

**UTAH COUNTY HEALTH DEPARTMENT**

**Utah County Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit  
Regulation**

Adopted by the Utah County Board of Health

January 24, 2022

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

By DocuSigned by:  
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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 Section 26-62-101 et seq. of Utah Code Annotated, 2021 as amended, relating, in part, to the permitting of retail tobacco specialty businesses; and

WHEREAS, based on current practices of tobacco retailers in Utah County, the Utah County Board of Health finds certain provisions of Utah Code Section 26-62-101 et seq. are not adequate to protect the public health and environment of the state insofar as they fail to employ best technological and employment practices; 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

WHEREAS, 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

2.1 These standards shall be known as the Utah County Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit Regulation, hereinafter referred to as the "Regulation,"

2.2 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, 2021 as amended.

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

3.3 The Utah County Board of Health is authorized to establish and collect monetary penalties pursuant to Section 26-23-6 of the Utah Code Annotated, 2008 as amended.

3.4 All fees shall be set by the Board of Health 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, 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 tobacco retailers' 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. An audit of any tobacco retailer facility may include a plan review

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, a department deputy, or other designated officer.

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

4.6 **"Plan Review"** means the process by which the Department will verify the accuracy of the information provided by the retail tobacco specialty business applicant through the permit application process.

4.7 **"Retail Tobacco Specialty Business"** means the same as that term is defined in Utah Code Section 26-62-102(11).

4.8 **"Tobacco product"** means the same as that term is defined in Section 76-10-101 of the Utah Code Annotated, 2020 as amended, and, for purposes of this Regulation, includes tobacco paraphernalia, an electronic cigarette product, a flavored electronic cigarette substance, and nicotine products as those terms are defined in Utah Code Section 76-10-101 and Section 59-14-102 of the Utah Code Annotated, 2020 as amended.

"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.

4.10 **"Tobacco retailer"** means a person that has a valid tax commission license and a local health department Permit for the sale of tobacco products, electronic cigarettes products, or nicotine products.

## 5.0 SCOPE

This Regulation applies to the permitting of tobacco retailers 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

### 6.1 The Department:

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

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

7.3 The Department shall issue the Permit to the applicant within 30 days from receiving the application and payment unless:

- a. the application is incomplete or inaccurate;
- b. the applicant is a person or location for which a permit suspension or revocation is in effect or otherwise time barred under Utah Code Section 26-62-305; or
- c. the application is in violation of this regulation and/or other applicable laws and regulations.

7.4 The expiration date for the Permit shall be on the last day of the month that the Permit was issued in the year the Permit is set to expire.

7.5 The Department may conduct an audit of the tobacco retailer's premises to determine the tobacco retailer's compliance with all applicable laws and regulations. The Department shall issue a permit if the tobacco retailer is in compliance therewith.

and shall deny the application or issue a notice of violation if the tobacco retailer is in violation of any applicable law and regulations.

## 8.0 GENERAL PROVISIONS

8.1 It shall be a violation of this regulation for a person to represent in any way that any place is a permitted tobacco retailer unless the facility is operating under a valid permit issued by the Department.

8.2 The tobacco retailer shall display the permit in a conspicuous place within public view on the premises.

8.3 Failure to pay any fee issued by the department in association with the issuance or continued maintenance of a permit after the stated or ordered due date may result in a late charge determined by the Board of Health and loss of any applicable reduction in fine according to Utah Code Section 26-62-306. Failure to pay all fees, fines, and late charges shall result in the inability to renew a permit until such fees, fines, or late charges are paid in full.

8.4 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.

8.5 The Department has the authority to perform audits, inspections, reviews, or other similar actions as necessary to enforce this Regulation. No person shall prevent 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.

8.6 A tobacco retailer shall, at the discretion of and upon request by the Department, submit to or allow the Department to inspect its total quarterly gross receipts 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.

8.7 The "itemized transaction log" referenced in 26-62-206(1)(b) shall be created and maintained in a typed, searchable electronic format.

## 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 accordance with the Utah County Health Department Regulation for the Hearing of Administrative Actions, Health Regulation 17-01, except that all requests shall be submitted in writing within twenty (20) days of receiving an order, notice, or penalty.

## 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 Utah Code Section 26A-1-123. 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 Utah Code Section 26a-1-123.

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 this Regulation shall be liable for all expenses incurred by the Department in prosecuting and/or abating the violation.

#### 11.0 SEVERABILITY

11.1 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

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

Adopted by the Utah County Board of Health on 24<sup>th</sup> of January, 2022