

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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DEPARTMENT OF RECORDS

**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 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.

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2016 SEP 12 PM 8:02

DEPARTMENT OF PUBLIC HEALTH

- (.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.

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- (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.

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2016 SEP 12 PM 2:02