

Salt Lake County Health Department

Health Regulation

#37

**TOBACCO RETAILER &
ELECTRONIC SMOKING DEVICE**

**Adopted by the Salt Lake County Board of Health
March 5, 2015**

**Amended:
*****, 2019**

**Under Authority of
Utah Code Ann. § 26A-1-114**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. The purpose of this regulation is to promote and protect the public health, safety, and welfare of residents and employees by establishing practices and provisions for Retail Tobacco Specialty Businesses, to implement the provisions of Utah Code Ann. § 26-62-101 et seq., and to establish effective tobacco control measures as identified by the Institute of Medicine and the United States Surgeon General.
- 1.2. This regulation applies to establishments that operate as Tobacco Retailers in incorporated and unincorporated areas in Salt Lake County and establishes setbacks and requirements for Retail Tobacco Specialty Businesses in compliance with Utah Code Ann. §§ 10-8-41.6, 17-50-333 and 26-62-202.
- 1.3. The purpose of this Regulation is to protect the public health, safety, and welfare of residents and employees by establishing practices and provisions for the sale of Electronic Smoking Devices (ESDs) and e-liquid; and the safe preparation and handling of e-liquid components in Salt Lake County.
- 1.4. This Regulation applies to ESDs and e-liquid sampled, sold and/or manufactured in incorporated and unincorporated areas of Salt Lake County. Requirements for ESDs and e-liquid are consistent with and support all applicable state and federal laws.
- 1.5. This Regulation is adopted under the authority of the Salt Lake County Board of Health in accordance with Utah Code Annotated Section 26A-1-121.

2. DEFINITIONS

For the purposes of this Regulation, the following terms, phrases, and words shall have the meanings herein expressed:

- 2.1. “Building” shall mean an entire free-standing structure enclosed by exterior walls.
- 2.2. “Building owner” shall mean the person(s) who has an ownership interest in any public or private building.
- 2.3. “Board” shall mean the Salt Lake County Board of Health.
- 2.4. “Community location” shall mean:
 - 2.4.1. A public or private kindergarten, elementary, middle, junior high or high school;
 - 2.4.2. Licensed child-care facility or preschool;
 - 2.4.3. A trade or technical school;

- 2.4.4. A church;
 - 2.4.5. A public library;
 - 2.4.6. A public playground;
 - 2.4.7. A public park;
 - 2.4.8. A youth center or other space used primarily for youth-oriented activities;
 - 2.4.9. A public recreational facility;
 - 2.4.10. A public arcade;
 - 2.4.11. For a new license issued on or after July 1, 2018, a homeless shelter.
 - 2.4.12. For a new license issued on or after July 1, 2018, a college or university.
- 2.5. “Department” shall mean the Salt Lake County Health Department.
- 2.6. “Director” shall mean the Director of the Salt Lake County Health Department or his or her designated representative.
- 2.7. “Electronic Smoking Device (ESD)”
- 2.7.1. Shall mean an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances.
 - 2.7.2. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- 2.8. “E-Liquid” shall mean a liquid product containing nicotine that is vaporized and inhaled when using an ESD. Also referred to as, but not limited to, E-Juice or Smoke Juice.
- 2.9. “E-Liquid Components” shall mean the ingredients used in making e-liquid including, but not limited to propylene glycol (PG), vegetable glycerin (VG), nicotine, and flavorings.
- 2.10. “Employee” shall mean an employee of a tobacco retailer.

- 2.11. “General Tobacco Retailer” shall mean a tobacco retailer that is not a retail tobacco specialty business.
- 2.12. “Good Hygienic Practices” shall mean activities that include, but are not limited to, washing hands, covering open wounds or abrasions, not working when experiencing signs or symptoms of an illness, keeping work areas clean and free from food and drink, etc.
- 2.13. “Hookah” shall mean a single or multi-stemmed instrument for vaporizing and smoking flavored shishah, in which the vapor or smoke is passed through a water basin before inhalation.
- 2.14. “Manufacturing” shall mean the process that includes, but is not limited to, mixing, re-packaging and/or resizing E-Liquid.
- 2.15. “Manufacturing Establishment” shall mean any business within Salt Lake County that manufactures, repackages, or resizes e-liquid for sale or for resale.
- 2.16. “Nicotine” shall mean an alkaloid derived of tobacco and other plants, or produced synthetically which has addictive and other physiological effects when ingested or inhaled.
- 2.17. “Operator” shall mean a person who leases a place from a building owner or controls, operates or supervises a place.
- 2.18. “Permit” shall mean a retail tobacco specialty permit issued to a retail tobacco specialty business.
- 2.19. “Place” shall mean any “place of public access”, or “publicly owned building or office”, as defined in Utah Admin. Rule Title 26, Chapter 38.
- 2.20. “Preparation Area” shall mean a physical location in which e-liquid components are mixed, repackaged, or resized for sale to the consumer.
- 2.21. “Owner” shall mean any person who solely, jointly or severally with others:
- 2.21.1. Has legal title to an e-manufacturing establishment with or without accompanying actual possession thereof; or
 - 2.21.2. Has charge, care, or control of any e-manufacturing establishment as legal or equitable owner, agent of the owner, lessor or lessee, or as an executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.
- 2.22. “Retail Tobacco Specialty Business” shall mean a commercial establishment in which:

- 2.22.1. The sale of tobacco products accounts for more than 35% of the total annual gross receipts of the establishment;
- 2.22.2. Food and beverage products, excluding gasoline sales, is less than 45% of the total annual gross receipts for the establishment; ~~and~~
- 2.22.3. 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;
- 2.22.4. 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products;
- 2.22.5. The retail space features a self-service display for tobacco products; or
- 2.22.6. The name of the registered business, or any of its DBAs, makes reference to tobacco products or their use;
- ~~2.22.7. The establishment is not licensed as a pharmacy.~~
- 2.23. “Safety Precautions” shall mean general activities that include, but are not limited to, wearing gloves, wearing eye protection, using equipment that is in good repair, cleaning up spills, access to a first aid kit, etc.
- 2.24. “Sampling” shall mean demonstrating to the potential purchaser of an ESD how to use the device, or the customer sampling an e-liquid sold for use in an ESD.
- 2.25. “Smoking” shall mean the possession of any lighted or heated tobacco product in any form; inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah.
- 2.26. “Tax Commission License” shall mean a license issued by the State Tax Commission under:
 - 2.26.1. Section 59-14-201 to sell cigarettes at retail;
 - 2.26.2. Section 59-14-301 to sell tobacco products at retail; or,
 - 2.26.3. Section 59-14-803 to sell an electronic cigarette product.
- 2.27. “Tobacco product” shall mean:
 - 2.27.1. Any cigar, cigarette, or electronic cigarette as those terms are defined in Utah Code Ann. § 76-10-101;
 - 2.27.2. A tobacco product, as that term is defined in Utah Code Ann. § 59-14-102, including:
 - (i) Chewing tobacco; or

- (ii) Any substitute for a tobacco product, including flavoring or additives to tobacco; and,
 - (iii) Tobacco paraphernalia as that term is defined in Utah Code Ann. §76-10-104.1.
- 2.28. “Tobacco retailer” shall mean a person that is required to obtain a tax commission license.
- 2.29. “United States Pharmacopeia (USP) Standards” shall mean written standards for medicines, food ingredients, dietary supplement products and ingredients. These standards are used by regulatory agencies and manufacturers to help ensure products are of the appropriate identity, as well as strength, quality, purity, and consistency.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

- 3.1.1. This Regulation is promulgated by the Salt Lake County Board of Health as authorized by Utah Code Ann. § 26A-1-121(1), and Chapter 9.04, Salt Lake County Code of Ordinances.
 - 3.1.2. The Department is empowered to enforce this Regulation in all incorporated and unincorporated areas served by the Department as authorized by Utah Code Ann. § 26A-1-114(1) (a), and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.2. Except as otherwise provided for, it shall be unlawful for any person not to comply with any regulation promulgated by the Department unless granted an express variance by the Salt Lake County Board of Health.
- 3.3. Compliance with this Regulation does not constitute a defense if charged with any ~~environmental~~ crime or violation of any local, state, or federal law.
- 3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any ~~environmental~~ crime that may have been committed or violation of any other local, state, or federal law.
- 3.5. Nothing in this Regulation affects or modifies in any way the obligations or liability of any person under any other Regulation or provision thereof issued by the Department, any ordinance issued by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. However, Departmental Regulations supersede other existing local and county standards, Regulations and ordinances pertaining to similar subject matter that are inconsistent.

- 3.6. **Severance.** If any section, subsection, sentence, clause, or phrase of this Regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Regulation.

4. SUBSTANTIVE PROVISIONS

4.1. Permits Required

- 4.1.1 **Tobacco Retailer Permit Required.** No person shall operate as a Tobacco Retailer without prior written approval and a corresponding valid Tobacco Retailer Permit. Tobacco Retailer Permits are either a General Tobacco Retailer Permit or a Retail Tobacco Specialty Business Permit.
- 4.1.2 **E-Liquid Manufacturing Permit Required.** No person shall operate an e-liquid manufacturing establishment without prior written Department approval and a corresponding valid e-liquid manufacturing permit.
- (i) To apply for an e-liquid manufacturing permit, the owner shall complete and submit the Department approved application form.
 - (ii) **Permit Duration.** An e-liquid manufacturing permit is valid only at the location stated in the application and shall be renewed annually after the date of issuance.
- 4.1.3 **Tobacco Retailer Prohibitions.** A person without a valid Tobacco Retailer Permit shall not:
- (i) Place tobacco products in public view;
 - (ii) Display any advertisement related to tobacco products that promotes the sale, distribution, or use of those products; or
 - (iii) Sell, offer for sale, or offer to exchange for any form of consideration, tobacco or tobacco products.
- 4.1.4 **Tobacco Retailer Permits; Not Transferable.** A Tobacco Retailer Permit is:
- (i) Valid only for the one physical location, including a vending machine;
 - (ii) Valid only at one fixed business address as indicated on the Department approved permit form; and
 - (iii) If multiple tobacco retailers are at the same address, separately required for each tobacco retailer.

4.2 Tobacco Retailer Permit Application, Duration, and Renewal.

4.2.1 To apply for a Tobacco Retailer Permit, the applicant shall:

- (i) Complete and submit the Department-approved application form;
- (ii) Pay the applicable Retail Tobacco Specialty Business Permit fee or General Tobacco Retailer Permit fee;
- (iii) Provide the name and address for the tobacco retailer business;
- (iv) Provide the name, address, and telephone number of each proprietor;
- (v) Provide the name and mailing address of each proprietor authorized to receive permit-related communication and notices;
- (vi) Provide a copy of the valid tax commission license for the location of the Tobacco Retailer.
- (vii) Submit a diagram containing a general floor plan and square footage of the retail tobacco specialty business with the locations of tobacco products and advertising;
- (viii) Provide information, including the dates and locations, when any proprietor of the tobacco retailer has been determined to have violated or has been a proprietor at a location that has been determined to have violated:
 - a. This regulation;
 - b. Utah Code Ann. §26-62;
 - c. Utah Code Ann. § 26-38-1, et seq., Utah Indoor Clean Air Act;
 - d. Utah Code Ann. § 26-42-103 for the sale of tobacco to a person under the age of 19-years.
 - e. Utah Code Ann. § 76-10-1, et seq., Cigarettes and Tobacco and Psychotoxic Chemical Solvents;
 - f. Utah Code Ann. § 76-10-16, et seq., Pattern of Unlawful Activity Act;

- g. Regulations restricting the sale and distribution of tobacco products issued by the United States Food and Drug Administration, including but not limited to 21 C.F.R. Part 1140, or
- h. Other applicable provisions of Utah Code or local ordinances regarding the sale, marketing, or distribution of tobacco products.

4.2.2 **Setbacks.** An applicant for a Retail Tobacco Specialty Business Permit shall submit to the Department evidence that the retail tobacco specialty business is not within:

- (i) 1,000 feet of a community location;
- (ii) 600 feet of another retail tobacco specialty business; or
- (iii) 600 feet from property used or zoned for agricultural use or residential use.

4.2.3 Measurements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location, without regard to intervening structures or zoning districts.

4.2.4 **Permit Duration.**

- (i) A retail tobacco specialty business permit is valid only at the location stated in the application and shall be renewed annually after the date of issuance.
- (ii) A General Tobacco Retailer Permit is valid only at the location stated in the application and shall be renewed every two years after the date of issuance.

4.2.5 **Permit Renewal.** A person that renews a tobacco retailer permit shall provide to the Department, 30 days prior to permit expiration, the information required in section 4.2.1

4.2.6 A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the Department:

- (i) The information in section 4.2.1 and if applicable the information in section 4.2.2.
- (ii) Pay the tobacco retailer permit reinstatement fee; and

(iii) A signed affidavit affirming that the tobacco retailer has not violated the prohibitions in section 4.2.1 (viii).

4.2.7 If any information required by section 4.2.1 changes during the effective term of a permit, a tobacco retailer may not renew its Tobacco Retailer Permit and shall apply for a new permit no later than 30 days after the information in section 4.2.1 changes.

~~4.2.8 **E-Liquid Sale Permit Required.** No person shall sell or offer for sale e-liquid without prior written Department approval and a corresponding valid e-liquid sale permit. An e-liquid manufacturing establishment that sells e-liquid and has a valid e-liquid manufacturing permit is exempt from section 4.1.2.~~

~~(i) To apply for an e-liquid sale permit, the owner shall complete and submit the Department approved application form.~~

~~(ii) Permit Duration. An e-liquid sale permit is valid only at the location stated in the application and shall be renewed annually after the date of issuance.~~

~~(iii) E-liquid sale permit applicants shall meet the requirements in sections 4.3-4.9 and section 4.13.~~

4.3 **Exemption, Pre-filled Single-Use Electronic Smoking Devices**

~~Sections 4.1.2, 4.3, 4.4, 4.5, 4.6, 4.8.1, 4.10, 4.11 and 4.12~~ 4.5, 4.10, 4.11, 4.12, 4.14.1, 4.16, 4.17, and 4.18 shall not apply to electronic smoking devices containing pre-filled e-liquid cartridges and are single-use, or electronic smoking devices that use pre-filled disposable replacement cartridges.

4.4 **Retail Tobacco Specialty Business Plan Review.** A retail tobacco specialty business shall provide the Department, at the time of permit application, with documents:

4.4.1 The total quarterly gross receipts and the percent of sales related to tobacco products;

4.4.2 A floor plan of the public retail floor space indicating areas allocated to the offer, display, or storage of tobacco products;

4.4.3 A plan of the total shelf space with products to be located on the shelf space, as well as shelf space allocated to the offer, display, or storage of tobacco products; or

4.4.4 Location of any retail space that features a self-service display for tobacco products.

4.5 **E-Liquid Manufacturing Establishment Plan Review.**

4.5.1 An owner of an e-liquid manufacturing establishment shall submit to the Department properly prepared plans and standard operating procedures for review and approval before:

- (i) The construction of an e-liquid manufacturing establishment;
- (ii) The conversion of an existing structure for use as an e-liquid manufacturing establishment; or
- (iii) The remodeling of an e-liquid manufacturing establishment, if the Department determines that plans and standard operating procedures are necessary to ensure compliance with this Regulation.

4.5.2 **Contents of the Plans.** The plans and standard operating procedures for an e-liquid manufacturing establishment shall include:

- (i) A floor plan of the establishment;
- (ii) Finish schedule for the floors, walls, and ceilings;
- (iii) Equipment and location of the equipment used in the e-liquid manufacturing establishment;
- (iv) Packaging used;
- (v) Labels for e-liquid manufactured at the establishment;
- (vi) Documentation of standard operating procedures required in section ~~4.12~~ 4.18; and
- (vii) Other information that may be required by the Department for the proper review of the proposed construction, conversion or modification, and procedures for operating an e-liquid manufacturing establishment.

4.6 **Permit Display and Signage.** Upon acceptance of a permit issued by the Department, a retail tobacco specialty business shall:

4.6.1 Not allow an individual who is less than 19 years old to enter or be present in the retail tobacco specialty business unless the individual is:

- (i) Accompanied by a parent or legal guardian;

- (ii) Present at the retail tobacco specialty business for a bona fide commercial purpose other than to purchase a cigarette, tobacco, or an electronic cigarette; or
 - (iii) 18 years old or older and an active duty member of the United States Armed Forces, as demonstrated by valid, government-issued military identification card.
- 4.6.2 Prominently display at the retail tobacco specialty business a sign on the public entrance of the business that communicates the prohibition in section 4.6.1.
- 4.6.3 Prominently display at the point of purchase a sign that states that the sale of tobacco is prohibited to a person under the age of 19 years.
- 4.7 **Photo Identification.** A tobacco retailer shall inspect the photo identification of the purchaser of a tobacco product to confirm that the purchaser is of legal age to purchase the tobacco product.
- 4.8 An establishment is a retail tobacco specialty business if it meets one or more of the following criteria:
 - 4.8.1 **Signage.** The name of the establishment identifies oneself as a retail tobacco specialty business with phrases like “Smoke Shop”, “Vape Shop,” or other similar phrases emphasizing the sale of tobacco products by the establishment; or
 - 4.8.2 **Floor Allocation.**
 - (i) The allocation of twenty percent (20%) or more floor and shelf space inside the business shows a focus on tobacco products and is devoted to the offer, display and/or storage of tobacco products.
 - (ii) Floor allocation shall be calculated in square footage. Measurements are made from the tobacco product or tobacco advertisement to the next wall or shelf space and includes aisles and common areas in the retail space. Shelves that contain tobacco product shall have the aisle square footage included in the floor allocation.
- 4.9 **Grandfathered Businesses.** A retail tobacco specialty business that has a business license and is operating lawfully in a municipality or the county:
 - 4.9.1 On or before July 1, 2018, in accordance with Utah Code Ann. §§ 10-8-41.6(8) and 17-50-333(8), is exempt from the proximity of a community location in section 4.2.2 of this regulation and is exempt from the proximity requirement for a homeless shelter or a college or university;

4.9.2 A retail tobacco specialty business may maintain an exemption from the setback requirements of section 4.2.2 above if:

- (i) The retail tobacco specialty permit is renewed continually without relapse or permanent revocation;
- (ii) The retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products for more than 60 consecutive days;
- (iii) The retail tobacco specialty business does not change ownership or other information provided in its permit application;
- (iv) The retail tobacco specialty business maintains its current building lease without any lapse, provided that it has a lease;
- (v) The retail tobacco specialty business maintains its right to operate under other applicable laws, rules, regulations, and ordinances, including Utah Code Ann. § 26-38-1, et seq., Utah Indoor Clean Air Act, zoning ordinances, building codes and the business license issued before July 1, 2018.

4.10 **E-Liquid for sale in Salt Lake County.**

4.10.1 Packaging – All containers shall:

- (i) Have child-proof caps;
- (ii) Be leak-proof at the time of sale; and
- (iii) Be tamper-evident.

4.11 **Labeling.**

4.11.1 Labels shall clearly display:

- (i) Nicotine content in mg/ml or percent by volume;
- (ii) Vendor name and manufacturing location (city and state);
- (iii) All ingredients;
- (iv) Safety warning stating “Contains Nicotine” and “Keep away from children”;
- (v) Lot or batch number; and

(vi) Manufacture date.

4.11.2 Labels shall be smear resistant.

4.12 Nicotine level in E-Liquid.

4.12.1 The maximum allowable nicotine content shall be no greater than 36 mg/mL or 3.6% by volume.

4.12.2 Nicotine content shall not exceed a 10% variation in mg/mL from the content level indicated on the label.

4.12.3 Any liquid product sold as e-liquid or e-liquid substitute labeled "0 nicotine" shall have no nicotine present.

4.13 Sampling. E-liquid shall be subject to random testing by the Department.

4.14 Prohibited Acts

4.14.1 Selling e-liquid without an e-liquid sale permit or an e-liquid manufacturing permit.

4.14.2 Manufacturing e-liquid for distribution or sale without an e-liquid manufacturing permit.

4.14.3 The selling, giving, furnishing, sending, or causing to be sent e-liquid or an electronic smoking device to any person under 19 years of age is prohibited.

4.14.4 The possession of e-liquid or an electronic smoking device by any person under 19 years of age is prohibited.

4.15 Youth Access in Salt Lake County.

4.15.1 ESDs and e-liquid shall not be directly accessible to persons under 19 years of age.

4.16 Sanitation and Safety, Manufacturing.

4.16.1 At least one hand washing sink shall be available in the preparation area for convenient use by employees, and shall include: hot and cold water, soap, hand drying equipment, and a collection container for waste. A hand washing sink shall be installed according to law, maintained in good repair and used in accordance with Section 4.11.

- 4.16.2 E-liquid preparation surfaces shall be smooth, non-absorbent and easily cleanable.
 - 4.16.3 Floors, walls, and ceilings in the preparation area shall be smooth, non-absorbent and easily cleanable.
 - 4.16.4 All e-liquid preparation equipment shall be easily cleanable and in good repair.
 - 4.16.5 Individuals preparing e-liquid shall use good hygienic practices and take proper safety precautions.
 - 4.16.6 Employees shall wear single-use gloves when handling e-liquid components.
 - 4.16.7 Drinking, eating, vaping or smoking shall not be permitted in the preparation area.
 - 4.16.8 No animals shall be permitted in the preparation area.
 - 4.16.9 E-liquid components shall be sorted and stored to prevent contamination and/or spillage.
 - (i) Nicotine shall be stored in a manner to prevent contamination of preparation areas, equipment, supplies and other e-liquid components.
 - 4.16.10 Chemicals not involved in the preparation of e-liquid shall not be stored in preparation or ingredient storage areas.
 - 4.16.11 Containers sold to a customer that contain e-liquid shall not be refilled.
- 4.17 A minimum of a 20 second handwash with soap and water shall occur:
- 4.17.1 When entering a mixing or preparation area, prior to handling e-liquid components or engaging in mixing activities;
 - 4.17.2 When mixing e-liquid components as necessary to remove products on hands;
 - 4.17.3 After using the bathroom, coughing, sneezing, eating, drinking, and engaging in any other activities which potentially expose hands to any form of potential contamination;
 - 4.17.4 Before proceeding to a subsequent mixing session, to prevent cross contamination from one batch to another;
 - 4.17.5 Before donning gloves to mix e-liquid; and

4.17.6 In a hand washing sink. This sink shall not be located in a restroom or be used for other activities in the establishment.

4.18 Operating Procedures.

4.18.1 Standard operating procedures (SOPs) for manufacturing e-liquids shall be written and shall incorporate good hygienic practices and safety precautions. SOPs shall be made available to the Department upon request.

4.18.2 Employees shall be trained on all SOPs and training logs shall be maintained. Logs shall be made available to the Department upon request.

4.19 Quality and Safety of E-Liquid Components

4.19.1 E-liquid components including but not limited to, propylene glycol (PG), vegetable glycerin (VG), nicotine, and flavorings shall be at a minimum USP grade certified, food grade, United States Food and Drug Administration (FDA) approved, or equivalent.

4.19.2 Documentation shall be available for all e-liquid components showing certification, approval, grade, or equivalency and shall be made available to the Department upon request.

4.19.3 Documentation shall be available for all e-liquid offered for sale showing that e-liquid Components listed in section ~~4.13.1~~ 4.19.1 shall be at a minimum USP grade certified, food grade, FDA approved, or equivalent.

4.20 Sampling Facilities in Salt Lake County

4.20.1 Businesses who generate 75% of their gross income from ESDs and e-liquid are allowed to take a sampling exemption in accordance with the Utah Indoor Clean Air Act, Utah Code Ann. § 26-38-2.6.

4.20.2 In accordance with the Utah Indoor Clean Air Act, Utah Code Ann. § 26-38-2.6, tobacco specialty retailers who allow electronic cigarette product sampling in their store cannot permit a person under the age of 19 to enter the establishment.

5. LICENSES, CERTIFICATES, PERMITS AND REGULATORY FEES.

5.1 The Department may establish and collect appropriate fees for permits as set out in the Department's Fee Schedule and this Regulation. The Department may collect appropriate fees as set out in this Regulation for the performance of services, including plan reviews. If information on a permit application changes, the applicant shall notify the Department in writing within 20 calendar days.

- 5.1.1 **Tobacco Retailer Permit.** Any applicant who applies for a tobacco retailer permit as required by section 4.1 of this regulation shall remit to the Department a Tobacco Retailer Permit fee in an amount as provided for or as approved by the Director in the Department's Fee Schedule.
- 5.1.2 **Retail Tobacco Specialty Business Plan Review.** Any applicant who applies for a Retail Tobacco Specialty Business Permit as required by 4.4 of this regulation shall have a Retail Tobacco Specialty Business Plan Review and shall remit to the Department a Retail Tobacco Specialty Business Plan Review fee in an amount as provided for or as approved by the Director in the Department's Fee Schedule.
- 5.1.3 **Tobacco Retailer Permit Renewal.** Any person who renews a Tobacco Retailer Permit as required by 4.2.5 of this regulation shall remit to the Department a Tobacco Retailer Renewal Permit fee in an amount as provided for or as approved by the Director in the Department's Fee Schedule.
- 5.1.4 **Tobacco Retailer Permit Reinstatement.** Any person who reinstates a Tobacco Retailer Permit as required by 4.2.6 of this regulation shall remit to the Department a Tobacco Retailer Reinstatement Permit fee in an amount as provided for or as approved by the Director in the Department's Fee Schedule.
- 5.1.5 **E-Liquid Manufacturing Permit Fee.** Any applicant who applies for an e-liquid manufacturing permit as required by ~~4.1.1~~ 4.1.2 of this Regulation shall remit to the Department an e-liquid manufacturing permit fee in an amount as provided for or as approved by the Director in the Department's fee schedule.
- ~~**E-Liquid Sales Permit Fee.** Any applicant who applies for an e-liquid sales permit as required by 4.1.2 of this Regulation shall remit to the Department an e-liquid sales permit fee in an amount as provided for or as approved by the Director in the Department's fee schedule.~~
- 5.1.6 **E-Liquid Follow-Up Inspection Fee.** The Department will charge a follow-up fee to the owner, permit holder or other person that has an e-liquid manufacturing establishment permit ~~or e-liquid sales permit~~ when conditions found during an inspection may cause or create a nuisance or hazard, to the public health, safety or welfare require a follow-up inspection to ensure compliance. The fee for an e-liquid manufacturing ~~or e-liquid sales permit~~ follow-up inspection shall be remitted to the Department in an amount as provided for or as approved by the Director in the Department's fee standard.
- 5.1.7 **E-Liquid Manufacturing Plan Review Fee.** The fee for an e-liquid manufacturing establishment plan review required under section ~~4.2~~ 4.5 of this Regulation shall be remitted to the Department at the time that plans are

submitted for review. An e-liquid manufacturing plan review fee shall be remitted to the Department in an amount as provided for or as approved by the Director in the Department's fee standard.

- 5.1.8 **Follow-Up Inspection Fee.** The Department will charge a follow-up fee to the owner, permit holder or other person in charge of an establishment when conditions found during an inspection require a follow-up inspection to ensure compliance. The follow-up inspection fee is an amount as provided for or as approved by the Director in the Department's Fee Schedule.
- 5.2 Unless otherwise provided for in this Regulation or approved by the Director in the Department's fee standard, all fees collected by the Department are non-refundable. All licenses and permits issued by the Department are non-transferable.
- 5.3 **Late Fees.**
- 5.3.1 The Department may impose upon any party subject to this Regulation penalties and charges for failure to timely pay service and license or permit fees as set out in this Regulation. Attorney's fees and collection fees may also be applied.
- 5.3.2 Fees unpaid to the Health Department after one month of the due date will be assessed a penalty of 10% of the outstanding balance. Failure to pay the fees and additional charges after two months of the due date will be assessed an additional penalty of 15% of the outstanding balance including previous penalties. Failure to pay the fees and additional charges after 100 days of the due date will result in suspension of the permit and the right to operate.
- 5.4 **Denial, Suspension, or Revocation of License or Permit.** In addition to the penalties provided for in section 8.2, any permit applied for or issued pursuant to this Regulation may be denied, suspended, or revoked by the Director for any of the following reasons:
- 5.4.1 Failure of the permit holder to operate an establishment maintained in accordance with the requirements and standards of this regulation;
- 5.4.2 Failure to operate or maintain the establishment in accordance with the application and requirements approved by the Director;
- 5.4.3 Failure of the owner or operator of an establishment to permit or allow the Department to conduct inspections as necessary to determine compliance with this regulation;
- 5.4.4 Failure of the application, plans, or specifications to show that the e-liquid manufacturing establishment ~~or e-liquid sales establishment~~ or tobacco retailer will be operated or maintained in accordance with the requirements and standards of this Regulation;

- 5.4.5 Submission of incorrect or false information in the application, plans, or specifications;
- 5.4.6 Failure to operate or maintain the e-liquid manufacturing establishment or ~~e-liquid sales~~ tobacco retailer establishment in accordance with the application, report, plans, and specifications approved by the Director;
- 5.4.7 Failure of the owner or operator of a e-liquid manufacturing establishment or ~~e-liquid sales~~ tobacco retailer establishment to permit or allow the Department to conduct inspections as necessary to determine compliance with this Regulation;
- 5.4.8 Operation of the establishment in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;
- 5.4.9 Operation of the e-liquid manufacturing establishment or ~~e-liquid sales~~ tobacco retailer establishment in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;
- 5.4.10 Violation of this Regulation, or any other restrictions or requirements adopted by the Board;
- 5.4.11 Violation of provisions of the Utah Code or an applicable local ordinance related to the sale or use of tobacco products or retail tobacco specialty businesses;
- 5.4.12 Violation of any condition upon which the permit was issued; or
- 5.4.13 Failure to pay a permit fee or any late fees within 100 days of the permit fee's due date.

5.5 Progressive Permit Suspension and Revocation.

- 5.5.1 Receipt of the first permit suspension shall result in suspension of e-liquid manufacturing, sale operations until the Department has verified that violations of this Regulation have been corrected.
- 5.5.2 Receipt of a second permit suspension within five (5) years of the first permit suspension, as set forth in Part 5.5.1, shall result in suspension of e-liquid manufacturing, sale operations for a period of a minimum of seven (7) days.
- 5.5.3 Receipt of a third permit suspension within five (5) years of the second permit suspension, as set forth in Part 5.5.2, may result in the e-liquid manufacturing permit ~~or the e-liquid sales~~ permit being revoked. The owner of the said establishment may be restricted from operating the establishment for a minimum of 180 days, at which time the owner may be required to make application and submit a plan review etc., as if the establishment was a new

establishment. Additional conditions may be imposed by the Department for approval of the establishment to operate.

- 5.5.4 Receipt of a permit suspension by an owner that previously had their permit revoked in accordance with Part 5.5.3 may result in immediate revocation of the current permit for a minimum of 180 days.
- 5.5.5 Permit suspension and revocation shall reset after five (5) years from the last suspension for a history of compliance with all provisions of this Regulation.

6. INSPECTIONS & INVESTIGATIONS

6.1. The Department, by the Director, has the authority to perform inspections, investigations, reviews, and other similar actions as necessary of any public or private establishment.

6.1.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ~~determine whether the tobacco retailer or e-liquid manufacturer: insure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the Division of Occupational and Professional Licensing.~~

- (i) Is in compliance with rules, standards, regulations, and ordinances adopted by the Department, the Utah Departments of Health & Environmental Quality, county or municipal governing bodies;
- (ii) If it is a retail tobacco specialty business continues to meet the requirements for a retail tobacco specialty business license issued under Utah Code Ann. §§ 10-8-41.6 and 17-50-333;
- (iii) Is engaged in a pattern of unlawful activity under Utah Code Ann. §76-10-16, Pattern of Unlawful Activity;
- (iv) Violated any of the regulations restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration, 21 CFR Part 1140; or
- (v) To determine if the business is a tobacco retailer.

6.1.2. **Unregulated Commercial Premises.** The Department may enter upon the premises of unregulated commercial properties upon the consent of the owner or otherwise responsible party or upon a warrant issued by a court.

6.1.3. **Private Dwellings.** Inspections of private dwellings are made by consent of owner or otherwise responsible party or upon a warrant issued by a court.

6.1.4. **Consent by License or Permit.** The Department may require licensees or permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the license or permit may result in the suspension or revocation of the license or permit.

6.2. The owner or other responsible person may request information gathered by the Department during an investigation, inspection, or review as authorized by the Government Records Access and Management Act.

7. **ENFORCEMENT MECHANISMS.** If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this Regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this Regulation or that the property owner or otherwise responsible party is not in compliance with this Regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

7.1. **Criminal Enforcement Actions.** The Department may recommend criminal prosecution for environmental violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the District Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors:

7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;

7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance, or it involved a pattern of conduct or a common attitude of illegal conduct;

7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the department;

7.1.4. The degree to which prosecution might deter future violations;

- 7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;
- 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
- 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
- 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.

7.2. **Civil Enforcement Actions.**

- 7.2.1. The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

7.3. **Administrative Actions.**

- 7.3.1. The Department may, at its discretion, issue a Notice of Violation & Order of Compliance (NOV).
- 7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.
- 7.3.3. **Contents of NOV.** The NOV shall:
 - (i) Describe the property and the persons believed to be in violation;
 - (ii) Describe the violation;
 - (iii) Describe remedial action that will comply with the provisions of this Regulation;
 - (iv) Set a reasonable time for the performance of any required remedial action(s);
 - (v) Describe the procedure to contest the NOV and the time limits for such a contest; and

- (vi) Notify the owner, or other responsible person, that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. **Challenging an NOV.** As detailed in the Department's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within 10 days of the date of the NOV.

7.3.5. **Departmental Conference, Settlement Agreements, and Stipulations & Orders.**

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a departmental conference to discuss the NOV and settlement with the Department and its legal counsel. No hearing officer will be present. The process of requesting a departmental conference is more fully described in the Department's Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the District Attorney's Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the departmental conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. **Hearings & Appeals.** Parties Aggrieved by an NOV may also request a departmental hearing or a departmental appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the Department's Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the Department's Adjudicatory Hearing Procedures.

7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.

- 7.4.2. Any variances allowed by the Department to the requirements of this Regulation shall be only by written approval of the Board.
- 7.4.3. **Exercise of Physical Control.** The Department may establish, maintain, and exercise physical control over property and over individuals as the Department finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this Regulation, the Director shall continue the order in effect or modify or revoke it.
- 7.4.4. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this Regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES

8.1. Criminal Penalties.

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this Regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Utah Code Ann. § 26A-1-123.
- 8.1.2. Each day such violation is committed or permitted to continue shall constitute a separate violation.
- 8.1.3. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.

8.2. Civil & Administrative Penalties.

8.2.1. Pursuant to the authority contained in Utah Code Ann §26-62-305, the Department may impose administrative penalties when following an inspection the Department, or an investigation issuance of a citation or information under Utah Code Ann. §77-39-101, the Department determines that a person has violated the terms of a tobacco retailer permit issued under this chapter, the Department may impose the penalties as follows:

- (i) Upon the first violation, a penalty of not more than \$500;
- (ii) Upon the second violation at the same tobacco retailer location that occurs within one year of a previous violation a penalty of not more than \$750;
- (iii) Upon the third or subsequent violation at the same tobacco retailer location that occurs within two years after two or more previous violations is:
 - a. A suspension of the tobacco retailer permit for 30 consecutive business days within 60 days after the day on which the third or subsequent violation occurs; or
 - b. A penalty of not more than \$1,000.

8.2.2. These administrative penalties can be reduced if the permittee has proof of a documented employee training program consistent with the provisions in Utah Code Ann. §26-62-306, Recognition of tobacco retailer training program.

8.2.3. The Department may:

- (i) Revoke a permit if a fourth violation occurs within two years of three previous violation;
- (ii) In addition to a monetary penalty imposed under section 8.2.1, suspend the permit if the violation is due to a sale of tobacco products to a person under 19 years of age; and
- (iii) If applicable, recommend to a municipality or county that a tobacco retailer business license issued under Utah Code Ann. §§ 10-8-41.6 and 17-50-333 be suspended or revoked.

8.2.4. The Department may not issue a tobacco retailer permit, except when a transfer occurs in accordance with section 8.2.4, to:

- (i) A tobacco retailer for whom a permit is suspended or revoked under section 8.2.2.

- (ii) A tobacco retailer that has the same proprietor, director, corporate officer, partner, or other holder of significant interest as another tobacco retailer for whom a permit is suspended or revoked under section 8.2.2.

8.2.5. A person whose tobacco retailer permit:

- (i) Is suspended under this section may not apply for a new permit for any other tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends the permit; and
- (ii) Is revoked may not apply for a new permit for any tobacco retailer for a period of 24 months after the day on which an enforcing agency revokes the permit.

8.2.6. Violations of this chapter, Utah Code Ann. §§ 10-8-41.6 and 17-50-333 that occur at a tobacco retailer location shall stay on the record for that tobacco retailer location unless:

- (i) The tobacco retailer is transferred to a new proprietor; and
- (ii) The new proprietor provides documentation to the local health department that the new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous proprietor.

8.2.7. Pursuant to the authority contained in Utah Code Ann. § 26-23-6(2), the Department may impose administrative penalties for the illegal sale of e-liquid to any person under 19 years of age as follows:

- (i) Upon the first violation, a penalty of not more than \$300;
- (ii) Upon the second violation at the same retail location within 12 months of the first violation, a penalty of not more than \$750;
- (iii) Upon the third violation at the same retail location and within 12 months of the first violation, a penalty of not more than \$1,000 and up to a 30-day suspension of the permit; and
- (iv) Upon the fourth violation at the same retail location and within 12 months of the first violation, a penalty of not more than \$1,000 and up to a one-year suspension of the permit.
- (v) These administrative penalties can be reduced if the permittee has proof of a documented employee training program consistent with the provisions of Utah Code Ann. § 26-42-101, et seq., Civil Penalties for Tobacco Sales to Underage Persons.

8.2.8. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:

- (i) The violator's history of compliance or non-compliance;
- (ii) The violator's economic benefit of non-compliance;
- (iii) The documented costs associated with environmental or health damage;
- (iv) The violator's degree of willfulness or negligence; and
- (v) The violator's good faith efforts to comply and cooperate.

8.2.9. The Director may multiply the penalty by the number of days the violation occurred.

8.3. Recovery of Investigation & Abatement Costs

8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

9. EFFECTIVE DATE

9.1. This Regulation shall be effective six months following its adoption by the Salt Lake County Board of Health.

APPROVED AND ADOPTED this _____ day of _____, 20195.

SALT LAKE COUNTY BOARD OF HEALTH

By: _____
~~KELLY CHRISTENSEN~~, Clare Coonan, Chair

ATTEST:

GARY L. EDWARDS, M.S.
Executive Director
Salt Lake County Health Department