

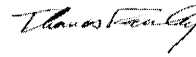
City of Philadelphia  
Department of Public Health  
Office of the Commissioner

**MEMORANDUM**

To: James Leonard, Commissioner  
Department of Records

Cc: Cheryl Bettigole, MD, MPH, Director, Chronic Disease Prevention  
Joshua Roper, Senior Policy Advisor  
Department of Public Health

Martha Johnston, Senior Attorney  
Law Department



From: Thomas A. Farley, MD, MPH, Health Commissioner

Date: December 14, 2016

Re: Public Hearing Report and Revised Regulation Relating to Tobacco Retailing

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Pursuant to § 8-407(c) of the Philadelphia Home Rule Charter, a public hearing was requested and held in regard to the Regulation Relating to Tobacco Retailing. The public hearing took place on October 17, 2016. Enclosed herewith is the Report on the October 17, 2016 public hearing, including the revised Regulation Relating to Tobacco Retailing (Exhibit A of the Report).

The following procedural actions have been taken:

Regulation approved by the Board of Health	September 8, 2016
Regulation approved by the Law Department	September 12, 2016
Public hearing pursuant to § 8-407(c) of the Philadelphia Home Rule Charter	October 17, 2016
Report and revised Regulation approved by the Board of Health	December 8, 2016
Report and revised Regulation approved by the Law Department	December 14, 2016

It is requested that the attached Report on the October 17, 2016 public hearing, including the revised Regulation Relating to Tobacco Retailing (Exhibit A of the Report), be filed for final action by the Department of Records.

TAF/initials

**Attachments:**

Law Department approval cover sheet  
Report on the October 17, 2016 public hearing

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

Submitted by: Thomas 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.<sup>1</sup> 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’ associations<sup>2</sup> of the public hearing. PDPH also published notice of the hearing in the Philadelphia Daily News and on social media, [www.smokefreephilly.org](http://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 Health<sup>3</sup> and one member of the City Solicitor’s office<sup>4</sup> appeared at the October 17, 2016 hearing.<sup>5</sup> Approximately 50 members of the public attended. The following individuals testified:<sup>6</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Martha Johnston, Senior Attorney, Appeals and Legislation.

<sup>5</sup> Transcript attached as Exhibit D.

<sup>6</sup> 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.<sup>7</sup> The following individuals and entities submitted comment:<sup>8</sup> 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*

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<sup>7</sup> Written comments attached as Exhibit E.

<sup>8</sup> 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[.]*<sup>9</sup>

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.

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<sup>9</sup> 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**

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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**

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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**

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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:

**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.

- (.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**

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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        B E F O R E :

4                T H O M A S F A R L E Y , M . D . , H E A L T H C O M M I S S I O N E R

5                S C O T T M C N E A L , D . O . ,

6                A M I D I S M A I L , B D S , M P H , D r P H , M B A

7                M A R L A J . G O L D , M . D .

8                A N A D I E Z - R O U X , M . D , P h . D . , M P H

9

10        A L S O P R E S E N T :   J O S H U A R O P E R , E S Q .

11                        M A R T H A J O H N S T O N , E S Q .

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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 Winthrop 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, Winthrop 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 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 Philadelphiaans 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.

5 - - -

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

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C E R T I F I C A T I O N

I, ERICA HEARN, Professional Court  
Reporter and Notary Public, do hereby certify that  
the foregoing is a true and accurate transcript of  
the stenographic notes taken by me in the  
aforementioned matter.

- - -

DATE: OCTOBER 18, 2016 \_\_\_\_\_

ERICA HEARN

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