UTAH COUNTY HEALTH DEPARTMENT

Regulation for

Tobacco Retailer Permitting

Adopted by the Utah County Board of Health

September 24, 2018

Under Authority of Section 26A-1-121, Utah Code Annotated, 2012, as amended; and

By _____
Ralph Clegg, Director, Utah County Health Department

By _____
Jeff Aderson, Chair, Utah County Board of Health

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1.0 RECITALS

WHEREAS, the Utah County Health Department, the local health department in Utah County, has been tasked with the responsibility to administer and enforce H.B. 324, 2018, relating, in part, to the licensing and permitting of retail tobacco specialty businesses,

WHEREAS, based the current practices of retail tobacco specialty businesses in Utah County, certain provisions of H.B. 324, 2018 are not adequate to protect the public health and environment of the state, and fail to promote fair competition, which failure negatively affects the public health and environment of the state, and

WHEREAS, studies by the U.S. Surgeon General and Centers for Disease Control and Prevention, which the Utah County Health Department hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that almost no one starts smoking after age 25, and sales of tobacco products near community locations has been identified as the legislature as a public health concern.

NOW THEREFORE, to promote the health and safety of citizens in Utah County, to promote uniform clarity in the application and enforcement of the powers and duties granted to the Utah County Health Department, and to minimize the harmful risks of tobacco consumption, the Utah County Board of Health adopts the following regulation:

2.0 TITLE AND PURPOSE

These standards shall be known as the Tobacco Sales Licensing and Permitting Regulation, hereinafter referred to as the "Regulation,"

It is the purpose of this Regulation to protect the public health, safety, and welfare of Utah County residents and employees, by establishing requirements and provisions for tobacco sales and permitting.

3.0 AUTHORITY AND JURISDICTION OF THE DEPARTMENT

3.1 The Utah County Board of Health is authorized to make standards and regulations pursuant to Section 26A-1-121(1) of the Utah Code Annotated, 2012 as amended.

3.2 The Utah County Board of Health is authorized to establish and collect fees pursuant to Section 26A-1-114 of the Utah Code Annotated, 2011 as amended, and Section 26-62-203(2)(c) of the Utah Code Annotated, 2018, as amended.

3.3 The Utah County Board of Health is authorized to establish and collect monetary penalties pursuant to Section 26-38-1 et. seq. of the Utah Code Annotated, 2008 as amended.

3.4 All fees shall be set by the Board of Health in in accordance with Utah law. The Department may charge additional fees for enforcement and follow-up inspections as set by the Board of Health.

4.0 DEFINITIONS

For the purpose of this Regulation, the following words and phrases, when used herein, except as otherwise required by the context, have the following meanings.

4.1 **"Audit"** means a procedure performed by Department personnel that includes but is not limited to, inspection of facilities retail and preparation areas, review of required records, compliance checks, review of personnel working knowledge and training, and taking samples of tobacco products. The audit procedures are intended to ensure compliance with this Regulation and department policies and procedures;

4.2 **"Board of Health"** means the Utah County Board of Health.

4.3 **"Department"** means the Utah County Health Department.

4.4 **"Health Officer"** means and includes the Health Officer of the Utah County Health Department, his/her deputy, or other designated officer.

4.5 "Marked Down Amounts" means an amount greater than 50% off the manufacturer suggested retail price.

4.6 "**Permit"** means a tobacco retail permit issued under Utah Code Section 26-62-101 et seq. and this regulation.

4.7 **"Plan Review"** means the process by which the Department will verify the accuracy of the information provided by the Retail Tobacco Specialty Business through the permit application process.

4.8 **"Retail Tobacco Specialty Business"** means a commercial establishment in which:

a. The sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;
b. 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;
c. 20% or more of the total shelf space is allocated to the offer, display, or storage of the tobacco products; or
d. The retail space features a self-service display for tobacco products.

4.10 **"Tobacco product"** means a product made of, or containing, tobacco. "Tobacco product" includes, but is not limited to, the following (as defined in Section 76-10-101, Section 59-14-102, Section 59-14-802, Section 26-38-2, and Section 76-10-104.1):

a. a cigarette
b. a cigar;
c. moist snuff;
d. Chewing tobacco;
e. Electronic cigarettes, including accessories and components;

f. Any substitute for a tobacco product containing tobacco or nicotine, or used with tobacco or nicotine, including products that become vapors of nicotine or another substance, flavorings, or additives to tobacco; or
g. Tobacco paraphernalia, as defined but Utah law;
h. E-cigarette paraphernalia, as defined by Utah law.

"Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

4.11 **"Tobacco retailer"** means a person that has a valid tax commission license and a local health department Permit for the sale of tobacco.

5.0 SCOPE

This Regulation applies to the licensing and permitting of retail tobacco specialty businesses in incorporated and unincorporated areas of Utah County. It shall be unlawful for any person not to comply with any policy, procedure, regulation, or ordinance promulgated by the Board of Health, Health Officer and/or the Department unless expressly waived by this Regulation.

6.0 POWERS AND DUTIES

The Department: (1) is responsible for the enforcement and administration of tobacco retail permitting under Utah Code Section 26-62-101 et seq., (2) may enforce the licensing requirements for entities that hold a business license to sell tobacco products under Section 10-8-41.6 or Section 17-50-333, and (3) may recommend to a municipality or Utah County that the business license of a retail tobacco specialty business be suspended or revoked for violation of Sections 10-8-41.6, 17-50-333, or 26-62-101 et seq.

The Department is responsible for the enforcement and administration of this Regulation and shall have all other powers vested in it by law.

7.0 TOBACCO RETAILER PERMIT REQUIREMENTS

7.1 Unless otherwise stated herein or in other controlling law, the Department shall issue a permit for a tobacco retailer in accordance with Utah Code Section 26-62-201 et seq.

7.2 In making the determination as to whether the sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for a commercial establishment that may qualify as a retail tobacco specialty business for the purpose of obtaining a permit, the Department shall include all discounted and marked-down amounts to all tobacco products sold in its calculation.

7.3 In addition to the fees described in Section 26-62-203, all applications for a new permit and permit renewal shall include a Plan Review fee in an amount as determined by the Utah County Board.

7.4 The Department shall issue the Permit to the applicant within 30 days from receiving the application and payment unless such application is incomplete or inaccurate, the application seeks authorization for retailing by a person or location for which a suspension is in effect under this regulation, or the application seeks authorization for retailing that is unlawful under this Regulation or other applicable law(s).

A. The Department will provide an online or hard copy receipt of payment and application submission to the proprietor when the Department receives the completed application and payment.
B. The receipt provided by the Department will serve as a temporary operating permit, which will be valid for 30 days.

7.5 Retail Permit Issuance

A. The Department shall conduct an audit of the place of business where retailing is to occur, and if it is found that all provisions of this Regulation and all applicable laws have been and will be complied with, the Department shall issue the permit; otherwise, the application for the permit shall be denied.

8.0 GENERAL PROVISIONS

8.1 No person shall in any way represent any place as a permitted facility unless the facility is operated under a valid Permit issued by the Department.

8.2 The Department is authorized to issue, suspend, revoke, deny or require the surrender of a Permit.

8.3 A Permit may not be transferred from one person to another person, from one facility to another facility or from one type of operation to another.

8.4 The Permit shall be posted in a conspicuous place within public view on the premises.

8.9 Failure to pay the Permit fee and any additional charges after the due date may result in suspension and/or revocation of the Permit and the right to operate.

8.10 The Permit applicant shall hold the Department harmless in applying for a Permit or for its renewal; such action shall constitute a declaration by the applicant that the Department shall be held harmless from liability incurred due to action or inaction of the owner or their employees.

8.11 Permit fees shall be determined according to a fee schedule adopted by the Board of Health. Fees are subject to change and may be amended as deemed necessary by the Board of Health to accomplish the purposes of this Regulation.

8.12 The Department, by the Health Officer, has the authority to perform audits, inspections, reviews or other similar actions as necessary to enforce this Regulation. No person shall refuse to allow or hinder the activity of the authorized representatives of the Department while conducting audits or inspections of permitted facilities. The

Department may determine whether the Tobacco Retailer continues to meet the qualifications of this Regulation and hasn't violated any provisions contained herein.

8.15 Violations of any tobacco-related laws shall constitute violations of the permit issued pursuant to this Regulation. In addition, a violation of Utah Penal Code may subject the permit-holder to suspension or revocation of their license or permit.

8.16 A tobacco retailer shall, at the discretion of the Department, submit or allow the Department to inspect its total quarterly gross receipts to the Department every quarter beginning three months after obtaining a permit in accordance with Utah Code Section 26-62-101 et seq. The Department may suspend or revoke a permit for failure to comply with this section.

9.0 ADJUDICATIVE PROCEEDINGS

9.1 A request for a hearing on the validity of an order, notice, denial, or penalty shall be submitted in writing within thirty (30) days of receiving an order, notice, denial, or penalty in accordance with the Utah County Health Department Regulation for the Hearing of Administrative Actions, Health Regulation 17-01.

10.0 PENALTY

10.1 Any person who is found guilty of violating any of the provisions of this Regulation, either by failing to do those acts required herein or by doing a prohibited act, shall be guilty of a class B misdemeanor pursuant to Section 26a-1-123, Utah Code Annotated, 1991, as amended. If a person is found guilty of a subsequent similar violation within two years, they shall be guilty of a class A misdemeanor pursuant to Section 26a-1-123, Utah Code annotated, 1991, as amended.

10.2 The County Attorney may initiate civil or criminal legal action requested by the Department to abate any condition that exists in violation of this Regulation.

10.3 In addition to other penalties imposed by a court of competent jurisdiction, any person(s) found guilty of violating any of this Regulation shall be liable for all expenses incurred by the Department in prosecuting and/or abating the violation.

10.4 Violations of this Regulation shall be subject to the Department's Regulation for the Hearing of Administrative Actions, Health Regulation 17-01, or as otherwise provided under Utah law, and may result in permit suspension or revocation, and/or monetary penalties.

11.0 SEVERABILITY

If any provision, clause, sentence, or paragraph of this Regulation or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the other provisions or applications of this Regulation. The valid part of any clause, sentence, or paragraph of this Regulation shall be given independence from the invalid provisions or application and to this end the provisions of this Regulation are hereby declared to be severable.

12.0 EFFECTIVE DATE

This Regulation shall become effective the day of its adoption by the Board of Health.

Adopted by the Utah County Board of Health on XXXX