

Chapter 9

TOBACCO AND SYNTHETIC NICOTINE CONTROL

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1-9-1: Purpose.

The purpose of this regulation is to protect and promote the public health, safety, and welfare of residents and employees by establishing practices and provisions for the sale of Tobacco Products; to define the way tobacco and synthetic nicotine are marketed, sold and distributed in Summit County in order to address the incidence and use of electronic smoking devices by youth, accidental injury to children as a result of ingestion or contact with liquid nicotine and the safe preparation and handling of Electronic Cigarette Substance components in Summit County.

1-9-2: Scope.

This regulation applies to Tobacco Products, Electronic Nicotine Delivery Systems, and Electronic Cigarette Substances, sold and/or manufactured in incorporated and unincorporated areas of Summit County.

1-9-3: Definitions.

Child Resistant:

Packaging that is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

Community Location:

- (i) A public or private kindergarten, elementary, middle, junior high, or high school;
- (ii) A licensed child care facility or preschool;
- (iii) A trade or technical school;
- (iv) A church;
- (v) A public library;
- (vi) A public playground;
- (vii) A public park;
- (viii) A youth center or other space used primarily for youth oriented activities;
- (ix) A public recreational facility; or
- (x) A public arcade.

Electronic Nicotine Delivery Systems (ENDS):

Any electronic oral device:

- (i) that provides a vapor of nicotine or other substance;
- (ii) which simulates smoking through its use or through inhalation of the device;
- (iii) where the oral device is composed of a heating element, battery, or electronic circuit; and
- (iv) is marketed, manufactured, distributed, or sold as an e-cigarette, personal vaporizer, vape pen, e-cigar, e-pipe, e-hookah, Electronic Cigarette Substance, and/or any other vaping device.

Electronic Cigarette Substance Manufacturing Facility:

A facility which:

- (i) casts, constructs, or makes ENDS; or
- (ii) blends, makes, processes, or prepares an Electronic Cigarette Substance.

An Electronic Cigarette Substance Manufacturing Facility does not include a Manufacturer Sealed Electronic Cigarette Substance as defined in UCA §26-57-102(6).

Electronic Cigarette Substance Manufacturing Facility Permit:

A permit issued by the Health Department in accordance with Section 1-9-7.

Electronic Cigarette Substance:

Any substance, including liquid containing nicotine or synthetically manufactured nicotine, used or intended for use in an ENDS.

Minimum Legal Sales Age:

The age an individual must be before that individual can be sold cigarettes, cigars, cigarillos, smokeless tobacco products, Electronic Cigarette Substances or ENDS as established by statute, regulation, or local ordinance which in no instance shall be younger than 19 years old.

Tobacco Retailer:

Any person who sells, offers for sale or offers to exchange for any form of consideration, Tobacco Products, ENDS, Electronic Cigarette Substance, or any substitute for a Tobacco Product, including flavoring, additives, or herbal tobacco. A Tobacco Specialty Business is a Tobacco Retailer.

Tobacco Retail Permit:

A permit issued by the Health Department in accordance with Section 1-9-5.

Tobacco Product:

Any cigar, cigarette, or electronic cigarette, as defined in UCA §76-10-101, any Electronic Cigarette Substance, any ENDS, any chewing tobacco, any substitute for a tobacco/synthetic nicotine product including flavoring or additives to tobacco, and tobacco paraphernalia, as defined in UCA §76-10-104.1.

Tobacco Specialty Business:

Any Tobacco Retailer for which:

- (i) The sale of Tobacco Products accounts for more than Twenty-Five Percent (25%) of the total annual gross receipts for the establishment; or
- (ii) The name of the business evidences holding itself out as a Tobacco Specialty Business; e.g., “Smoke Shop,” “Vape Shop,” etc. as opposed to “Tommy’s Trinkets” or “Nonie’s Notions;” or
- (iii) The allocation of floor and shelf space inside the business shows a focus on Tobacco Products. Twenty-Five percent (25%) or more is devoted to the offer, display and/or storage of Tobacco Products; and
- (iv) The establishment is not licensed as a pharmacy under UCA Title 58, Chapter 17b (Pharmacy Practice Act).

Transaction Statement:

Any statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the Electronic Cigarette Substance is in compliance with the standards of R384-415.

1-9-4: Authority and Applicable Laws.

- A. This regulation is adopted under the authority of the Summit County Board of Health in accordance with UCA §26A-1-121, as amended.
- B. UCA Title 26, Chapter 38 (Utah Indoor Clean Air Act), is hereby adopted and incorporated herein by this reference.
- C. R392-510 (Utah Indoor Clean Air Act), is hereby adopted and incorporated herein by this reference.
- D. UCA §76-10-104 (Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor), is hereby adopted and incorporated herein by this reference.
- E. UCA §76-10-105 (Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor), is hereby adopted and incorporated herein by this reference.
- F. UCA Title 26, Chapter 57 (Electronic Cigarette Regulation Act), is hereby adopted and incorporated herein by this reference.
- G. R384-415 (Electronic Cigarette Substance Standards), is hereby adopted and incorporated herein by this reference.

1-9-5 Tobacco Retail Permit.

- A. Effective January 1, 2018, no Tobacco Specialty Business may sell an ENDS, an Electronic Cigarette Substance, or a Tobacco Product in Summit County except it first obtain a Tobacco Retail Permit issued by the Health Department. A Tobacco Specialty Business which has not been issued a Tobacco Retail Permit shall not:
 - 1. Sell ENDS, an Electronic Cigarette Substance, or a Tobacco Product.
 - 2. Display an ENDS, an Electronic Cigarette Substance, or a Tobacco Product to the viewing public.
 - 3. Display any advertisement related to an ENDS, an Electronic Cigarette Substance, or a Tobacco Product that promotes the sale, distribution, or use of such products.

B. The Health Department shall issue a Tobacco Retail Permit to a Tobacco Specialty Business based upon compliance with the following criteria:

1. Tobacco Specialty Business location.

(a) A Tobacco Specialty Business shall not be located within:

- (i) 1,000 feet of a Community Location;
- (ii) 600 feet of another Tobacco Specialty Business; and
- (iii) 600 feet from property zoned primarily for agriculture or residential uses.

(b) The proximity requirements set forth in Section 1-9-5(B)(1)(a) shall be measured in a straight line from the nearest entrance of the Tobacco Specialty Business to the nearest property boundary of the Community Location, Tobacco Specialty Business, or agricultural or residential use without regard to intervening structures or zoning districts.

(c) A Tobacco Specialty Business which existed prior to May 8, 2012, shall be exempt from this Section 1-9-5(B)(1), so long as the Tobacco Specialty Business:

- (i) has a current business license that has been renewed continuously without lapse or permanent revocation;
- (ii) has not closed for business or otherwise suspends the sale of Tobacco Products for more than 60 consecutive days;
- (iii) does not substantially change the business premises or its business operations; and
- (iv) maintains the right to operate under the terms of other applicable laws, including zoning ordinances and building codes.

2. The Tobacco Specialty Business shall obtain a license to sell an Electronic Cigarette Product, as defined by UCA §59-14-802, from the Utah State Tax Commission in accordance with UCA §59-14-803. A copy of this license shall be provided to the Health Department.

3. The Tobacco Specialty Business shall submit an operations plan and scaled floor plan drawing of its proposed establishment for review by the Health Department. The plans shall include the following:

(a) Name and address of the business.

- (b) The name of the owner(s), operators and all registered employees and their current home addresses and telephone numbers.
 - (c) The hours of operation of the Tobacco Specialty Business.
 - (d) The square footage and general floor plan of the establishment.
 - (e) Description of Tobacco Products being sold.
 - (f) Information about any ENDS to be sold.
 - (g) Any other information specifically requested by the Health Department to ensure compliance with this chapter.
- C. A Tobacco Retail Permit is Non-Transferable from one place or person to another. Any Tobacco Specialty Business shall apply for a new permit if the information in the permit application changes. Violations of the Health Code that occur at a Tobacco Specialty Business shall stay on the record of that business unless that business has been transferred to a new proprietor; and the new proprietor provides documentation to the Health Department that the new proprietor is acquiring the retail business in an arms-length transaction from the previous proprietor.
- D. A Tobacco Retail Permit issued under this chapter expires annually and may be renewed upon application to the Health Department, payment of the established renewal fee and compliance with the requirements of any applicable regulations.
- E. Tobacco Retail Permits issued under the provisions of this chapter may be suspended or revoked by the County Health Officer or the Board of Health for failure of the holder to comply with the requirements of this chapter.
1. Whenever a violation of this chapter occurs, the County Health Officer shall issue a Notice of Violation in accordance with Section 1-1-8. Failure of a Tobacco Specialty Business to cure the violation within the time period set forth in the Notice of Violation or to request a hearing in accordance with Section 1-1-9, shall result in a suspension of the Tobacco Retail Permit.
 2. In the event that the County Health Officer determines on substantial evidence that a Tobacco Specialty Business is engaging in a pattern of unlawful activity under Utah Code Title 76, Chapter 10, Part 16 (Pattern of Unlawful Activity Act) or is violating FDA regulations restricting the sale and distribution of Tobacco Products to children and adolescents under 21 C.F.R. Part 1140, the County Health Officer shall immediately suspend the Tobacco Retail Permit. The Tobacco Specialty Business may request a hearing in accordance with Section 1-1-9 within ten (10) calendar days to reinstate the permit.

3. The Board of Health may revoke a Tobacco Retail Permit for serious or repeated violations of this chapter. Where a Tobacco Retail Permit has been revoked, the Tobacco Specialty Business may not re-apply for 24 months.
 4. Any Tobacco Specialty Business whose Tobacco Retail Permit has been suspended may, at any time, make application for reinstatement of the permit. Within ten (10) calendar days of receipt of a written request, including a statement signed by the permit holder that in his or her opinion the conditions causing the suspension have been corrected, and upon submission of the appropriate re-inspection fees, the Health Department shall re-inspect the Tobacco Specialty Business and/or evaluate documentation provided by the permit holder. If the permit holder is in compliance with the provisions of this chapter, the Tobacco Retail Permit shall be reinstated.
- F. Any person, employee, operator, or owner that fails to meet the requirements of this chapter, and has been found to be a threat to the public health, may be prohibited from working in a Tobacco Specialty Business.
- G. Nothing in this chapter requires the Health Department to issue a Tobacco Retail Permit to a Tobacco Specialty Business.

1-9-6 Tobacco Retailer; Electronic Cigarette Substance Labeling; Advertisement; Nicotine Content; Packaging; Quality; Record Keeping and Testing.

- A. A Tobacco Retailer shall:
1. Not sell ENDS, an Electronic Cigarette Substance, or a Tobacco Product to a person under the age of 19 years.
 2. Prominently display at the point of purchase a sign that states that the sale of Tobacco Products is prohibited to a person under the age of 19 years.
 3. With respect to a Tobacco Specialty Business, prominently display, in an area readily visible to the public, at the entrance of the business, a sign that states that a person under the age of 19 years is prohibited from entering.
 4. Inspect the photographic-identification of a purchaser of an ENDS, an Electronic Cigarette Substance, or a Tobacco Product to confirm that the purchaser is of legal age to purchase the product.

5. Display an ENDS, an Electronic Cigarette Substance, or a Tobacco Product behind the counter or in a locked display case.

1-9-7 Manufacture of Electronic Cigarette Substances.

- A. Electronic Cigarette Substance Manufacturing Facilities within Summit County shall obtain an Electronic Cigarette Substance Manufacturing Permit from the Health Department.
- B. Sanitation and Safety.
 1. Electronic Cigarette Substance preparation surfaces must be smooth, non-absorbent and easily cleanable.
 2. Floors and ceilings in the preparation area must be smooth, non-absorbent and easily cleanable.
 3. All preparation equipment shall be easily cleanable and in good repair.
 4. Individuals preparing Electronic Cigarette Substances shall use good hygienic practices and take proper safety precautions.
 5. Drinking, eating, vaping or smoking is not permitted in the preparation area.
 6. No animals shall be permitted in the preparation area.
 7. Electronic Cigarette Substance components shall be stored to prevent contamination and/or spillage.
 8. Nicotine shall be stored in a manner to prevent contamination of prepared areas, equipment, supplies and other Electronic Cigarette Substance components.
 9. Chemicals not involved in the preparation of Electronic Cigarette Substances shall not be stored in preparation or ingredient storage areas.
- C. Operating Procedures.
 1. Standard operating procedures (SOPs) for manufacturing Electronic Cigarette Substances shall be written and must incorporate good hygienic practices and

safety precautions. SOPs shall be made available to the Health Department upon request.

2. Employees shall be trained on all SOPs and training logs shall be maintained. Logs shall be made available to the Health Department upon request.
3. Propylene glycol (PG), vegetable glycerine (VG), nicotine, and flavorings must be at a minimum US Pharmacopeial (USP) grade certified, food grade, FDA approved, or equivalent.
4. Documentation must be available for all Electronic Cigarette Substance components showing certification, approval, grade, or equivalence and shall be made available to the Health Department upon request.