

SUMMIT COUNTY BOARD OF HEALTH
TOBACCO AND SYNTHETIC NICOTINE CONTROL

An Ordinance amending the Summit County Code of Health,
Chapter 9, and providing Written Findings
pursuant to UCA §26A-1-121

Preamble

WHEREAS, UCA §26A-1-121 requires that any board of health regulation which is more stringent than state or federal standards must be accompanied by written findings.

WHEREAS, the Utah Department of Health issued its Tobacco 2018 Report, wherein the following findings as it relates to tobacco use in Summit County, Utah were made:

- Youth experimentation with electronic cigarettes (“e-cigarettes”) in grades 8, 10, and 12 was at 20.4% or about 1 in 5 students.
- Youth use of e-cigarettes in grades 8, 10 and 12 is at 7.4%.
- Adult use of e-cigarettes has maintained an average of 2.0%.
- Adult experimentation with e-cigarettes is at 17.2% compared to its 2015 rate of 6.8%.
- Adult smoking rates are at 8.9% compared to 5.5% in 2015.
- E-cigarettes are rapidly evolving. The new high-nicotine product JUUL has become popular with youth and has captured 68% of the e-cigarette market in 2 years.
- E-cigarettes expose users to several chemicals, including nicotine, carbonyl compounds, and volatile organic compounds known to have adverse health effects. The health effects and potentially harmful doses of heated and aerosolized constituents of e-cigarette liquids, including solvents, flavorings, and toxicants, are not completely understood.
- 60% of teens incorrectly reported e-cigarettes as being comprised of mostly flavoring.
- Some e-liquids have been marked to look like common food items, many of which appeal to kids. For example: Chocolate, Sour Apple, Strawberry, Fruity, etc.

(Utah Department of Health. (2018) Tobacco Prevention and Control Annual Report 2018. <https://tobaccofreeutah.org/wp-content/uploads/tpcreportfy18-1.pdf>)

WHEREAS, the United States Surgeon General has stated, “E-cigarette aerosol is not harmless. It can contain harmful and potentially harmful constituents, including nicotine. Nicotine exposure during adolescence can cause addiction and can harm the developing adolescent brain.”

2018. *Surgeon General’s Advisory on E-Cigarette use among youth.* <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

WHEREAS, the Institute of Medicine and the U.S. Surgeon General have recommended that communities take steps to limit the number and restrict the location of tobacco retailers as an effective youth tobacco use control measure, finding that “[e]xposure to these marketing and promotional activities has been shown to affect tobacco use initiation rates among adolescents, particularly when the stores are close to schools. Studies have documented that youth who live or go to schools in neighborhoods with the highest density of tobacco outlets (or with the highest density of retail tobacco advertising) have higher smoking rates compared to youth who live, or attend school, in neighborhoods with fewer or no tobacco outlets.”

Tobacco Control Legal Consortium. (2014). Point-of-Sale Strategies: A Tobacco Control Guide. Retrieved from: <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-pos-policy-WashU-2014.pdf>

WHEREAS, the City of San Francisco Department of Public Health has identified that retailer densities tend to be higher in vulnerable communities including:

- Communities with lower incomes
- Communities with Minors and Young Adults
- Communities with LGBTQ+ Populations
- Communities with Low Educational Attainment
- Communities with a high rate of Mental Illness

San Francisco Department of Public Health. (2016) Retail Tobacco Permit Density Cap Health Impact Assessment. Retrieved from: <https://www.sfdph.org/dph/files/opp/Tobacco-Density-HIAInfographic.pdf>

WHEREAS, Tobacco Free Kids states that higher densities of tobacco retailer stores increases the likelihood of tobacco/nicotine sales to minors: “Despite improvements in state

efforts to stop retailer sales of tobacco products to youth, 14 percent of all 9th to 12th graders who smoke usually buy their cigarettes directly from a store, and others do so less frequently.” Further, “[o]f the sales to youth smokers, nearly half (48.5%) of them were not asked to show proof of age when purchasing cigarettes. Not surprisingly, 58 percent of 8th graders and 80 percent of 10th graders say that cigarettes are fairly or very easy to get.”

Campaign for Tobacco Free Kids. (2010) Enforcing Laws Prohibiting Cigarette Sales to Kids Reduces Youth Smoking. Retrieved from: <https://www.tobaccofreekids.org/research/factsheets/pdf/0049.pdf>

WHEREAS, Nicotine and Tobacco Research reported that the widespread availability of tobacco products in retail outlets is designed to attract new tobacco users, discourage quitting and create a normative environment that makes tobacco use acceptable and even desirable. A large majority of sales for these products occur in convenience stores, gas stations, and supermarkets – accessible to individuals of all ages. The positive association between densities and recent product experimentation may be due to either a varying availability of these products in outlets or differences in advertising at the point-of-sale. Over 90% of cigarette marketing expenditures in the United States in 2011 focused on point-of-sale environments.

Nicotine & Tobacco Research. (2016). Tobacco Retail Outlet Density and Young Adult Tobacco Initiation. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4830222/pdf/ntv036.pdf>

WHEREAS, a study released by the National Institute of Health has determined that “[l]iving in communities with higher outlet densities was associated with smoking by youths, greater perceived access to cigarettes, and lower levels of perceived enforcement of underage tobacco laws.” The study also indicated that “[h]igher densities of tobacco outlets may serve a normative function as well, affecting adolescents’ beliefs about the ease of obtaining cigarettes and the likelihood of getting into trouble with authorities for smoking.”

Addiction. (2016). Tobacco Outlet Density, Retailer Cigarette Sales without ID Checks, and Enforcement of Underage Tobacco Laws: Associations with Youth Cigarette Smoking and Beliefs. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4749431/pdf/nihms728253.pdf>

WHEREAS, the American Journal of Public Health (AJPH) has identified that approximately 40% of United States adolescents (13-16 years) live within walking distance of a tobacco retailer and visit these stores at least weekly. The study concluded that by reducing tobacco retailer density by 50% in suburban rich communities, the attendant tobacco prices therein went up by 7%. For suburban poor communities, a 50% reduction in tobacco retailer density resulted in price increases of 3.4%. In addition to this, during an evaluation of the Tobacco Town Policy

Program, a combination of policies, including a tobacco retailer cap, was found to be the most effective way to reduce retailer density. Suburban rich communities that implemented tobacco retailer cap policies saw tobacco retailer density decrease by about 1 store per mile, while simultaneously seeing a price increase of 16.8%. For suburban poor communities, with similar policies, prices went up by 10.7% and an attendant decrease in 1-2 stores per mile.

American Journal Of Public Health Research. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. Retrieved from:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5388950/pdf/AJPH.2017.303685.pdf>

WHEREAS, tobacco prices are found to have a direct inverse relationship to adolescent tobacco usage. Nationally, every ten (10) percent increase in cigarette prices reduces youth smoking by about seven (7) percent and total cigarette consumption by about four (4) percent.

Campaign for Tobacco Free Kids. (2019). U.S. State and Local Issues, U.S. State Tobacco Taxes. A Win-Win Solution. <https://www.tobaccofreekids.org/what-we-do/us/state-tobacco-taxes>

WHEREAS, Change Lab Solutions has documented several cities and counties to have regulated tobacco retailer density by capping the number of retailers based upon population size.

- San Francisco, CA: Limited the number of tobacco retailer permits to no more than forty-five (45) permits per electoral district. As a result, the City saw a 10% decline in tobacco retailer permits.
- Philadelphia, Pennsylvania: In 2016, placed a cap of one (1) tobacco retailer per 1,000 inhabitants in each planning district. As a result, the City has seen a decrease in tobacco retailers and is currently evaluating the effectiveness of this regulation. An initial report on such from December 2018 indicates that the number of tobacco retailers has declined by 40% since 2016.
- Sonoma County, California: Placed a cap of one (1) tobacco retailer per 2,000 countywide inhabitants. Upon implementation, 75 former tobacco retailers did not apply. Currently, there are no new retailers permitted until the density drops below the set per capita threshold.
- State of Massachusetts: In 2015, placed a cap of one (1) tobacco retailer per 1,000 inhabitants.
- Oroville, CA: Placed a population cap of one (1) smoke shop per 4,000 residents.

Change Lab Solutions. (2019) Tobacco Retailer Density Fact Sheet. Retrieved from:
https://www.changelabsolutions.org/sites/default/files/CLS-BG214-Tobacco_Retail_Density-Factsheet_FINAL_20190131.pdf

WHEREAS, Change Lab Solutions in their Tobacco Retail Density Fact Sheet provided documentation of successful retail cap ordinances, has determined that preventing an environment where tobacco products are readily accessible and advertised to attract young individuals, increases the likelihood that youth will not engage in using tobacco products.

Change Lab Solutions. (2019) Tobacco Retailer Density Fact Sheet. Retrieved from:
https://www.changelabsolutions.org/sites/default/files/CLS-BG214-Tobacco_Retail_Density-Factsheet_FINAL_20190131.pdf

WHEREAS, the Summit County Board of Health finds that youth are at a higher risk of health consequences and addiction to tobacco due to:

- Media and marketing exposure;
- Tobacco use among peers and parents;
- Personal perception and misconception of the risks associated with vaping;
- Biological factors making youth more likely to become addicted to nicotine than adults; and
- Accessibility, availability and price of tobacco products, especially ENDS products.

WHEREAS, the Summit County Board of Health further finds that the research surrounding youth accessibility to tobacco products (price, proximity, density of tobacco retailers) is compelling and that restricting access can have a significant positive influence on preventing youth tobacco use.

NOW, THEREFORE, the Board of Health of Summit County, State of Utah, ordains as follows:

Section 1. **Amendment.** Summit County Code of Health, Title 1, Chapter 9, is hereby amended to add Section 1-9-7, Population and Density Cap, which is published as a code in book form, copies of which have been filed for use and examination in the Summit County Health Department.

1-9-7 Population and Density Cap.

A. The number of Tobacco Retail Permits issued by the Health Department shall be limited as follows:

- (1) The total number of Tobacco Retail Permits issued within Summit County by the Health Department shall be limited to one permit for each 1,000 inhabitants of Summit County during any calendar year.
- (2) For purposes of this subsection, the total inhabitants of Summit County during any calendar year shall be determined by population data on file with either the U.S. Census Bureau or the Utah State Department of Finance, whichever has been more recently updated, as of the date the permit application is filed.
- (3) No new Tobacco Retail Permits may be issued if the number of Tobacco Retail Permits during any calendar year exceeds the total number authorized herein.

B. In the event that on January 1, 2020, the total number of pre-existing and authorized Tobacco Retail Permits exceeds the maximum number determined in §1-9-7(A), those Tobacco Retailers operating lawfully on December 31, 2019 shall be eligible to renew a Tobacco Retail Permit so long as the following conditions are met:

- (1) The permit is timely obtained and renewed without lapse or permanent revocation (as opposed to temporary suspension);
- (2) The Tobacco Retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days;
- (3) The Tobacco Retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location:
 - i. to a new Proprietor(s); or
 - ii. for which a significant purpose of the transfer is to avoid any of the requirements of this chapter; and
- (4) The Tobacco Retailer retains the right to operate under all other applicable laws.

Section 2. Savings Clause. In the event one or more of the provisions of this Ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under any applicable laws, such unenforceability or invalidity shall not affect any other provision; and in such an event, this Ordinance shall be construed as if such unenforceable or invalid provision had never been contained therein.

Section 3. Effective Date. This Ordinance shall take effect on January 1, 2020.

APPROVED, ADOPTED, AND PASSED and ordered published by the Summit County Board of Health, this ___ day of _____, 2019.

SUMMIT COUNTY BOARD OF HEALTH

Ilyssa Golding, Chair

SUMMIT COUNTY HEALTH OFFICER

APPROVED AS TO FORM:

Richard Bullough
Public Health Officer

David L. Thomas
Chief Civil Deputy

VOTING OF BOARD OF HEALTH:

Member Heidi Jaeger: _____
Member Marc Watterson: _____
Member Dorothy Adams: _____
Member Chris Ure: _____
Member Kim Carson: _____