
2 effectively have no value.

3 I'm 61-years-old and have counted
4 on using the money I get from the sale of
5 my store to help me in my retirement.

6 There are ways to help stop
7 children from smoking without imposing
8 this hardship on small business owners.
9 Some obvious ways are out there. The
10 first and most foremost is we have a law
11 that's in place, enforce the law against
12 selling cigarettes to minors. I'm all for
13 it. Enforce the law. Educate our
14 children. It's a parent's responsibility.
15 It's the school's responsibility. It's
16 the community's responsibility to educate
17 our children. Teach them right from
18 wrong. Not everyone is going to be
19 perfect, we're human beings, and we make
20 mistakes and we do things that aren't
21 always good for us.

22 Thirdly, there's the very easy
23 first to ad point of sale in any retail
24 establishment to show kids that smoking is

1 bad, but do it in an effective manner. If
2 we charge more for these licenses, let's
3 use that money to put some point of sale
4 material up that says when you walk up to
5 that candy counter, don't buy cigarettes.

6 Secondly, there's many products
7 and behaviors that are extremely addictive
8 and harmful to children. It seems to me
9 that there's been a disproportion amount
10 of restrictions and taxes that have been
11 levied against the tobacco industry than
12 other products. As an example, in the
13 last two years, the cost of a pack of
14 cigarettes in Philadelphia has gone up 60
15 percent as a result of the tax that has
16 been put in place. When that happened, my
17 business was cut by 60 percent overnight.
18 I, in fact, had to fire two employees as a
19 result of that because I couldn't afford
20 to pay them anymore. I'm small. This
21 trickles down. You go to a 7-Eleven or
22 Wawa, good Philadelphians that work hard
23 don't have jobs because of these things.

24 Again, there are other products

1 that are harmful and addictive that have
2 not been restricted or taxed at this rate.
3 Obvious examples are alcohol, chips,
4 potatoes, cookies, cakes, cheesesteaks,
5 all these things are not healthy for us,
6 yet I like a cheesesteak. And I'm a human
7 being, it's a legal product, I'm allowed
8 to make those choices because it's
9 America.

10 There are many ways that we can
11 help our children that are equally, if not
12 more important, without hurting good
13 hardworking people, especially small
14 business people that pay their taxes and
15 employ other people.

16 Don't do drugs, don't drink,
17 enforce the importance of education,
18 exercise and stay health, all these things
19 matter, not just cigarette smoking.

20 Thank you.

21 DR. FARLEY: Thank you very much.

22 DR. GOLD: I have a question.

23 DR. FARLEY: I'm sorry, sir, we
24 have a question for you. Could you just

1 sit down for a second. It won't count
2 against your three minutes.

3 MR. KARPO: No problem.

4 DR. GOLD: Just, concisely, why
5 would this regulation as written with
6 these four parts put you out of business.

7 MR. KARPO: Well, the one that's
8 most bothersome to me is the last one
9 which says that if I sell my business I
10 can't transfer the license. As soon as I
11 lose the ability to transfer my cigarette
12 license, my business has no value.
13 Because if you want to buy my business, I
14 can't guarantee to you that my business is
15 going to have any value because 90 percent
16 of my profits are cigarettes. So if I
17 sell the business to you and you can't
18 have a cigarette license, I'm selling you
19 nothing.

20 DR. GOLD: Okay. I understand.
21 Thank you.

22 DR. FARLEY: And just a follow-up
23 question. So your business is basically a
24 tobacco business, that's pretty much all

1 you sell.

2 MR. KARPO: Yes. Yes.

3 I mean, I sell some candy, some
4 other stuff, ancillary items, but 90
5 percent of the volume of the profit is
6 cigarettes.

7 DR. FARLEY: Okay. Thank you
8 very much, sir.

9 DR. GOLD: Thank you.

10 DR. FARLEY: The next person on
11 my list is Mark Harrell from the Southwest
12 CDC.

13 - - -

14 MR. HARRELL: Good evening.

15 DR. FARLEY: Good evening.

16 MR. HARRELL: Good evening. My
17 name is Mark Harrell. I'm the MAC
18 Coordinator for the Southwest Community
19 Development Corporation.

20 A little over 25 years ago,
21 Phillip Morris, one of the most successful
22 cigarette manufacturers in the country
23 began spending 1.3 million dollars over
24 three years to subsidize the Mayor's

1 Commission on Literacy here in
2 Philadelphia. Why did Phillip Morris
3 chose Philadelphia for it's big literacy
4 grant, for the same reason R.J. Reynolds
5 choose Philadelphia to test market the
6 African American targeted Uptown
7 Cigarette.

8 At that time, cigarette companies
9 considered Philadelphia a city with, and I
10 quote, few morals and fewer principles.
11 And Phillip Morris donated 1.3 million
12 dollars to prove it. R.J. Reynolds would
13 have been successful as well had it not
14 been for the Coalition against Uptown
15 Cigarettes led by the Reverend Jesse Brown
16 of Christ Evangelical Lutheran Church at
17 that time, and Dr. Carl M. Mansfield, the
18 then president of the American Cancer
19 Society's Philadelphia Division, and a
20 cross section of community activists,
21 including myself, who was the community
22 coordinator for the Why Smoke Project at
23 Graduate Hospital at that time.

24 We defeated big tobacco. R.J.

1 Reynolds addressed every detail in
2 designing the cigarette, it's packaging
3 and marketing strategies. For example,
4 the package was designed the black and
5 gold colors that were deemed attractive to
6 the African American market. Through
7 focus group testing, R.J. Reynolds found
8 that the African American blue collar
9 worker opened their cigarettes from the
10 bottom to avoid crushing the filter or
11 putting unwashed hands on the part of the
12 cigarette that go into the mouth. So the
13 cigarettes were packed with their filters
14 down, the opposite of standard packaging.
15 They would also be offering the cigarettes
16 in a ten pack format. They also planned
17 to introduce the brand during February,
18 which coincided with Black History Month.
19 These tactics continue to be in practice
20 when you see that Philadelphia's low
21 income neighborhoods have 69 percent more
22 tobacco retailers overall and 63 percent
23 more tobacco retailers within 500 schools
24 than higher income neighborhoods. Tobacco

1 retailers near schools pays more tobacco
2 marketing materials, mere products for
3 children such as candy, than tobacco
4 retailers in other locations.

5 Philadelphia has the highest
6 youth tobacco sales violation rate in
7 Pennsylvania. In 2015, 23 percent of
8 Philadelphia tobacco retailers sold
9 tobacco to youth over twice both the state
10 average and the rate of the next highest
11 county. We have more than twice the
12 number of retailers per capita than other
13 major U.S. cities. For these reasons, I
14 support the policy proposals to address
15 disproportionate tobacco exposure in
16 Philadelphia that are currently before
17 you, including the tobacco retailer cap,
18 which will establish the maximum of one
19 tobacco retailer permit per a thousand
20 residents by planning district, and a
21 tobacco school free zone, prohibiting new
22 tobacco retailer permits within 500 feet
23 of any K through 12 school.

24 Thank you.

1 DR. FARLEY: Thank you very much,
2 sir.

3 (Applause.)

4 DR. FARLEY: Next I have Ilycia
5 Boatwright. Did I get that right? Thank
6 you.

7 - - -

8 MS. BOATWRIGHT: Hi, my name is
9 Ilycia Boatwright Buffalo. I am a former
10 worker of the compliance checks industry.
11 I am now 18-years-old. I've been working
12 there for about -- or previously working
13 there for about two years.

14 A day in the life of a compliance
15 checks worker is basically going out to
16 the store, asking to buy tobacco product
17 and if being asked so to present your ID.
18 It is very important that everyone
19 understands that this is a 100 percent
20 honesty program. You have to do exactly
21 what they say. If they ask for ID, you
22 have to present an ID. This is no lying
23 allowed.

24 I will a hundred percent support

1 everything that these bills stand for,
2 because if these rules aren't in place
3 there is not going to be anybody to smoke
4 in the future. So if we get rid of
5 everything now, we don't have to worry
6 about industries or stores being passed
7 down because there's going to be no youth
8 to smoke them. This program is very, very
9 important to everyone in my community,
10 really, because as one of my co-workers
11 said before, she walks past a store every
12 single day and she sees -- she sees
13 advertisement going towards youth. And it
14 might not exactly say, oh, this is for
15 youth, but we all know who they're going
16 for. So it is very important that we stop
17 these programs while we're ahead so that
18 in the future we don't have any of these
19 problems.

20 Thank you.

21 DR. FARLEY: Thank you very much.

22 Next, I have, and I apologize if
23 I'm pronouncing your name wrong, Bhagwant
24 Bhatti.

1 Yes, sir, thank you very much for
2 coming.

3 - - -

4 MR. BHATTI: Hi, good evening,
5 everybody. My name is Bhagwant Bhatti. I
6 own the store Girard Food and Gas Mart on
7 Girard Avenue. I've been 11, 12 years
8 over there, and since the changing of the
9 law, my business losing a lot of the value
10 of the business, and I already couple of
11 employees give a layoff. And in the
12 future if they put too many laws on the
13 business, it's very hard to survive in the
14 city. We already discriminated by the
15 city because out of the city cigarette is
16 cheaper, inside the city is expensive, and
17 our tax bracket is very high rather than
18 (inaudible). So I think we should to
19 follow-up something, a nice way to make
20 sure, you know, I know there's health
21 issues with cigarette, but if it's a
22 health issue, why not they stop in the
23 whole state cigarette. I'd be happy with
24 that. I can survive with that, without

1 selling cigarettes, but the city and the
2 states who make the money behind this law,
3 they should think about that. That's it.

4 Thank you.

5 DR. FARLEY: Thank you very much,
6 sir.

7 Next is Ken Margulies from the
8 American Heart Association.

9 - - -

10 MR. MARGULIES: Commissioner
11 Farley and Members of the Board, my name
12 is Ken Margulies. In addition to being an
13 academic cardiologist at Penn Medicine,
14 I'm the volunteer president of the local
15 American Heart Association Board here in
16 Southeast Pennsylvania. On behalf of the
17 Heart Association, we support all the
18 provisions of the proposal being
19 submitted.

20 We specifically encourage
21 immediate adoption of all these new
22 provisions that are aimed at reducing the
23 density of tobacco retail locations
24 throughout the city, and specifically the

1 marketing of tobacco products to our
2 children.

3 Furthermore, these meaningful
4 steps will help finally address the
5 patterns of repeated violations that are
6 endemic and provide some revenue for
7 enforcement.

8 Now, this is very relevant to
9 this city in particular, right, more than
10 2000 Philadelphians are killed each year
11 because of smoking related illnesses. I'm
12 on the front lines of that. I'm a heart
13 failure doctor, I see the consequences of
14 smoking-related illness every single day.
15 Exposure to greater tobacco retailer
16 density and tobacco marketing are clearly
17 associated with increased smoking rates
18 among youth and adults. Tobacco retailers
19 in Philadelphia are 63 percent more likely
20 to market their products within 500 feet
21 of a school in low income areas compared
22 with high income areas, so they're clearly
23 targeting vulnerable populations here and
24 that's very unfortunate, especially since

1 Philadelphians suffer from the highest
2 smoking rate of any major city of
3 comparable size.

4 So while we do support
5 legislatures to support other effective
6 means to discourage youth, mainly taxes on
7 tobacco products themselves, this Board
8 has the authority to specifically address
9 the problems of retailer density in
10 violation of youth sales, and I urge you
11 to exercise that authority.

12 I found it interesting to hear
13 Mr. Karpo's remarks concerning the winners
14 and losers in any policy, and surely there
15 are winners and losers in any policy, but
16 I think it's important to be mindful of
17 the fact that the vulnerable populations
18 that are targeted by tobacco sales near
19 schools and in low income areas are also a
20 vulnerable population that are also
21 economically and healthwise disadvantaged
22 by these marketing practices. So
23 businesses can be winners or losers, but
24 so are the people targeted by these

1 businesses and we should be mindful of
2 their needs as well. So, of course, in
3 the larger context one of the most
4 profound victories and progress in public
5 health is the reduction in smoking rates
6 from over 50 percent to less than 20
7 percent in the United States. The problem
8 is that there are some pockets that are
9 not doing quite as well, and Philadelphia
10 is one of those pockets, so today the
11 Board of Health and this city have an
12 opportunity to further reduce the toll of
13 tobacco on hard-working people in
14 Philadelphia, both the economic toll and
15 the health toll, and we support these
16 policies to do so.

17 Thank you very much.

18 (Applause.)

19 DR. FARLEY: Then I have Reverend
20 Jesse Brown.

21 - - -

22 REVEREND BROWN: Good afternoon,
23 everybody.

24 Many businesses in the City of

1 Philadelphia do not care or show little
2 regard in protecting our young people from
3 the use of tobacco products, even under
4 the current laws that are on the books.

5 The tobacco industry has targeted
6 the most vulnerable citizens and
7 communities to supersaturate tobacco
8 products. Philadelphia's poorest
9 neighborhoods and poorest children are the
10 intended victims of the tobacco industry's
11 advertising and promotional campaigns, and
12 too many in the retail community
13 flagrantly violate existing rules on
14 selling tobacco to minors believing that
15 nobody is watching or no significant
16 punishment is on the way.

17 Many in the retail community have
18 demonstrated an indifference and an
19 inability to police themselves. There are
20 some that will claim that this will put
21 some retailers out of business. If these
22 retailers can't follow the rules, then we
23 should stop them from being a menace to
24 our communities. There may be some people

1 who will try to convince you that underage
2 sales of tobacco is the fault of children.
3 What they fail to tell us is that no child
4 brought tobacco products into the
5 neighborhood, no children sells tobacco
6 products, and that it is not the children
7 who fail to follow the rules, but adults.

8 Some retailers and associations
9 that represent retailers have become
10 cowards and they try to blame children for
11 the failure of adults. The rules that are
12 proposed in the tobacco retailing policies
13 are both necessary and overdue. If this
14 City government loves its children and
15 wants to provide a little support for its
16 children and communities, then these few
17 rules are no brainers.

18 I want to add one other piece to
19 this in support of this. You probably
20 already know that Chicago has also added
21 into their legislation menthol cigarettes,
22 which too was the only flavored cigarettes
23 not covered in the Master Settlement
24 Agreement. Those flavored cigarettes is

1 also being targeted to the community to
2 the same populations and same communities
3 that we're talking about here in
4 Philadelphia, particularly African
5 American communities, Latino communities,
6 and woman who are the primary consumers of
7 mentholated cigarettes. It would not be
8 that difficult to add that into that 500
9 feet provision that no one can sell
10 mentholated cigarettes within 500 feet of
11 schools or places young people congregate.
12 And I would propose at some point in time
13 that that be visited, if not in this
14 current legislation, in future rules that
15 you make with that. It's already been
16 upheld in Chicago and passed Supreme Court
17 muster, so to speak, so to do that would
18 also continue to help protect our
19 children.

20 (Applause.)

21 DR. FARLEY: Thank you very much,
22 sir.

23 I now have, I'm not sure I can
24 quite read it, John Rocco from the

1 Newsstand Association of Philadelphia.

2 Thank you, sir.

3 - - -

4 MR. ROCCO: Good evening
5 everyone.

6 As president of the Newsstand
7 Association, I want to take this
8 opportunity to thank you for allowing me
9 to present my testimony regarding the
10 proposed tobacco permit fee.

11 On behalf of the 118 members in
12 our association, I want to state that we
13 strongly oppose increasing the tobacco
14 sale permit from 50 to 300 dollars. This
15 fee increase is another burden on our
16 membership struggling to provide for their
17 families due to the 60 percent decline in
18 newspaper sales, 40 to 50 percent loss in
19 revenues from the recently enacted Sin tax
20 on a pack of cigarettes. It is a flawed
21 argument that because our cigarette sales
22 are down, Philadelphia residents health is
23 up. It is well-known that Philadelphians
24 are crossing county lines to save cash by

1 purchasing cigarettes elsewhere.

2 It is our opinion that this
3 permit fee is another method to subsidize
4 a failed budget. Philadelphia doesn't
5 have a smoking problem as much as it has a
6 spending problem. While we recognize the
7 benefits to provide additional funding for
8 education, and the City's concern for the
9 health of its citizens, particularly the
10 children, this fee increase will have
11 little impact. There ought to be another
12 way to balance the City's budget then
13 imposing a permit fee on the tobacco
14 retail license.

15 Thank you very much.

16 HEARING OFFICER PETERSEN: Thank
17 you, sir.

18 I now have, and I'm sorry if I'm
19 having trouble pronouncing it, because I'm
20 having trouble reading it, Anton Moore; is
21 that right?

22 MR. MOORE: Yes.

23 - - -

24 MR. MOORE: Good afternoon. I

1 was just talking to one of my good friends
2 that are here. We were talking about, you
3 know, the Regulations and looking at
4 what's going on in our community.

5 Oftentimes, when you see young
6 kids targeted from a marketing aspect with
7 tobacco, they look to experiment on other
8 things. In my community, I watch kids
9 start off smoking cigarettes, then they
10 start smoking marijuana, and then doing
11 other things. When you target that
12 demographic, and they see it on social
13 media and they see it in the
14 neighborhoods, they end up getting sucked
15 into the marketing campaign and they start
16 doing these things. So these Regulations,
17 as my brother said, is a no brainer,
18 because you have to stop -- I mean, we
19 hear that, you know, oh, it's going to
20 affect the businesses in our community,
21 but we have to stop putting profit over
22 human beings and start thinking about the
23 actual lives of these young people that
24 are in our communities.

1 So as many people sit up here and
2 said, this is a no brainer.

3 Thank you.

4 (Applause.)

5 DR. FARLEY: Thank you very much.

6 Now, those are the only names
7 that I have on my list here. Let me just
8 double-check to see if there isn't anyone
9 else who has signed in.

10 Josh, could you check with Jean
11 to make sure there isn't anyone else?

12 So if no one else wants to
13 testify, then this hearing is concluded.

14 I want to thank you all very much
15 for coming.

16 Again, I'll explain the process
17 from here. The Board will take input from
18 the written comments it received, as well
19 as the comments received tonight, any
20 written comments we have received tonight,
21 and those will be presented to the Board.
22 The Board will deliberate and consider
23 what it wants to do with the rules
24 probably at the November meeting, which is

1 scheduled for November 10th.

2 Thank you all very much. Good
3 night.

4 DR. GOLD: Thank you.

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6 (Hearing concluded at 6:17 p.m.)

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EXHIBIT E

public citizens for children + youth

Philadelphia Board of Health
Attn: Regulations
City Hall, Room 156
Philadelphia, PA 19107

October 12, 2016

Dear Board Members,

I am writing to express Public Citizens for Children and Youth's resounding support for the board's current proposal to modify tobacco retailer regulations and reduce children's exposure to cigarette marketing and potential use.

Public Citizens for Children and Youth (PCCY) is dedicated to improving the lives and life chances of children in southeast Pennsylvania through thoughtful and informed advocacy, including driving positive change in children's health status.

The board's proposal to increase the tobacco permit fee, limit the number and locations of retailers near schools and initiate a standard penalty for repeatedly selling tobacco to minors are strong deterrents to keep kids from getting hooked on deadly and addictive tobacco products.

Philadelphia's poorest children are hit hardest, and they have the fewest defenses to fight back. The City's low income neighborhoods have 69% more tobacco retailers *overall* and 63% more tobacco retailers *within 500 feet of schools* than high income neighborhoods. Moreover, tobacco retailers near schools place more tobacco marketing materials near candy and other child-centric products than tobacco retailers in other locations. Our children need safe corridors to travel to school, and the regulation changes the board is advancing will get us closer to this goal.

Strengthening the regulations could also be viewed as a potential school attendance booster. Cigarette smoke is a very common child asthma trigger, and when students are sick, they are often absent from school. PCCY will release a report on child well-being in Philadelphia at the end of this month, and we will show that more than one in five Philadelphia students have asthma, and that the rate of child asthma hospitalizations increased slightly from 2008 to 2013.

PCCY applauds the Board of Health's efforts to further protect the City's children from sickness and harm and help them realize their full potential.

Sincerely,



Donna Cooper
Executive Director



1709 Benjamin Franklin Pkwy
Sixth Floor
Philadelphia, PA 19103

215-563-5848 Office
215-563-9442 Fax
info@pccy.org Email

@pccyteam
facebook.com/PCCYPage

pccy.org

From: sukesh anam [REDACTED]
Sent: Friday, October 07, 2016 2:09 PM
To: Regulations
Subject: Comment on Tobacco Retail Regulations

To: Thomas Farley, MD, MPH
Commissioner, Philadelphia Department of Health

Dear Commissioner Farley:

I don't often take the time to write to public officials. I am doing so in this case because I am extremely concerned about the new regulations on tobacco retailers proposed by your Board. Of greatest concern in the regulation that will cut existing permits based on a new rule of population limits. The problem with this is that it will drastically cut the value of my business. This level of de-valuation is not warranted. Why should I be penalized? I have spent a life-time building this business and you will be taking it away from me and my family.

I, and many other store owners oppose your new regulations and ask that you rescind them.

Sincerely,

Sukesh Anam
Liberty
[REDACTED]
Philadelphia, PA

Mr. Uri Benabou
Island Petrol, Inc.
10,000 Frankford Avenue
Philadelphia, PA 19114

October 6, 2016

Thomas Farley, MD, MPH
Commissioner
Philadelphia Department of Public Health
Board of Health
City Hall
Philadelphia, PA 19107

Dear Commissioner Farley:

I am writing about the regulations proposed by the Board of Health against businesses that sell tobacco. These regulations will cause great harm to my business.

Allow me to make clear – I am in full agreement that retailers should not sell tobacco products to minors. My staff is fully trained and my store has always been in compliance and will continue to be.

The new regulation that I am very concerned about will limit tobacco licenses. I am concerned about this because it will significantly reduce the value of my business if I sell my business in the future. I have worked very hard for many years and I provide many jobs. With more regulations, Philadelphia, the very birthplace of our liberties, is taking away my freedom to build and manage my business.

Because of the economic impact, it is important that this regulation be discussed at a hearing.

Sincerely,

Uri Benabou

Cc: Mayor Kenney

From: Tariq Jalil [REDACTED]
Sent: Tuesday, October 11, 2016 10:23 PM
To: Regulations
Subject: TABOCCO LICENSE PRICE INCREASE NOT OK TO DO IT

hi,

my name is tariq from 7-Eleven, i just heard about the new law about the new raise on TABOCCO license and termination on 3 violation in 2 years it completely wrong number one we are already losing 50% of our business by raising 3 dollars tax in city of Philadelphia we been suffering because of that tax increase our profit is down sale is down we cant take another increase on license please stop this its one of the main reason putting businesses out Philadelphia.

number 2 : cancelling the license after 3 violation in two years is not okay thing to do it we are having hard time to train people in within 6 months and after that they looking for something else and do the same thing for another employees so if different people are making mistakes why should the business owner should there license cancelled there should be fine but not putting him or her out business we open 24 hours 7 days week different people are talking there jobs responsibility some or good soon or not we all human and making mistakes every one should be hold accountable for there deeds not the business owner for there deeds .hope you ill understand the concern put your self on our place and make decisions how should the business owner be treated in city

of Philadelphia.

thank you

[Sent from Yahoo Mail on Android](#)

From: Kathleen Furdella [REDACTED]
Sent: Tuesday, October 11, 2016 9:37 AM
To: Regulations
Subject: Proposed Legislation

Kathleen Furdella
AB Wholesale Distribution Services
120 West Erie Avenue
Philadelphia, PA 19140
October 11, 2016

To: Commissioner Farley, Philadelphia Board of Health

I have learned that you have proposed a business regulation that will cut the amount of business licenses to sell tobacco products. This will have a major negative impact on retail stores by severely cutting the value of their business.

I ask you to think about the fact that the company I am employed with supplies those stores. If the stores lose value and have to go out of business, that will be a huge hit and will hurt the company I work for and could put me and the others I work with out of a job.

The revenue generated by these businesses including the incredible amount of taxes they pay is an asset to our city by employing our citizens and helping to fund the Philadelphia School District.

Please do not place further regulations on businesses in Philadelphia. This proposed regulation, along with the recent soda tax you passed is going to drive companies away when we need them to stay in Philadelphia so jobs can stay in Philadelphia.

Do NOT advance the tobacco retailing regulation.

Thank you for reading this and considering my input. It's important!

Sincerely,
Kathleen Furdella

Thomas Farley, MD, MPH
Commissioner
Philadelphia Department of Public Health
Board of Health
City Hall
Philadelphia, PA 19107

October 9, 2016

Dear Commissioner Farley –

I am writing to you due to serious concern for my future and the future of my family.

I work in a store that my father has owned, operated and built over the past 30-plus years. My father has been able to provide for his family based on the revenue from the store just as I had hoped and planned to do for my family. The proposed regulations by your Board of Health will kill my hopes and plans.

Your plan to cut tobacco permits based on a new formula of population density will cut the value of my father's business in a major way. He has worked his entire lifetime to build his business. When he prepares to sell it to me or other members of our family, there will be no guarantee of the tobacco permit being approved for the new owner – even within a family. This is a huge concern to me because when customers come in to purchase tobacco products they purchase other items as well. Without this revenue, the business will lose overall revenue and will lose value.

In addition, your regulations suddenly change the rules stating that tobacco sales will not be allowed within 500 feet of a school. Our store is located near a school. We are careful to follow the law to not sell tobacco products to minors. Taking our license away because of where we are physically located is not fair and is not the right approach. And, you will cut revenue to the City from a source you pledged would go toward helping students. Plain and simple - it doesn't make sense and it's not fair.

I ask that you not pass these resolutions and move on to solve health issues rather than attacking businesses that are focused on making a living for their families.

Thank you for listening to my perspective.

Sincerely,

Kira Hendricks
Anne's Place
460 Belgrade St.
Philadelphia, PA 19125

[Sent from Yahoo Mail for iPhone](#)

From: [REDACTED]
Sent: Tuesday, October 11, 2016 10:06 AM
To: Regulations
Cc: Mark Squilla; James Kenney
Subject: TOBACCO RETAILER REGULATIONS

Thomas Farley, MD, MPH
Commissioner
Philadelphia Department of Public Health
Board of Health
City Hall
Philadelphia, PA 19107

October 11, 2016

Dear Commissioner Farley –

I have learned about the proposed regulations for tobacco retailers. In addition to owning and operating a retail store, I also own a wholesale business. The section of the regulation that deals with cutting permits and proximity to schools will kill my business.

Changing to a population-based limit for permits will severely reduce the value of my business if I decide to sell it. I have worked extremely hard for over 27 years to build my business and depend on maximizing its value so I can retire one day. It is absolutely not right for government to take this type of restrictive action. Once the retail stores go out of business, in turn, my wholesale business will suffer and likely close.

Regarding the issue of not selling tobacco products to minors, my staff has been properly trained and we follow the existing laws and regulations and uphold our responsibility to not sell to minors.

You are suggesting major changes that will have major impact on many lives. Please take action on the comments I have provided in this letter and do not move forward with the regulations.

Sincerely,

Alan Karpo

From: Lee, Susan S [REDACTED]
Sent: Tuesday, October 11, 2016 1:06 PM
To: Regulations
Cc: [REDACTED]
Subject: Regulation Relating to Tobacco Retailing

To Whom It May Concern,

I'm writing to show my support for the "Regulation Relating to Tobacco Retailing" sponsored by the Philadelphia Department of Public Health.

I'm an adolescent health researcher in West Philadelphia, based at The Children's Hospital of Philadelphia, and I am regularly faced with the harms of tobacco advertising and use among the youth I work with in research.

Tobacco use is the leading cause of death in Philadelphia. **Tobacco use is also unique among consumer products in that it severely injures and kills when used exactly as intended.** Neighborhoods with more retailers that sell tobacco (i.e., high tobacco retailer density) have higher smoking rates in adults and youth. Our low income neighborhoods in Philadelphia - including where I practice - have 69% more tobacco retailers overall and 63% more tobacco retailers within 500 feet of schools than high income neighborhoods. Tobacco retailers near schools place more tobacco marketing materials near products for children, such as candy, than tobacco retailers in other locations.

Protecting children from tobacco products is one of the most important things that a society can do to protect children's health.

The proposed regulations will do just that:

- A tobacco retailer density cap of 1 tobacco permit per 1,000 residents, by planning district, with grandfathering of existing permit holders.
- Prohibiting new tobacco permits within 500 feet of any K-12 School.
- Increasing the tobacco retailer permit fee from \$50 to \$300 to support the full costs of the administration and enforcement program.
- 12-month suspension of tobacco sales by retailers who have 3 youth sales violations on separate days at a single location within a 2 year period.

As the Board of Health, whose responsibilities include protecting the health of children, I strongly encourage you to uphold these proposed regulations.

Sincerely,

Susan Lee

Mr. Salwinder Malhi
Citgo 76 Gulf Pennj Petroleum
9430 State Road
Philadelphia, PA 19114

Thomas Farley, MD, MPH
Philadelphia Department of Public Health
Board of Health
City Hall
Philadelphia, PA 19107

October 10, 2016

Commissioner Farley:

I was shocked to learn about the proposed regulations made by your Board of Health against tobacco retailers. I understand your dedication to health issues but I submit to you that your approach is wrong. Those of us who are business people should not be responsible for – and made to suffer consequences of - the choices of individuals to purchase a legal product in our stores.

In my case, my family and I own and operate 10 stores in Philadelphia and we employ nearly 50 people. We have invested and worked hard in Philadelphia. What is extremely troubling is the regulation that will eliminate tobacco retail permits. If I chose to sell my business to my children, another relative or anyone, based on your new regulation, they would not be able to secure the tobacco permit meaning they would not be able to sell tobacco products which would result in a major hit against the value of the business. This drastically changes the value of my business and assaults everything my family and I have worked toward.

We ensure that our employees – through training and practice – follow the law prohibiting the sale of tobacco products to minors. So it seems to me that the new regulation prohibiting a store from being located within 500 feet of a school is duplicating a system that is already working. It is also unfair to those of us who have established our livelihood in a location that may experience a new school being built or taking occupancy nearby.

Your policies will drive business and jobs OUT of Philadelphia. It is very important that these issues be considered on behalf of those of us who are contributing services to the residents of Philadelphia. I respectfully request that these regulations be dismissed.

Sincerely,

Salwinder Malhi

Cc: Mayor James Kenney

Councilman Bobby Henon

From: Herman Nyamunga [REDACTED]
Sent: Tuesday, October 11, 2016 9:01 AM
To: Regulations
Subject: Tobacco Retail

To Whom It May Concern,

I am writing to support the proposed legislation on controlling tobacco retail in our neighborhoods. Tobacco is a harmful product that should not be allowed to flood our neighborhoods. I support reducing the number of retail outlets who will be allowed to sell tobacco products and increasing the fee on tobacco sales license to the same level as major cities in the country.

Thank you all for doing important job and putting community first.

Sincerely,

--

Herman Nyamunga, MBA

From: mijul patel [REDACTED]
Sent: Monday, October 10, 2016 2:54 PM
To: Regulations
Subject: About cigarettes fee increases

I am Mijul Patel . I am small Bussiness owner and just got in Bussiness 2014 July. I invested everything I have to feed my family and 6 employees and their family . Right after I bought Bussiness cigarettes tax increase by 2.00 dollar I and other Bussiness lost lot of sale . And then recently state tax increases by 1.00 . Now they want to increase fee and put cap and license? That is not right . That will hurt me and other big time . Even if I want to expanded I can't expend no more Bussiness in Philadelphia. Please stop this fee increases and capping on licensing please My store in 1319 market st. Philadelphia.pa1907 Sent from my iPhone

From: Santos, Jasmine M [REDACTED]
Sent: Tuesday, October 11, 2016 1:44 PM
To: Regulations
Subject: Board of Health: Regulation Relating to Tobacco Retailing

To Whom It May Concern,

I'm writing to show my support for the "Regulation Relating to Tobacco Retailing" sponsored by the Philadelphia Department of Public Health.

I'm am a Clinical Research Coordinator at The Children's Hospital of Philadelphia, and I am regularly faced with the harms of tobacco advertising and use among my patients.

Tobacco use is the leading cause of death in Philadelphia. **Tobacco use is also unique among consumer products in that it severely injures and kills when used exactly as intended.** Neighborhoods with more retailers that sell tobacco (i.e., high tobacco retailer density) have higher smoking rates in adults and youth. Our low income neighborhoods in Philadelphia have 69% more tobacco retailers overall and 63% more tobacco retailers within 500 feet of schools than high income neighborhoods. Tobacco retailers near schools place more tobacco marketing materials near products for children, such as candy, than tobacco retailers in other locations.

Protecting children from tobacco products is one of the most important things that a society can do to protect children's health.

The proposed regulations will do just that:

- A tobacco retailer density cap of 1 tobacco permit per 1,000 residents, by planning district, with grandfathering of existing permit holders.
- Prohibiting new tobacco permits within 500 feet of any K-12 School.
- Increasing the tobacco retailer permit fee from \$50 to \$300 to support the full costs of the administration and enforcement program.
- 12-month suspension of tobacco sales by retailers who have 3 youth sales violations on separate days at a single location within a 2 year period.

As the Board of Health, whose responsibilities include protecting the health of children, I strongly encourage you to uphold these proposed regulations.

Sincerely,

Jasmine M. Santos

From: John P Valkovec [REDACTED]
Sent: Wednesday, October 12, 2016 1:38 PM
To: Regulations
Subject: Tobacco Proposal Endorsement

To whom it may concern,

My name is John Valkovec and I am a senior public health major at Temple University. As a public health student, I was taught to view health as a multifaceted and layered societal function not only at the individual doctor-patient level, but at a broader level as well. This includes policy level action we enact to protect the health of the community. Tobacco use is the leading cause of death in the city of Philadelphia. Philadelphia has a higher number of tobacco retailers per capita than other major cities, and these retailers are typically located in low-income communities of color. This is not only an issue of public health, but also of social justice.

I firmly support this board of health's proposal to alter the tobacco retail regulations within the city. It is clear that disenfranchised communities are being targeted by tobacco sales and marketing, particularly youth. This proposal will effectively tighten the regulation of tobacco retailers and help to protect the health of families and communities within our city.

Sincerely,

John Valkovec



October 12, 2016

Via Regular Mail and E-mail

Records Department/City Hall
Room 156
Philadelphia, PA 19107
regulations@phila.gov

Re: Regulation Relating to Tobacco Retailing

To Whom It May Concern:

I am Christopher T. Gheysens, President and Chief Executive Officer of Wawa, Inc. (“Wawa”). The purpose of this letter is to provide you with Wawa’s comments on the proposed regulation that the Philadelphia Department of Public Health’s Board of Health (“Board of Health”) approved on September 8, 2016, known as “Regulation Relating to Tobacco Retailing” (the “Proposed Regulation”). Wawa vigorously opposes the sale of cigarettes to minors. That being said, Wawa believes that certain provisions set forth in the Proposed Regulation are unclear and that more clarity is needed in order for businesses to invest in developing retail outlets within the City of Philadelphia. If finalized as written, the Proposed Regulation would negatively affect economic growth within the City of Philadelphia, specifically it would stop all future Wawa store growth.

Wawa operates as its primary business a chain of over seven hundred convenience food stores. These stores are located in Pennsylvania, New Jersey, Delaware, Maryland, Virginia and Florida.

- Wawa currently has thirty-six (36) stores in the City of Philadelphia and has an aggressive growth plan to open additional stores throughout the City of Philadelphia.
- If the Proposed Regulations are enacted as written, Wawa will no longer open new stores in the City of Philadelphia, nor will Wawa relocate existing stores.

Wawa places a strong emphasis on its core values, one of which is “Do The Right Thing.” In furtherance of this value, Wawa takes its obligations for the marketing and sale of tobacco products very seriously. For example, all retail associates are trained on the laws against the sale of tobacco to minors, each Wawa store is part of the “We Card” program, and Wawa clearly and concisely sets forth its policy against the sale of tobacco to minors.

Looking forward, to ensure our continued compliance with the Board of Health’s regulations, Wawa feels that clarification and guidelines are needed to increase the effectiveness of the Proposed Regulation and that changes are needed in order to promote a business friendly environment in the City of Philadelphia. As described more fully below, Wawa has five comments regarding the Proposed Regulation.

Comment #1. The Proposed Regulation contains changes to existing licensing requirements that present challenges and will present further barriers for businesses such as ours to continue to open new stores in the City of Philadelphia. Wawa requests that the Board of Health seriously consider delaying the Tobacco Retailer Density Limit in Section 2(a) of the Proposed Regulation for a period of five (5) years. Wawa suggests that this delay would allow the enforcement piece of the Proposed Regulation to play out

and effectively force irresponsible operators that violate tobacco sales laws out of business, without penalizing responsible retailers like Wawa or stifling economic growth in the City of Philadelphia.

Comment #2. Wawa is concerned that the density requirements contained in Section 2(a) of the Property Regulation and the distance requirements contained in Section 2(b) of the Proposed Regulation may have some unintended consequences to businesses in the process of being approved and to on-going businesses as density calculations change and/or new K-12 schools are opened over time, if the business's Tobacco Retailer Permit was issued after the enactment of the Proposed Regulation. Wawa requests that the Proposed Regulation be revised to clarify that renewals of Tobacco Retailer Permits should not be subject to the density requirements contained in Section 2(a) of the Property Regulation or the distance requirements contained in Section 2(b) of the Proposed Regulation, as long as the retailer complies with the violations requirement in Section 2(c) of the Proposed Regulation.

Comment #3. Wawa requests that the Board of Health clarify when is the earliest point in time when a retailer can apply for a Tobacco Retailer Permit and receive confirmation that a Tobacco Retailer Permit will be issued for the store in question. Developing a store in the City of Philadelphia is an expensive and time consuming process, and it would be beneficial to know as early in the process as possible whether a Tobacco Retailer Permit will be issued for the store in question, so as to avoid spending unnecessary funds on plans, permits and approvals. Wawa recommends that retailer be permitted to apply for a Tobacco Retailer Permit as soon as the retailer has entered into a contract of sale or lease for space within the City and requests that the City provide confirmation of whether a Tobacco Retailer Permit will be issued for the store in question within thirty (30) days after the application is submitted.

Comment #4. Wawa requests that the Board of Health develop a waiting list for obtaining new Tobacco Retailer Permits. Wawa would suggest that, instead of a first-come, first-served approach, the Board of Health take into account the number of jobs the business requesting the Tobacco Retailer Permit will create and the overall economic benefit that the business will bring to the City of Philadelphia.

Comment #5. Wawa requests that the Board of Health clarify what type of census data will be used for the density calculation. For a downtown business area, it may not be appropriate to use residential census data, given the high workforce population and relatively low residential population in those areas.

Thank you for your consideration of Wawa's comments. Please do not hesitate to contact Wawa's Associate General Counsel, Maria Kalogredis, at 610-358-8793 if you have any questions or if you require further information.

Very truly yours,



Christopher T. Gheysens
President and Chief Executive Officer



October 11, 2016

Board of Health
City of Philadelphia
Records Department
City Hall, Room 158
Philadelphia, PA 19107

RE: Legal Comments on Tobacco Regulations

Dear Board of Health Members:

As the Executive Director and Legal Counsel for the National Association of Tobacco Outlets, Inc., I am submitting these comments on behalf of the association and its member retail stores that are located in the City of Philadelphia regarding the tobacco regulations provisionally approved by the Philadelphia Board of Health.

Questions Regarding Enforcement of Tobacco Laws

In the preamble to the ordinance, a Whereas clause states that “the Department [of Health] has identified hundreds of Tobacco Retailers who have each been cited for selling Tobacco Products to children more than ten times since 2010....” This statement raises several questions. NATO and its retail members know that the sale of tobacco products is unlawful and precautions are taken to prevent the sale of these products to underage youth. If the number of violations referred to in the “Whereas” clause is accurate, then what actions has the Department of Health taken to enforce the current law? Is the Department of Health committing the necessary resources to ensure that those retailers that do not comply with the law take steps to become compliant? This is important because those retailers who are compliant with the law should not have their business threatened due to the unlawful behavior of some other retailers.

Future Retail Economic Development Severely Restricted

Under Section 1 of the regulations, a “Tobacco Retailer Density Limit” of one store per 1,000 residents is established for each of the 18 Planning Districts in the city. This means that if the current density of retail stores that sell tobacco products is higher than the 1/1,000 ratio in any given Planning District, then a retailer cannot relocate its store in that district nor can a retailer open a new store in that district. On the Department of Health’s website, a table and map show that the current density of retail stores exceeds the 1/1,000 limit in 14 out of the 18 Planning

Districts. This limitation essentially guarantees that no new retail store development will occur in three-fourths of the entire city.

On the City of Philadelphia's website, the "Businesses" page has the following message:

"This is your one-stop shop for resources to plan, launch, and manage your business.
We are a city built by entrepreneurs. Your success is our success."

The density limit is contradictory to this statement in which the City of Philadelphia fosters and encourages businesses to thrive. Rather, the density limit will virtually prevent any new retail development throughout most of Philadelphia.

Devaluation of Retail Businesses

The tobacco regulations would likely result in retailers facing a significant devaluation of their businesses. Many retail stores are family-owned, "mom and pop stores." However, the new regulations may require a person obtaining a current store through a purchase or other transfer to prove to the Department of Health that the store was acquired through an "arms length transaction." If a retailer passes away and a son or daughter inherits the store, does inheritance constitute an "arms length transaction"? If a parent wants to hand down their store to one of their children, is a gift transaction an "arms length transaction"?

These are legitimate transfers, but the regulations are devoid of any factors that must be taken into account to determine what is and is not an "arms length transaction." This vagueness leaves it up to the sole discretion of the Philadelphia Department of Health to determine whether to issue a tobacco license to a new store owner. The problem is that the sale of tobacco products accounts for up to 40% of in-store sales for an average convenience store. If a tobacco retail license is not issued for a store that is transferred, the value of that store is diminished significantly. Consequently, a convenience store would likely close if a retail tobacco license is not issued because the business model for a convenience store includes gasoline sales outside at the pump and tobacco sales inside the store. Without both gasoline and tobacco sales, the economic viability of the store is doubtful.

The Department of Health should not have the regulatory authority to eliminate with the stroke of a pen the economic value of a retail store. This is especially true in the case of legal store ownership transfers.

I urge you to not enact the tobacco regulations and rather focus the resources of the Philadelphia Department of Health on enforcing current laws. Thank you for your consideration of these comments.

Sincerely,

Thomas A. Briant

Thomas A. Briant
Executive Director and Legal Counsel