

CITY OF PHILADELPHIA  
DEPARTMENT OF PUBLIC HEALTH  
BOARD OF HEALTH

Regulation Relating to the Sale of Electronic  
Smoking Devices in Youth-Accessible and Adults-Only Establishments

Approved January 9, 2020

**WHEREAS**, Section 9-638 of The Philadelphia Code (“Sale of Electronic Smoking Devices in Youth-Accessible Establishments”) restricts the sale of certain Electronic Smoking Devices, except in establishments holding Adults-Only ESD Establishment Licenses; and

**WHEREAS**, Section 5-301(b) of the Philadelphia Home Rule Charter authorizes the Board of Health to issue Department of Public Health regulations for the preservation and promotion of the health of the people of Philadelphia; and

**WHEREAS**, Section 9-638 of The Philadelphia Code tasks the Department with determining which Electronic Smoking Devices are permitted for unrestricted sale and, additionally, calls for Department regulations establishing an approval process for Unrestricted Electronic Smoking Devices; and

**WHEREAS**, Section 9-638 of The Philadelphia Code tasks the Department with issuing Adults-Only ESD Establishment Licenses to establishments that adequately demonstrate they have met the requirements of Section 9-638(6)(a)-(d);

**NOW, THEREFORE**, the Board of Health hereby adopts this Regulation Relating to the Sale of Electronic Smoking Devices in Youth-Accessible Establishments, as follows:

**Section 1. Definitions**

*Adults-Only ESD Establishment License.* The license issued pursuant to Section 9-638(6) of The Philadelphia Code and in accordance with Section 3 hereof.

*Adults-Only Establishment.* An establishment that holds an active Adults-Only ESD Establishment License issued pursuant to Section 9-638(6).

*Department.* The Philadelphia Department of Public Health.

*Electronic Smoking Device.* As defined in Section 9-638(1) of The Philadelphia Code.

*Unrestricted Electronic Smoking Device.* An Electronic Smoking Device the sale of which is not restricted by Section 9-638 of The Philadelphia Code.

## **Section 2. Unrestricted Electronic Smoking Devices List**

(a) The Department shall approve any Unrestricted Electronic Smoking Device upon discovery or receipt of reasonably adequate evidence that an Electronic Smoking Device does not meet the indicia of restrictions set forth in Section 9-638(2) or Section 9-638(3), and therefore, is an Unrestricted Electronic Smoking Device. Reasonably adequate evidence shall include, but not be limited to, an authentic, accurate statement by the manufacturer of the Electronic Smoking Device demonstrating that the Electronic Smoking Device does not meet the indicia of restrictions set forth in Section 9-638(2) or Section 9-638(3). Such manufacturer's statement may consist of original packaging, content on the manufacturer's website, a letter from the manufacturer, or other materials deemed acceptable by the Department.

(b) The Department shall provide a method for submission of products for review pursuant to this Section and may require the submission of Universal Product Codes and other product-identifying information as appropriate for review and for compliance efforts pursuant to this Section. The Department shall reply promptly to a person who submits a product for review and advise whether the evidence provided is adequate or inadequate.

(c) The Department shall create an initial list of Unrestricted Electronic Smoking Devices that, through its research, do not meet the indicia of restrictions set forth in Section 9-638(2) or Section 9-638(3).

(d) The Department shall maintain this list of Unrestricted Electronic Smoking Devices and make it openly available to the public via the internet.

(e) The Department shall amend this list of Unrestricted Electronic Smoking Devices from time to time to: (1) add newly discovered or recently submitted and approved Electronic Smoking Devices that do not meet the indicia of restrictions set forth in Section 9-638(2) or Section 9-638(3); and (2) remove Electronic Smoking Devices that meet the indicia of restrictions set forth in Section 9-638(2) or Section 9-638(3) and are no longer Unrestricted Electronic Smoking Devices.

**Section 3. Adults-Only ESD Establishment License Application**

(a) The Department shall approve an application for the issuance or renewal of an Adults-Only ESD Establishment License upon determining that the applying establishment meets the requirements of Section 9-638(6).

(b) The formal, written employee training and compliance protocol required by Section 9-638(6)(c) shall include a clear explanation of how the establishment will ensure that persons identified in Section 9-638(6)(b) are prevented from entering. The following is a non-exclusive list of examples of protocol elements that would satisfy the requirement identified in Section 9-638(6)(c): (i) an employee stationed at entrances checking identification and instructing underage persons that they may not enter, and (ii) a locked entrance that is opened upon request to allow a potential customer to show identification before entering, followed by an instruction if the person is underage that such person may not enter.

(c) It shall be unlawful to admit persons under 18 years of age, or persons of such other higher age who are legally prohibited from purchasing an Electronic Smoking Device in the Commonwealth of Pennsylvania as may be established by law, to an Adults-Only Establishment.

(d) It shall, additionally, constitute a violation of Section 9-638 for an Adults-Only Establishment to admit persons under 18 years of age, or persons of such other higher age who are legally prohibited from purchasing an Electronic Smoking Device in the Commonwealth of Pennsylvania as may be established by law.

(e) The Department shall conduct compliance investigations pursuant to Section 9-638(6).

**Section 4. Adults-Only ESD Establishment License Signage**

An establishment holding an Adults-Only ESD Establishment License shall display a sign at least 8.5" x 11" at each entrance of the establishment clearly visible from the exterior stating that people who are younger than the age required to enter in accordance with Section 9-638(6)(b) may not enter. The Department shall make available a sign meeting the requirements of this Section.

**Section 5. Effective Date**

This Regulation shall be effective immediately.