MEMORANDUM

To: James Leonard, Commissioner
    Department of Records

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

    Martha Johnston, Senior Attorney
    Law Department

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

Date: December 14, 2016

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

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

The following procedural actions have been taken:

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

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

TAF/initials

Attachments:
Law Department approval cover sheet
Report on the October 17, 2016 public hearing
Report on public hearing held October 17, 2016 by the Philadelphia Board of Health
Regarding
Regulation Relating to Tobacco Retailing

Submitted by: Thomas Farley, MD, MPH
Health Commissioner

Date: 10/13/16

Approved by: Martha Johnston
Senior Attorney

Date: 12/14/16
CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH
Board of Health

Report Concerning Public Comments on Regulation Relating to Tobacco Retailing

I. Procedural Background

The Board of Health (the “Board”) approved the Regulation Relating to Tobacco Retailing (the “Regulation”) on September 8, 2016 at a public meeting by unanimous vote of the seven members present. The Law Department approved the Regulation on September 12, 2016. The Department of Public Health (“PDPH”) submitted the Regulation to the Department of Records for publication on September 12, 2016. The Department of Records received a request for public hearing and the Board scheduled a hearing for October 17, 2016. PDPH notified members of the public who requested a hearing or submitted comment on the Regulation and various retailers’ associations of the public hearing. PDPH also published notice of the hearing in the Philadelphia Daily News and on social media, www.smokefreephilly.org, and on the official City website. The public hearing occurred on October 17, 2016 at 5:30 PM in the Municipal Services Building, 1401 John F. Kennedy Boulevard.

II. October 17, 2016 Hearing

Five representatives of the Board of Health and one member of the City Solicitor’s office appeared at the October 17, 2016 hearing. Approximately 50 members of the public attended. The following individuals testified: Ed O’Donnell of the Winthrop Foundation; Jada Rasulallah of the Advocacy Institute; Alan Karpo; Mark Harrell of the Southwest Community Development Corporation; Ilycia Boatwright; Bhagwant Bhatti; Ken Margulies of the American Heart Association; Reverend Jesse Brown; John Rocco of the Newsstand Association of Philadelphia; and Anton Moore.

1 Thomas A. Farley, MD, MPH; Tyra Bryant-Stephens, MD; Marla J. Gold, MD; Jennifer Ibrahim, PhD, MPH; Amid I. Ismail, BDS, DrPH, MBA; A. Scott McNeal, DO; John A. Rich, MD, MPH.
2 These included the Philadelphia Dominican Grocers Association, the Korean American Grocers Association of Philadelphia, the Greater Philadelphia Chinese Restaurant Association, the Pennsylvania Food Merchants Association, the African American Chamber of Commerce of PA, the Asian American Chamber of Commerce of Greater Philadelphia, FINANTA, the Greater Northeast Philadelphia Chamber of Commerce, and the Urban Affairs Coalition, among others.
3 Thomas A. Farley, MD, MPH; Amid I. Ismail, BDS, DrPH, MBA; A. Scott McNeal, DO; Ma’la J. Gold, MD; Ana Diez-Roux, MD, PhD, MPH.
4 Martha Johnston, Senior Attorney, Appeals and Legislation.
5 Transcript attached as Exhibit D.
6 Affiliations are as provided.
III. Written Comments

In addition to oral testimony provided at the Board’s October 17, 2016 hearing, the Board received written comments on the Regulation submitted to the Department of Records while the Regulation was available for public inspection.\(^7\) The following individuals and entities submitted comment: Sukesh Anam; Uri Benabou; Christopher Gheysens of Wawa, Inc.; Tariq Jalil; Kathleen Furdella of AB Wholesale Distribution Services; Kira Hendricks; Alan Karpo of Second St. Wholesale; Susan Lee of the Children’s Hospital of Philadelphia; Salwinder Malhi; Thomas Briant of the National Association of Tobacco Outlets; Herman Nyamunga of the Welcoming Center for New Pennsylvanians; Mijul Patel; Donna Cooper of Public Citizens for Children and Youth; Jasmine Santos of the Children’s Hospital of Philadelphia; and John Valkovec.

IV. Responses to Testimony and Comments

The Board heard testimony from 10 individuals and received 15 written comments on the Regulation. Nearly half of all testimony and comments encouraged the Board to finalize the Regulation as the Board had approved it on September 8, 2016. The remaining comments included requests for accommodations, clarifications, and, in some cases, outright rescission of the Regulation. The following is a summary of public testimony and comment grouped by topic, along with the Board’s responses.

A. Supportive Testimony and Comments

Supportive comments highlighted the importance of ensuring that minors are not able to purchase tobacco products and addressing the excessive amount of tobacco marketing and tobacco retailers in Philadelphia, especially in lower-income communities. Public comment noted that tobacco use is the leading cause of death in Philadelphia and that Philadelphia has more tobacco retailers per capita than other major cities. Public comment also pointed out that tobacco is a unique consumer product, because it severely injures and kills users and bystanders to its use, even when used exactly as intended. As one young woman put it:

\[
I \text{ pass by about ten stores on my way to school and I see about six of them that are heavily marketed with tobacco products. And I know that their marketing doesn’t go to adults, it’s directed towards the youth...}\]
\[
[T]hey place their tobacco products right next to the candy counters where young kids can see them. And they call kids replacement smokers
\]

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\(^7\) Written comments attached as Exhibit E.

\(^8\) Affiliations are as provided.
because . . . each day 1,300 people die from cigarette smoking . . . and so they need people to replace these people that are dying[.]9

RESPONSE: The Board appreciates the expressions of support from the public, and agrees that the Regulation is an appropriate and reasonable mechanism to address the ongoing threat tobacco poses to Philadelphia. The Board has decided to make certain limited changes to the Regulation in consideration of concerns from business owners, outlined in Section IV(B) below and reflected in the final Regulation, but the Regulation remains consistent with the spirit of the supportive comments received.

B. Testimony and Comments Resulting in Changes to Regulation

Some individuals noted that the value of their businesses would decrease as a result of the Regulation because permits would not be available to new owners upon sale or transfer. One individual who reported that he owned and managed a tobacco shop claimed that tobacco sales comprise more than 90% of his business’s revenue, which he said meant that his business would be essentially valueless upon sale.

RESPONSE: The overwhelming majority of tobacco retailers sell many products beside tobacco products, and tobacco represents a small fraction of their revenue. For the small number of existing retailers that sell little else other than tobacco, the Board finds it reasonable to allow a new permit to be issued after the first time a business is transferred to a new owner. The final version of the Regulation reflects this change.

Some individuals sought clarification of the rule surrounding renewal and grandfathering of permits for purposes of the retailer density limit and the 500-foot zone around schools in which new permits will not be available. One individual expressed concern that a permit could lose grandfathered status if a school opened within 500 feet of the permitted location.

RESPONSE: The Board agrees that it would be preferable to allow permits issued both before and after the Regulation goes into effect to retain grandfathered status upon renewal for purposes of the retailer density limit and the 500-foot zone around schools in which new permits will not be available. The final version of the Regulation reflects this change.

One individual requested clarity about the earliest point at which an applicant could receive a permit, and specifically asked that pre-operational permits be granted upon the showing of a contract for sale or lease. The same individual requested that applications for permits be responded to within 30 days.

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9 Testimony of Jada Rasulallah, p. 12 of October 17, 2016 Transcript Hearing, attached as Exhibit D.
RESPONSE: The Board agrees that pre-operational permit issuance is necessary for reasonable business expectations to be met. The Board agrees that an executed contract for sale or lease should be necessary for pre-operational permits, and finds that 24 months in advance of planned operation is an acceptable outside limit for the issuance of pre-operational permits. The final version of the Regulation reflects this change. The Board agrees that 30 days should generally be enough time for the Department to reply to an application, but recognizes that some applications will require additional investigation. The Department will respond in a reasonable amount of time, telling applicants whether they will receive a permit, are denied a permit (if they do not meet eligibility criteria), or will be placed on a waiting list (if they meet eligibility criteria but the district is above the retailer density limit).

One individual requested that the Board clarify the type of population data to be used in calculating tobacco retailer density limits and suggested that residential population data may not be the most appropriate type of data.

RESPONSE: The Board agrees that it would be helpful to provide additional detail about the type of population data to be used in calculating tobacco retailer density limits. The Board finds that commuter-adjusted daytime population is a reasonable proxy for economic activity in a district and an appropriate type of population data for calculating density limits. The final version of the Regulation reflects this change.

C. Testimony and Comments Not Resulting in Changes to Regulation

One individual requested that the Board consider banning menthol tobacco products.

RESPONSE: The Board agrees that menthol and other flavored tobacco products are public health problems, particularly because they entice youth and can make quit attempts more challenging, but this request falls outside of the current regulatory process.

Some individuals complained about the increased permit fee.

RESPONSE: The Board finds that the increased permit fee accurately reflects the costs of administering and enforcing applicable law effectively.

One individual sought additional clarity about arm’s length transactions.

RESPONSE: The Board finds that it is reasonable to make reference in the Regulation to relevant language concerning arm’s length transactions in The Philadelphia Code. The final version of the Regulation reflects this change. To reiterate, in some cases, the Department may seek proof of an arm’s length transaction because of concern that the new permit application is actually an attempt to avoid accrued fees or violations attached to the last permit. Failure to demonstrate an arm’s length transaction would not itself make an applicant ineligible for a permit.
Some individuals expressed concern about excise taxes on cigarettes, and one individual expressed concern that Philadelphians will buy tobacco products from surrounding municipalities as regulations become increasingly strict in Philadelphia.

RESPONSE: The Board does not find comments about excise taxes relevant to the current regulatory process, and the Board does not agree that the Regulation would make an individual less likely to purchase a tobacco product from a given permitted retailer.

One individual requested that the retailer density limit implementation be delayed for five years.

RESPONSE: Smoking is estimated to cause 2,000 deaths per year in Philadelphia. The Board does not believe a five-year implementation delay is consistent with its public health mission.

One individual expressed that as a business owner he was not responsible for his employees’ failures to comply with youth sales laws, and another individual noted that better enforcement, rather than more regulation, was the answer to the issue of youth sales violations.

RESPONSE: By law, tobacco retailers are responsible for the actions of their employees in tobacco sales. Retailers must train and supervise their employees to ensure that they do not sell tobacco products to minors. The Department is responsible for enforcing this law, but many retailers repeatedly violate youth sales laws, despite fines. The increased permit fee will provide resources to strengthen this enforcement.

V. Final Action

The Board hereby files with the Department of Records for final action this Report and the final Regulation, attached as Exhibit A, both of which the Board approved on December 8, 2016. For reference, changes from the version of the Regulation approved on September 8, 2016 to the final version approved on December 8, 2016 can be reviewed in the version attached as Exhibit B, wherein strikethrough reflects deletion and underlining reflects addition. The version of the Regulation approved on September 8, 2016 is attached as Exhibit C.
EXHIBIT A
CITY OF PHILADELPHIA  
DEPARTMENT OF PUBLIC HEALTH  
Board of Health

Regulation Relating to Tobacco Retailing

Approved December 8, 2016

WHEREAS, smoking kills an estimated 2,000 people in Philadelphia per year;

WHEREAS, smoking rates in Philadelphia are highest in low-income neighborhoods, as are rates of tobacco-related morbidity and mortality;

WHEREAS, Philadelphia has significantly more Tobacco Retailers per capita than other comparable cities, and low-income neighborhoods in Philadelphia contain significantly more Tobacco Retailers than do high-income neighborhoods;

WHEREAS, high Tobacco Retailer density and ubiquitous tobacco marketing are associated with increased smoking rates among youth and adults;

WHEREAS, youth are particularly susceptible to the effects of tobacco marketing;

WHEREAS, the Department has identified hundreds of Tobacco Retailers who have each been cited for selling Tobacco Products to children more than ten times since 2010, and the annual citywide rate of youth sales non-compliance consistently exceeds the state average;

WHEREAS, Section 9-631(2) of The Philadelphia Code requires that any person who wishes to engage in Tobacco Retailing in Philadelphia obtain a Tobacco Retailer Permit from the Department before doing so;

WHEREAS, Section 9-631(2)(a) of The Philadelphia Code deems Tobacco Retailing without a Tobacco Retailer Permit “a nuisance as a matter of law”; and

WHEREAS, Section 9-631(2)(c)(7) of The Philadelphia Code empowers the Board of Health to adopt any requirement for the issuance and renewal of Tobacco Retailer Permits that is “appropriate for the protection of public health”;

NOW, THEREFORE, the Board of Health hereby adopts this Regulation Relating to Tobacco Retailing, as follows:
Section 1. Definitions

Department. The Philadelphia Department of Public Health.

Electronic Smoking Device. As defined in Section 9-631(1) of The Philadelphia Code.

Planning District. A geographical designation established by the Philadelphia City Planning Commission, including Central, Central Northeast, Lower Far Northeast, Lower North, Lower Northeast, Lower Northwest, Lower South, Lower Southwest, North, North Delaware, River Wards, South, University Southwest, Upper Far Northeast, Upper North, Upper Northwest, West, and West Park.

Tobacco Product. As defined in Section 9-631(1) of The Philadelphia Code.

Tobacco Retailer. As defined in Section 9-631(1) of The Philadelphia Code.

Tobacco Retailer Density Limit. For each Planning District, the number equal to the commuter-adjusted daytime population of the Planning District divided by 1,000, rounded up. The commuter-adjusted daytime population shall be calculated using appropriate data sources and methodologies as determined by the Department.

Tobacco Retailer Permit. The permit issued pursuant to Section 9-631 of The Philadelphia Code.

Tobacco Retailing. As defined in Section 9-631(1) of The Philadelphia Code.

Unapproved Nicotine Delivery Product. As defined in Section 9-631(1) of The Philadelphia Code.

Section 2. Tobacco Retailer Permitting

In addition to the requirements of Sections 9-631(2) and (3) of The Philadelphia Code, the Department shall neither issue nor renew a Tobacco Retailer Permit unless the following requirements are met:

(a) The location for which the Tobacco Retailer Permit is sought is located in a Planning District in which the number of Tobacco Retailers with active Tobacco Retailer Permits is less than the Tobacco Retailer Density Limit.
(.1) A current or prospective business owner may at any time request a determination from the Department about the applicability of this Section 2(a) to the location in question.

(.2) A properly issued Tobacco Retailer Permit shall be exempt from the requirement of Section 2(a) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.

(.3) The Department shall maintain a waiting list ordered by date and time of complete application receipt for each planning district that has reached its Tobacco Retailer Density Limit. When the Tobacco Retailer Density Limit exceeds the number of Tobacco Retailer Permits, the Department shall send a notification to the next eligible applicant from the waiting list at the address the applicant provided to the Department. It is the applicant’s responsibility to maintain an accurate address on file with the Department. The eligible applicant shall have 30 days to submit a complete application from the date the Department sends notification of the applicant’s eligibility. If the eligible applicant fails to submit a complete application within the time allotted, the eligible applicant will be placed at the end of the waiting list and the Department shall notify the next eligible applicant in accordance with the same procedure.

(b) The stormwater parcel line of the location for which the Tobacco Retailer Permit is sought is not within 500 feet of the stormwater parcel line of a K-12 school.

(.1) A current or prospective business owner may at any time request a determination from the Department about the applicability of this Section 2(b) to the location in question.

(.2) A properly issued Tobacco Retailer Permit shall be exempt from the requirement of Section 2(b) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.
(c) The person applying for the Tobacco Retailer Permit has incurred no more than two violations of the provisions of Section 9-622 of The Philadelphia Code at any one location within the 24 months preceding the application. For purposes of this Section 2(c), multiple violations that occur on the same day are treated as one violation.

(d) Any person applying for a new Tobacco Retailer Permit for a location at which a person has held a Tobacco Retailer Permit within the past 24 months may be required to demonstrate to the Department that the location was acquired through an arm’s length transaction (as defined in Section 9-622(6)(e) of The Philadelphia Code). If the applicant does not demonstrate that the location was acquired through an arm’s length transaction, the applicant will be required to pay any unpaid Tobacco Retailer Permit fees incurred by the previous permittee and will be subject to Section 2(c) as if the applicant had incurred the violations of the previous permittee.

(e) The person applying for the Tobacco Retailer Permit and the location for which the Tobacco Retailer Permit is sought are not subject to an order to cease sales or operations pursuant to Section 9-622(6)(e).

Section 3. Grace Period

For purposes of Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing, timely renewal shall include renewals received by the Department before January 1 of the year for which the renewal is sought if accompanied by payment for any accrued late fees.

Section 4. Tobacco Retailer Permit Fee

Pursuant to Section 9-631(4) of The Philadelphia Code, the Tobacco Retailer Permit issuance and renewal fees shall each be $300.00, except that the fee imposed for late renewal pursuant to Section 9-631(3)(b)(1) shall remain $50.

Section 5. Standardization of Cease Sales Orders

Upon a finding of a third violation of the provisions of Section 9-622 of The Philadelphia Code at one location in any 24-month period, the Department shall order the Tobacco Retailer to cease Tobacco Retailing at that location, in accordance with Section 9-622(6)(e), for one year.
Section 6. Pre-Operational Permits

Tobacco Retailer Permits may be granted up to 24 months in advance of the planned initiation of Tobacco Retailing. A pre-operational application for a Tobacco Retailer Permit shall include a copy of an executed contract of sale or lease for the location at which Tobacco Retailing is planned.

Section 7. Special Designation

A Tobacco Retailer who possesses a valid Tobacco Retailer Permit on the date this Regulation Relating to Tobacco Retailing goes into effect whose revenue from Tobacco Retailing at the location the Tobacco Retailer Permit covers has exceeded 75% of total revenue at that location for the 3 preceding tax years may apply for a special designation for the location covered by the Tobacco Retailer Permit. The special designation application must be received by the Department within 180 days of the date this Regulation goes into effect. The special designation will allow for the next applicant for a Tobacco Retailer Permit at that location to qualify for a Tobacco Retailer Permit without meeting the requirements of Sections 2(a) and 2(b). Upon issuance of such a Tobacco Retailer Permit, the location shall no longer be specially designated. Such a Tobacco Retailer Permit will be subject to the ongoing requirement that revenue from Tobacco Retailing exceed 75% of total revenue at the location.

Section 8. Effective Date

This Regulation Relating to Tobacco Retailing shall be enforced upon going into effect pursuant to Section 8-407 of The Philadelphia Home Rule Charter, but not earlier than January 1, 2017, except that Section 2(a) shall be enforced no earlier than February 15, 2017.
CITY OF PHILADELPHIA  
DEPARTMENT OF PUBLIC HEALTH  
Board of Health  

Regulation Relating to Tobacco Retailing  

Approved ______________  

WHEREAS, smoking kills an estimated 2,000 people in Philadelphia per year;  

WHEREAS, smoking rates in Philadelphia are highest in low-income neighborhoods, as are rates of tobacco-related morbidity and mortality;  

WHEREAS, Philadelphia has significantly more Tobacco Retailers per capita than other comparable cities, and low-income neighborhoods in Philadelphia contain significantly more Tobacco Retailers than do high-income neighborhoods;  

WHEREAS, high Tobacco Retailer density and ubiquitous tobacco marketing are associated with increased smoking rates among youth and adults;  

WHEREAS, youth are particularly susceptible to the effects of tobacco marketing;  

WHEREAS, the Department has identified hundreds of Tobacco Retailers who have each been cited for selling Tobacco Products to children more than ten times since 2010, and the annual citywide rate of youth sales non-compliance consistently exceeds the state average;  

WHEREAS, Section 9-631(2) of The Philadelphia Code requires that any person who wishes to engage in Tobacco Retailing in Philadelphia obtain a Tobacco Retailer Permit from the Department before doing so;  

WHEREAS, Section 9-631(2)(a) of The Philadelphia Code deems Tobacco Retailing without a Tobacco Retailer Permit “a nuisance as a matter of law”; and  

WHEREAS, Section 9-631(2)(c)(7) of The Philadelphia Code empowers the Board of Health to adopt any requirement for the issuance and renewal of Tobacco Retailer Permits that is “appropriate for the protection of public health”;  

NOW, THEREFORE, the Board of Health hereby adopts this Regulation Relating to Tobacco Retailing, as follows:
Section 1. Definitions

*Department.* The Philadelphia Department of Public Health.

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*Planning District.* A geographical designation established by the Philadelphia City Planning Commission, including Central, Central Northeast, Lower Far Northeast, Lower North, Lower Northeast, Lower Northwest, Lower South, Lower Southwest, North, North Delaware, River Wards, South, University Southwest, Upper Far Northeast, Upper North, Upper Northwest, West, and West Park.

*Tobacco Product.* As defined in Section 9-631(1) of The Philadelphia Code.

*Tobacco Retailer.* As defined in Section 9-631(1) of The Philadelphia Code.

*Tobacco Retailer Density Limit.* For each Planning District, the number equal to the commuter-adjusted daytime population of the Planning District divided by 1,000, rounded up. The commuter-adjusted daytime population shall be calculated using appropriate data sources and methodologies as determined by the Department.

*Tobacco Retailer Permit.* The permit issued pursuant to Section 9-631 of The Philadelphia Code.

*Tobacco Retailing.* As defined in Section 9-631(1) of The Philadelphia Code.

*Unapproved Nicotine Delivery Product.* As defined in Section 9-631(1) of The Philadelphia Code.

Section 2. Tobacco Retailer Permitting

In addition to the requirements of Sections 9-631(2) and (3) of The Philadelphia Code, the Department shall neither issue nor renew a Tobacco Retailer Permit unless the following requirements are met:

(a) The location for which the Tobacco Retailer Permit is sought is located in a Planning District in which the number of Tobacco Retailers operating with active Tobacco Retailer Permits is less than the Tobacco Retailer Density Limit.
A current or prospective business owner may at any time request a
determination from the Department about the applicability of this Section
2(a) to the location in question.

Any properly issued Tobacco Retailer Permit issued before the enactment
of this Regulation Relating to Tobacco Retailing shall be exempt from this
the requirement of Section 2(a) as long as the Tobacco Retailer Permit
continues to be timely renewed in accordance with all applicable
requirements.

The Department shall maintain a waiting list ordered by date and time of
complete application receipt for each planning district that has reached its
Tobacco Retailer Density Limit. When the Tobacco Retailer Density Limit
exceeds the number of Tobacco Retailer Permits, the Department shall
send a notification to the next eligible applicant from the waiting list at the
address the applicant provided to the Department. It is the applicant’s
responsibility to maintain an accurate address on file with the Department.
The eligible applicant shall have 30 days to submit a complete application
from the date the Department sends notification of the applicant’s
eligibility. If the eligible applicant fails to submit a complete application
within the time allotted, the eligible applicant will be placed at the end of
the waiting list and the Department shall notify the next eligible applicant
in accordance with the same procedure.

The stormwater parcel line of the location for which the Tobacco Retailer Permit
is sought is not within 500 feet of the stormwater parcel line of a K-12 school.

A current or prospective business owner may at any time request a
determination from the Department about the applicability of this Section
2(b) to the location in question.

Any properly issued Tobacco Retailer Permit issued before the enactment
of this Regulation Relating to Tobacco Retailing shall be exempt from this
the requirement of Section 2(b) as long as the Tobacco Retailer Permit
continues to be timely renewed in accordance with all applicable
requirements.
(c) The person applying for the Tobacco Retailer Permit has incurred no more than two violations of the provisions of Section 9-622 of The Philadelphia Code at any one location within the 24 months preceding the application. For purposes of this Section 2(c), multiple violations that occur on the same day are treated as one violation.

(d) Any person applying for a new Tobacco Retailer Permit for a location at which a person has held a Tobacco Retailer Permit within the past 24 months may be required to demonstrate to the Department that the location was acquired through an arm's length transaction (as defined in Section 9-622(6)(e) of The Philadelphia Code). If the applicant does not demonstrate that the location was acquired through an arm’s length transaction, the applicant will be required to pay any unpaid Tobacco Retailer Permit fees incurred by the previous permittee and will be subject to Section 2(c) as if the applicant had incurred the violations of the previous permittee.

(e) The person applying for the Tobacco Retailer Permit and the location for which the Tobacco Retailer Permit is sought are not subject to an order to cease sales or operations pursuant to Section 9-622(6)(e).

Section 3. Grace Period

For purposes of Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing, timely renewal shall include renewals received by the Department before January 1 of the year for which the renewal is sought if accompanied by payment for any accrued late fees.

Section 4. Tobacco Retailer Permit Fee

Pursuant to Section 9-631(4) of The Philadelphia Code, the Tobacco Retailer Permit issuance and renewal fees shall each be $300.00, except that the fee imposed for late renewal pursuant to Section 9-631(3)(b).1 shall remain $50.

Section 5. Standardization of Cease Sales Orders

Upon a finding of a third violation of the provisions of Section 9-622 of The Philadelphia Code at one location in any 24-month period, the Department shall order the Tobacco Retailer to cease Tobacco Retailing at that location, in accordance with Section 9-622(6)(c), for one year.
Section 6. Pre-Operational Permits

Tobacco Retailer Permits may be granted up to 24 months in advance of the planned initiation of Tobacco Retailing. A pre-operational application for a Tobacco Retailer Permit shall include a copy of an executed contract of sale or lease for the location at which Tobacco Retailing is planned.

Section 7. Special Designation

A Tobacco Retailer who possesses a valid Tobacco Retailer Permit on the date this Regulation Relating to Tobacco Retailing goes into effect whose revenue from Tobacco Retailing at the location the Tobacco Retailer Permit covers has exceeded 75% of total revenue at that location for the 3 preceding tax years may apply for a special designation for the location covered by the Tobacco Retailer Permit. The special designation application must be received by the Department within 180 days of the date this Regulation goes into effect. The special designation will allow for the next applicant for a Tobacco Retailer Permit at that location to qualify for a Tobacco Retailer Permit without meeting the requirements of Sections 2(a) and 2(b). Upon issuance of such a Tobacco Retailer Permit, the location shall no longer be specially designated. Such a Tobacco Retailer Permit will be subject to the ongoing requirement that revenue from Tobacco Retailing exceed 75% of total revenue at the location.

Section 68. Effective Date

Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than January 1, 2017, and Sections 2(e), 2(d), 2(h), 4, and 5 of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than November 3, 2016. This Regulation Relating to Tobacco Retailing shall be enforced upon going into effect pursuant to Section 8-407 of The Philadelphia Home Rule Charter, but not earlier than January 1, 2017, except that Section 2(a) shall be enforced no earlier than February 15, 2017.
CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH
Board of Health

Regulation Relating to Tobacco Retailing

Approved September 8, 2016

WHEREAS, smoking kills an estimated 2,000 people in Philadelphia per year;

WHEREAS, smoking rates in Philadelphia are highest in low-income neighborhoods, as are rates of tobacco-related morbidity and mortality;

WHEREAS, Philadelphia has significantly more Tobacco Retailers per capita than other comparable cities, and low-income neighborhoods in Philadelphia contain significantly more Tobacco Retailers than do high-income neighborhoods;

WHEREAS, high Tobacco Retailer density and ubiquitous tobacco marketing are associated with increased smoking rates among youth and adults;

WHEREAS, youth are particularly susceptible to the effects of tobacco marketing;

WHEREAS, the Department has identified hundreds of Tobacco Retailers who have each been cited for selling Tobacco Products to children more than ten times since 2010, and the annual citywide rate of youth sales non-compliance consistently exceeds the state average;

WHEREAS, Section 9-631(2) of The Philadelphia Code requires that any person who wishes to engage in Tobacco Retailing in Philadelphia obtain a Tobacco Retailer Permit from the Department before doing so;

WHEREAS, Section 9-631(2)(a) of The Philadelphia Code deems Tobacco Retailing without a Tobacco Retailer Permit “a nuisance as a matter of law”; and

WHEREAS, Section 9-631(2)(c)(7) of The Philadelphia Code empowers the Board of Health to adopt any requirement for the issuance and renewal of Tobacco Retailer Permits that is “appropriate for the protection of public health”;

NOW, THEREFORE, the Board of Health hereby adopts this Regulation Relating to Tobacco Retailing, as follows:
Section 1. **Definitions**

*Department.* The Philadelphia Department of Public Health.

*Electronic Smoking Device.* As defined in Section 9-631(1) of The Philadelphia Code.

*Planning District.* A geographical designation established by the Philadelphia City Planning Commission, including Central, Central Northeast, Lower Far Northeast, Lower North, Lower Northeast, Lower Northwest, Lower South, Lower Southwest, North, North Delaware, River Wards, South, University Southwest, Upper Far Northeast, Upper North, Upper Northwest, West, and West Park.

*Tobacco Product.* As defined in Section 9-631(1) of The Philadelphia Code.

*Tobacco Retailer.* As defined in Section 9-631(1) of The Philadelphia Code.

*Tobacco Retailer Density Limit.* For each Planning District, the number equal to the population of the Planning District divided by 1,000, rounded up.

*Tobacco Retailer Permit.* The permit issued pursuant to Section 9-631 of The Philadelphia Code.

*Tobacco Retailing.* As defined in Section 9-631(1) of The Philadelphia Code.

*Unapproved Nicotine Delivery Product.* As defined in Section 9-631(1) of The Philadelphia Code.

Section 2. **Tobacco Retailer Permitting**

In addition to the requirements of Sections 9-631(2) and (3) of The Philadelphia Code, the Department shall neither issue nor renew a Tobacco Retailer Permit unless the following requirements are met:

(a) The location for which the Tobacco Retailer Permit is sought is located in a Planning District in which the number of Tobacco Retailers operating with active Tobacco Retailer Permits is less than the Tobacco Retailer Density Limit.
(.1) A current or prospective business owner may at any time request a determination from the Department about the applicability of this Section 2(a) to the location in question.

(.2) Any Tobacco Retailer Permit held before the enactment of this Regulation Relating to Tobacco Retailing shall be exempt from this Section 2(a) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.

(b) The stormwater parcel line of the location for which the Tobacco Retailer Permit is sought is not within 500 feet of the stormwater parcel line of a K-12 school.

(.1) A current or prospective business owner may at any time request a determination from the Department about the applicability of this Section 2(b) to the location in question.

(.2) Any Tobacco Retailer Permit held before the enactment of this Regulation Relating to Tobacco Retailing shall be exempt from this Section 2(b) as long as the Tobacco Retailer Permit continues to be timely renewed in accordance with all applicable requirements.

(c) The person applying for the Tobacco Retailer Permit has incurred no more than two violations of the provisions of Section 9-622 of The Philadelphia Code at any one location within the 24 months preceding the application. For purposes of this Section 2(c), multiple violations that occur on the same day are treated as one violation.

(d) Any person applying for a new Tobacco Retailer Permit for a location at which a person has held a Tobacco Retailer Permit within the past 24 months may be required to demonstrate to the Department that the location was acquired through an arm's length transaction. If the applicant does not demonstrate that the location was acquired through an arm's length transaction, the applicant will be required to pay any unpaid Tobacco Retailer Permit fees incurred by the previous permittee and will be subject to Section 2(c) as if the applicant had incurred the violations of the previous permittee.
(e) The person applying for the Tobacco Retailer Permit and the location for which the Tobacco Retailer Permit is sought are not subject to an order to cease sales or operations pursuant to Section 9-622(6)(e).

Section 3. Grace Period

For purposes of Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing, timely renewal shall include renewals received by the Department before January 1 of the year for which the renewal is sought if accompanied by payment for any accrued late fees.

Section 4. Tobacco Retailer Permit Fee

Pursuant to Section 9-631(4) of The Philadelphia Code, the Tobacco Retailer Permit issuance and renewal fees shall each be $300.00, except that the fee imposed for late renewal pursuant to Section 9-631(3)(b)(1) shall remain $50.

Section 5. Standardization of Cease Sales Orders

Upon a finding of a third violation of the provisions of Section 9-622 of The Philadelphia Code at one location in any 24-month period, the Department shall order the Tobacco Retailer to cease Tobacco Retailing at that location, in accordance with Section 9-622(6)(e), for one year.

Section 6. Effective Date

Sections 2(a) and 2(b) of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than January 1, 2017, and Sections 2(c), 2(d), 2(e), 4, and 5 of this Regulation Relating to Tobacco Retailing shall be enforced no earlier than November 2, 2016.
BOARD OF HEALTH REGULATION
RELATING TO TOBACCO RETAILING
PUBLIC HEARING

TRANSCRIPT OF TESTIMONY, taken in the
above-captioned matter, by and before ERICA HEARN,
Court Reporter and Notary Public, at 1401 John F.
Kennedy Boulevard, Room 1450, Philadelphia,
Pennsylvania, on Monday, October 17, 2016
commencing at 5:35 p.m.

- - -
ERSA COURT REPORTERS
30 South 17th Street
United Plaza - Suite 1520
Philadelphia, PA 19103
(215) 564-1233
PUBLIC HEARING

APPEARANCES:

BEFORE:

THOMAS FARLEY, M.D., HEALTH COMMISSIONER
SCOTT MCNEAL, D.O.,
AMID ISMAIL, BDS, MPH, DrPH, MBA
MARLA J. GOLD, M.D.
ANA DIEZ-ROUX, M.D, Ph.D., MPH

ALSO PRESENT: JOSHUA ROPER, ESQ.
MARTHA JOHNSTON, ESQ.
PUBLIC HEARING

1) DR. FARLEY: Welcome to the
2) Public Hearing of the Board of Health.
3) This is a public hearing
4) regarding Regulations that were passed by
5) the Board of Health at its September
6) meeting. There are copies available. If
7) you haven't already gotten one, I suggest
8) you get one. It is about a three-pager
9) here.
10) I will just summarize very
11) briefly what's in the Regulations, but I
12) want you to really just refer to the
13) Regulations themselves to know the details
14) about them. These have to do with permits
15) for being able to sell tobacco products in
16) Philadelphia.
17) The Regulations, the key parts
18) are four. One of them is that we put a
19) cap on the number of retailers per
20) thousand population in each planning
21) district.
22) Second, is it would prohibit
23) retailing within 500 feet of a school, but
24) for both the cap and for retailing,
existing retailers would be grandfathered, that is to say if they have an existing permit they would be able to keep that permit.

And the third thing is that there would be an increase in the permit fee from $50 to $300, additional revenue for which would be used for additional compliance checks to ensure that retailers are not selling tobacco products to children.

And the final was a regulation that would make it so that if a retailer was found to be selling cigarettes to minors on compliance checks for three times over a two-year period, than that permit would be revoked for a period of 12 months.

Again, that's my summary of it, but in case that wasn't totally accurate, I strongly suggest you read the Regulations themselves.

The purpose of this hearing tonight is to hear from you, the people.
who want to address the Board on this.

There will be no deliberation by the Board members tonight, and no decisions made tonight about the regulations. This is just an opportunity for us to receive your feedback.

In a minute, Josh Roper, the attorney for the Board, is going to talk about how we're going to run the hearing, what the process will be, but let me just summarize a little bit about what the process will be after tonight.

Go ahead, come on in.

The Regulations, as I said, were passed by the Board at its September meeting. There was a comment period that has been open since then, so the Board has been receiving any written comments. The Board will be receiving those written comments in addition to the oral comments that we'll hear tonight, and then the Board members will consider those comments at a subsequent meeting and determine based upon its considerations whether it
PUBLIC HEARING

1 wants to continue the Regulations as
2 written, whether it wants to rescind the
3 Regulations, or whether it wants to amend
4 the Regulations. That consideration and
5 decision will probably take place at the
6 November meeting which is currently
7 scheduled for November 10th, but check
8 back with us if you're interested in the
9 timing of that. But, again, the purpose
10 for tonight is really to hear from you.

11 So everybody who wants to speak,
12 if you're interested, please sign up with
13 Jean who I guess was outside the door, and
14 I'm going to turn it over to Josh Roper to
15 talk a little bit about exactly how we do
16 this.

17 MR. ROPER: Thanks for coming,
18 everybody.

19 A few process notes. So
20 Dr. Farley is going to call your name if
21 you signed up to testify. You can just
22 head over here where you'll speak. You'll
23 see up here there's a three minute timer
24 to count down so you know how much time
you have. It will make a beep when your
time is up. If you have any written
testimony that you want to share, either
in lieu of or in addition to oral
testimony, you can give it to Jean who is
outside at the sign-in table. She will
put it in a folder and it will be given to
the Board of Health. You can do that
before you leave if you'd like to submit
that with the testimony.

When you testify, please state
your name so that the court reporter can
write it down. Also, for the court
reporter, Martha Johnston is here from the
Law Department in accordance with the Home
Rule Charter requirement.

That's it.

DR. FARLEY: And let me just
reiterate, the Board is here to listen
tonight, and, so, in general, the Board is
not going to be engaging you, asking
questions, but we will be listening. But
if there are burning questions that the
Board members have, I won't stop them from
doing that. But, for the most part, we'll probably just go through one person after another. And we're going to take people in the turn in which they arrived and signed up.

So pardon me if I have trouble reading your handwriting or mispronouncing your name, the first name seems to be Ed O'Donnell from the Winthrop Foundation.

State your name and your organization before you give us your comments.

---

MR. O'DONNELL: Yes, Ed O'Donnell, Winthrop Foundation, which is a charity which engages in public health work. And Google me, I was on the ballot in the New Hampshire primary. I'm a third party candidate for president of the United States.

I support everything you recommend, and I'm going to tell you why. For those who smoke cigarettes, they get headaches, lung disease and cancer. For
those who are subjected to secondhand
cigarette smoke, especially if they're
allergic, like I am, they get headaches,
emphysema, lung disease, and can get
cancer. Secondhand cigarette smoke can
create serious illnesses, cancer and death
in other people who are just walking on
the street.

Former Delaware Governor

Peterson, a great environmentalist, said
secondhand cigarette smoke is the single
greatest cause by volume, cubic volume, of
air pollution. Cigarette butts litter the
countryside making a mockery out of
America the beautiful. The money which
cigarette smokers spend on cigarettes,
they should be giving to their families
and to charity. Science can be used for
good or for ill. It's used for a lot of
good purposes, but then it created the
atomic boom and cigarette smoking took off
when the filter was invented. And I have
noticed, frankly, that cigarette smokers
tend to be more verbally abusive and more
angry than the average citizen, and one of
the reasons is they don't feel well. It
gets in the way of a good night's sleep,
it gets in the way of eating a healthy
diet, and, to finish, I've dealt with
people who are addicted to various things.
And it is a wonderful thing to observe
them when they kick these addictions and
start feeling good. They start feeling
like a national football player in August,
it's a beautiful thing. So anything you
can do to get people to stop putting
unhealthy things in the body is good.
You've noticed the candidates for
President of the United States have not
mentioned cigarette smoking, it's a very
serious public health issue. The
President, the Vice President, never
mention it. I've known the Vice President
for years, I write him letters to his
home, he reads them, he's on this cancer
moonshot, and I pointed out to him one of
the greatest causes of cancer is cigarette
smoke.
So thank you for doing this. My father was a doctor, and went to Yale and Yale Med, my mother was a nurse, niece is a nurse, and anything I can do to help, let me know.

DR. FARLEY: Thank you very much. Next on our list is Jada Rasulallah, I may not have your name right, from the Advocacy Institute.

--

MS. RASULALLAH: Good evening. My name is Jada Rasulallah, I'm 15-years-old and I've been involved with tobacco prevention work for about a year now. And so I've been in an effort to help drop the youth smoking rate down from seven percent to zero percent because cigarettes takes people's lives in general. And I have a father that smokes and a grandmother that smokes, so I can relate to seeing people struggle for air when they walk up the steps and I don't like how that feels. And so I support the Regulations and I hope that you continue
to support the Regulations because I know that the tobacco industry continues to target youth. I pass by about ten stores on my way to school and I see about six of them that are heavily marketed with tobacco products. And I know that they're marketing doesn't go to adults, it's directed towards the youth. And I see that their tactics, they place their tobacco products right next to the candy counters where young kids can see them. And they call kids replacement smokers because -- excuse me. Each day 1,300 people die from cigarette smoking in the U.S. alone, and so they need people to replace these people that are dying, and they go directly to the youth.

There was a quote by one of the tobacco executives that said that they don't smoke cigarettes, but they reserve the right for the young, the poor, the black, and the stupid, and, of course, young people that are uneducated are vulnerable and victimized by the tobacco
industry and they fall for their targets
and their schemes. And they say that
smoking cigarettes can help relieve
stress, which absolutely is false, because
it helps -- it gets you addicted and it
numbs your throat so you continue to smoke
the cigarettes.

And, so, I just hope that the
policies stay in place. Thank you.

DR. FARLEY: Thank you very much.

(Applause.)

DR. FARLEY: I now see Alan
K-A-N-O, Kano, just listed as a citizen.
Thank you very much.

MR. KARPO: Hello, everybody.
My name is Alan Karpo and I own a
cigarette store and a wholesale business
I've owned for 27 years. I put my son
through college, take care of my family
with it. I have no problem with the
objective here. I don't want kids to
smoke, but I want kids to do things that
are healthy all around the board, not just
not smoke, but I'll get to that in a moment.

The problem I see with this regulation is two fold. The first problem I see is that the execution of the plan is unfair to business people that sell a legal product. Everything that everyone said so far, it all sounds good, but this is a legal product and people use it for a variety of reasons that I guess we can't elaborate on now, but it's a legal product. Many of these people are small business which employ people and pay taxes. These people work hard to care for and feed their families just like everyone that's in this room. Specifically, the Regulation that will take the permit away when I am ready to sell my business will dramatically reduce the value of the business that I've worked 27 years to build.

Cigarettes represent over 90 percent of my profits. Without the ability of a potential buyer to continue
s selling cigarettes, my business will
effectively have no value.
I'm 61-years-old and have counted
on using the money I get from the sale of
my store to help me in my retirement.

There are ways to help stop
children from smoking without imposing
this hardship on small business owners.
Some obvious ways are out there. The
first and most foremost is we have a law
that's in place, enforce the law against
selling cigarettes to minors. I'm all for
it. Enforce the law. Educate our
children. It's a parent's responsibility.
It's the school's responsibility. It's
the community's responsibility to educate
our children. Teach them right from
wrong. Not everyone is going to be
perfect, we're human beings, and we make
mistakes and we do things that aren't
always good for us.

Thirdly, there's the very easy
first to ad point of sale in any retail
establishment to show kids that smoking is
bad, but do it in an effective manner. If we charge more for these licenses, let's use that money to put some point of sale material up that says when you walk up to that candy counter, don't buy cigarettes.

Secondly, there's many products and behaviors that are extremely addictive and harmful to children. It seems to me that there's been a disproportion amount of restrictions and taxes that have been levied against the tobacco industry than other products. As an example, in the last two years, the cost of a pack of cigarettes in Philadelphia has gone up 60 percent as a result of the tax that has been put in place. When that happened, my business was cut by 60 percent overnight. I, in fact, had to fire two employees as a result of that because I couldn't afford to pay them anymore. I'm small. This trickles down. You go to a 7-Eleven or Wawa, good Philadelphians that work hard don't have jobs because of these things.

Again, there are other products
that are harmful and addictive that have not been restricted or taxed at this rate. Obvious examples are alcohol, chips, potatoes, cookies, cakes, cheesesteaks, all these things are not healthy for us, yet I like a cheesesteak. And I'm a human being, it's a legal product, I'm allowed to make those choices because it's America.

There are many ways that we can help our children that are equally, if not more important, without hurting good hardworking people, especially small business people that pay their taxes and employ other people.

Don't do drugs, don't drink, enforce the importance of education, exercise and stay health, all these things matter, not just cigarette smoking.

Thank you.

DR. FARLEY: Thank you very much.

DR. GOLD: I have a question.

DR. FARLEY: I'm sorry, sir, we have a question for you. Could you just
sit down for a second. It won't count against your three minutes.

MR. KARPO: No problem.

DR. GOLD: Just, concisely, why would this regulation as written with these four parts put you out of business.

MR. KARPO: Well, the one that's most bothersome to me is the last one which says that if I sell my business I can't transfer the license. As soon as I lose the ability to transfer my cigarette license, my business has no value. Because if you want to buy my business, I can't guarantee to you that my business is going to have any value because 90 percent of my profits are cigarettes. So if I sell the business to you and you can't have a cigarette license, I'm selling you nothing.

DR. GOLD: Okay. I understand.

Thank you.

DR. FARLEY: And just a follow-up question. So your business is basically a tobacco business, that's pretty much all
you sell.

MR. KARPO: Yes. Yes.

I mean, I sell some candy, some
other stuff, ancillary items, but 90
percent of the volume of the profit is
cigarettes.

DR. FARLEY: Okay. Thank you
very much, sir.

DR. GOLD: Thank you.

DR. FARLEY: The next person on
my list is Mark Harrell from the Southwest
CDC.

- - -

MR. HARRELL: Good evening.

DR. FARLEY: Good evening.

MR. HARRELL: Good evening. My
name is Mark Harrell. I'm the MAC
Coordinator for the Southwest Community
Development Corporation.

A little over 25 years ago,
Phillip Morris, one of the most successful
cigarette manufacturers in the country
began spending 1.3 million dollars over	hree years to subsidize the Mayor's
Commission on Literacy here in Philadelphia. Why did Phillip Morris chose Philadelphia for it's big literacy grant, for the same reason R.J. Reynolds choose Philadelphia to test market the African American targeted Uptown Cigarette.

At that time, cigarette companies considered Philadelphia a city with, and I quote, few morals and fewer principles. And Phillip Morris donated 1.3 million dollars to prove it. R.J. Reynolds would have been successful as well had it not been for the Coalition against Uptown Cigarettes led by the Reverend Jesse Brown of Christ Evangelical Lutheran Church at that time, and Dr. Carl M. Mansfield, the then president of the American Cancer Society's Philadelphia Division, and a cross section of community activists, including myself, who was the community coordinator for the Why Smoke Project at Graduate Hospital at that time.

We defeated big tobacco. R.J.
retailers near schools pays more tobacco
marketing materials, mere products for
children such as candy, than tobacco
retailers in other locations.
Philadelphia has the highest
youth tobacco sales violation rate in
Pennsylvania. In 2015, 23 percent of
Philadelphia tobacco retailers sold
tobacco to youth over twice both the state
average and the rate of the next highest
county. We have more than twice the
number of retailers per capita than other
major U.S. cities. For these reasons, I
support the policy proposals to address
disproportionate tobacco exposure in
Philadelphia that are currently before
you, including the tobacco retailer cap,
which will establish the maximum of one
tobacco retailer permit per a thousand
residents by planning district, and a
tobacco school free zone, prohibiting new
tobacco retailer permits within 500 feet
of any K through 12 school.
Thank you.
DR. FARLEY: Thank you very much, sir.

(Applause.)

DR. FARLEY: Next I have Ilycia Boatwright. Did I get that right? Thank you.

---

MS. BOATRIGHT: Hi, my name is Ilycia Boatwright Buffalo. I am a former worker of the compliance checks industry. I am now 18-years-old. I've been working there for about -- or previously working there for about two years.

A day in the life of a compliance checks worker is basically going out to the store, asking to buy tobacco product and if being asked so to present your ID. It is very important that everyone understands that this is a 100 percent honesty program. You have to do exactly what they say. If they ask for ID, you have to present an ID. This is no lying allowed.

I will a hundred percent support
everything that these bills stand for, because if these rules aren't in place there is not going to be anybody to smoke in the future. So if we get rid of everything now, we don't have to worry about industries or stores being passed down because there's going to be no youth to smoke them. This program is very, very important to everyone in my community, really, because as one of my co-workers said before, she walks past a store every single day and she sees -- she sees advertisement going towards youth. And it might not exactly say, oh, this is for youth, but we all know who they're going for. So it is very important that we stop these programs while we're ahead so that in the future we don't have any of these problems.

Thank you.

DR. FARLEY: Thank you very much.

Next, I have, and I apologize if I'm pronouncing your name wrong, Bhagwant Bhatti.
Yes, sir, thank you very much for coming.

MR. BHATTI: Hi, good evening, everybody. My name is Bhagwant Bhatti. I own the store Girard Food and Gas Mart on Girard Avenue. I've been 11, 12 years over there, and since the changing of the law, my business losing a lot of the value of the business, and I already couple of employees give a layoff. And in the future if they put too many laws on the business, it's very hard to survive in the city. We already discriminated by the city because out of the city cigarette is cheaper, inside the city is expensive, and our tax bracket is very high rather than (inaudible). So I think we should to follow-up something, a nice way to make sure, you know, I know there's health issues with cigarette, but if it's a health issue, why not they stop in the whole state cigarette. I'd be happy with that. I can survive with that, without
selling cigarettes, but the city and the
states who make the money behind this law,
they should think about that. That's it.

Thank you.

DR. FARLEY: Thank you very much, sir.

Next is Ken Margulies from the
American Heart Association.

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MR. MARGULIES: Commissioner

Farley and Members of the Board, my name
is Ken Margulies. In addition to being an
academic cardiologist at Penn Medicine,
I'm the volunteer president of the local
American Heart Association Board here in
Southeast Pennsylvania. On behalf of the
Heart Association, we support all the
provisions of the proposal being
submitted.

We specifically encourage
immediate adoption of all these new
provisions that are aimed at reducing the
density of tobacco retail locations
throughout the city, and specifically the
marketing of tobacco products to our children.

Furthermore, these meaningful steps will help finally address the patterns of repeated violations that are endemic and provide some revenue for enforcement.

Now, this is very relevant to this city in particular, right, more than 2000 Philadelphians are killed each year because of smoking related illnesses. I'm on the front lines of that. I'm a heart failure doctor, I see the consequences of smoking-related illness every single day.

Exposure to greater tobacco retailer density and tobacco marketing are clearly associated with increased smoking rates among youth and adults. Tobacco retailers in Philadelphia are 63 percent more likely to market their products within 500 feet of a school in low income areas compared with high income areas, so they're clearly targeting vulnerable populations here and that's very unfortunate, especially since
Philadelphians suffer from the highest smoking rate of any major city of comparable size.

So while we do support legislatures to support other effective means to discourage youth, mainly taxes on tobacco products themselves, this Board has the authority to specifically address the problems of retailer density in violation of youth sales, and I urge you to exercise that authority.

I found it interesting to hear Mr. Karpo's remarks concerning the winners and losers in any policy, and surely there are winners and losers in any policy, but I think it's important to be mindful of the fact that the vulnerable populations that are targeted by tobacco sales near schools and in low income areas are also a vulnerable population that are also economically and healthwise disadvantaged by these marketing practices. So businesses can be winners or losers, but so are the people targeted by these
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1 businesses and we should be mindful of
2 their needs as well. So, of course, in
3 the larger context one of the most
4 profound victories and progress in public
5 health is the reduction in smoking rates
6 from over 50 percent to less than 20
7 percent in the United States. The problem
8 is that there are some pockets that are
9 not doing quite as well, and Philadelphia
10 is one of those pockets, so today the
11 Board of Health and this city have an
12 opportunity to further reduce the toll of
13 tobacco on hard-working people in
14 Philadelphia, both the economic toll and
15 the health toll, and we support these
16 policies to do so.

17 Thank you very much.
18 (Applause.)
19
20 DR. FARLEY: Then I have Reverend
21 Jesse Brown.
22
23 ---
24
25 REVEREND BROWN: Good afternoon,
26 everybody.
27
28 Many businesses in the City of
Philadelphia do not care or show little regard in protecting our young people from the use of tobacco products, even under the current laws that are on the books. The tobacco industry has targeted the most vulnerable citizens and communities to supersaturate tobacco products. Philadelphia's poorest neighborhoods and poorest children are the intended victims of the tobacco industry's advertising and promotional campaigns, and too many in the retail community flagrantly violate existing rules on selling tobacco to minors believing that nobody is watching or no significant punishment is on the way.

Many in the retail community have demonstrated an indifference and an inability to police themselves. There are some that will claim that this will put some retailers out of business. If these retailers can't follow the rules, then we should stop them from being a menace to our communities. There may be some people
who will try to convince you that underage
sales of tobacco is the fault of children.
What they fail to tell us is that no child
brought tobacco products into the
neighborhood, no children sells tobacco
products, and that it is not the children
who fail to follow the rules, but adults.

Some retailers and associations
that represent retailers have become
cowards and they try to blame children for
the failure of adults. The rules that are
proposed in the tobacco retailing policies
are both necessary and overdue. If this
City government loves its children and
wants to provide a little support for its
children and communities, then these few
rules are no brainers.

I want to add one other piece to
this in support of this. You probably
already know that Chicago has also added
into their legislation menthol cigarettes,
which too was the only flavored cigarettes
not covered in the Master Settlement
Agreement. Those flavored cigarettes is
also being targeted to the community to
the same populations and same communities
that we're talking about here in
Philadelphia, particularly African
American communities, Latino communities,
and woman who are the primary consumers of
mentholated cigarettes. It would not be
that difficult to add that into that 500
feet provision that no one can sell
mentholated cigarettes within 500 feet of
schools or places young people congregate.
And I would propose at some point in time
that that be visited, if not in this
current legislation, in future rules that
you make with that. It's already been
upheld in Chicago and passed Supreme Court
muster, so to speak, so to do that would
also continue to help protect our
children.

(Applause.)

DR. FARLEY: Thank you very much, sir.
I now have, I'm not sure I can
quite read it, John Rocco from the
Newsstand Association of Philadelphia.

Thank you, sir.

---

MR. ROCO: Good evening everyone.

As president of the Newsstand Association, I want to take this opportunity to thank you for allowing me to present my testimony regarding the proposed tobacco permit fee.

On behalf of the 118 members in our association, I want to state that we strongly oppose increasing the tobacco sale permit from 50 to 300 dollars. This fee increase is another burden on our membership struggling to provide for their families due to the 60 percent decline in newspaper sales, 40 to 50 percent loss in revenues from the recently enacted Sin tax on a pack of cigarettes. It is a flawed argument that because our cigarette sales are down, Philadelphia residents health is up. It is well-known that Philadelphians are crossing county lines to save cash by
purchasing cigarettes elsewhere.

It is our opinion that this permit fee is another method to subsidize a failed budget. Philadelphia doesn't have a smoking problem as much as it has a spending problem. While we recognize the benefits to provide additional funding for education, and the City's concern for the health of its citizens, particularly the children, this fee increase will have little impact. There ought to be another way to balance the City's budget then imposing a permit fee on the tobacco retail license.

Thank you very much.

HEARING OFFICER PETERSEN: Thank you, sir.

I now have, and I'm sorry if I'm having trouble pronouncing it, because I'm having trouble reading it, Anton Moore; is that right?

MR. MOORE: Yes.

MR. MOORE: Good afternoon. I
was just talking to one of my good friends
that are here. We were talking about, you
know, the Regulations and looking at
what's going on in our community.

Oftentimes, when you see young
kids targeted from a marketing aspect with
tobacco, they look to experiment on other
things. In my community, I watch kids
start off smoking cigarettes, then they
start smoking marijuana, and then doing
other things. When you target that
demographic, and they see it on social
media and they see it in the
neighborhoods, they end up getting sucked
into the marketing campaign and they start
doing these things. So these Regulations,
as my brother said, is a no brainer,
because you have to stop -- I mean, we
hear that, you know, oh, it's going to
affect the businesses in our community,
but we have to stop putting profit over
human beings and start thinking about the
actual lives of these young people that
are in our communities.
So as many people sit up here and said, this is a no brainer.

Thank you.

(Applause.)

DR. FARLEY: Thank you very much.

Now, those are the only names that I have on my list here. Let me just double-check to see if there isn't anyone else who has signed in.

Josh, could you check with Jean to make sure there isn't anyone else?

So if no one else wants to testify, then this hearing is concluded.

I want to thank you all very much for coming.

Again, I'll explain the process from here. The Board will take input from the written comments it received, as well as the comments received tonight, any written comments we have received tonight, and those will be presented to the Board. The Board will deliberate and consider what it wants to do with the rules probably at the November meeting, which is
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scheduled for November 10th.

Thank you all very much. Good night.

DR. GOLD: Thank you.

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

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

DATE: OCTOBER 18, 2016

ERICA HEARN
|-----------|----------|-----------------|------------------|---------------------|---------|----------|--------|-------------|----------|-------------|-----------|--------------|-------------|----------------|----------------|------------------|-----------------|-----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|-------------|----------------|
PUBLIC HEARING

Church 20:16
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