

Model Zoning Ordinance Regulating the Location of Retail Establishments Selling Tobacco Products*

Section 1: Title.

An Ordinance Amending the Zoning Code to Provide Regulations for Retail Establishments Selling Tobacco Products.

Section 2: Findings.

The [Board of Selectmen] of [City] finds and declares that:

In Vermont, 15.4% of the adult population, 13% of high school students, and 3.0% of middle school students currently smoke; and 6.2% of adult males and 11% of high school males use smokeless or spit tobacco;

Although it is unlawful to sell tobacco products to minors, 11.6% of tobacco retailers sold to minors during compliance checks conducted by the Vermont Department of Liquor Control in 2010. Nationally, despite laws in every state making it illegal to sell tobacco to minors, each year an estimated 800 million packs of cigarettes are consumed by youth;

[City] has a substantial interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use;

An overwhelming majority of Americans who use tobacco products begin using such products while they are adolescents and become addicted to those products before reaching the age of 18;

Studies have found that a higher concentration of tobacco retailers in a geographic area is associated with higher rates of youth smoking;

Zoning controls and a requirement that tobacco retailers obtain a conditional use permit will not unduly burden legitimate business activities of tobacco retailers who sell cigarettes or distribute tobacco products to adults. It will, however, allow [City] to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws;

A purpose of the Vermont Planning and Development Act is to encourage municipalities to develop land in a manner that promotes the public health;

Zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products for the protection of public health, safety and welfare;

* This model ordinance is based in part on models developed by Public Health Law & Policy (www.phlpnet.org) for the California Tobacco Control Program. Adapted for use with the permission of the California Department of Health, California Tobacco Control Program.

The [Board of Selectmen] intends to limit the number of tobacco retailers in [City] for the protection of public health, safety, and welfare; and

The [Board of Selectmen] intends to declare any violation of this ordinance to be a public nuisance pursuant to Vt. Stat. Ann. tit. 24, § 2291(14), and will take action for its abatement or removal as the public health, safety or welfare may require.

Section 3: Authority.

This ordinance is adopted pursuant to the authority contained in the Vermont Planning and Development Act, also designated as Title 24, V.S.A. Chapter 117. Whenever any provision of this ordinance refers to or cites a section of Title 24 V.S.A. Chapter 117, and this section is later amended or superseded, this ordinance shall be deemed to refer to the amended section or the section that most nearly corresponds to the superseded section.

Section 4: Severability.

The provisions of this Chapter are declared to be severable, and if any section of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

Section 5: [Article / Chapter] is Hereby Added to [Article / Section] of the Zoning Code of the [City] and is to be Read as Follows:

5.1. Definitions. The following words and phrases, whenever used in this [article / chapter] shall have the meanings defined in this section unless the context clearly requires otherwise:

ZONING ADMINISTRATOR means the Administrative Officer responsible for zoning administration and enforcement in the municipality.

TOBACCO PRODUCT means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, dissolvable tobacco products, and electronic cigarette cartridges, whether packaged or not. However, "Tobacco Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

TOBACCO RETAILER means any business that sells or offers for sale any Tobacco Product.

EXISTING TOBACCO RETAILER means any Tobacco Retailer that is engaged in the legal sale of Tobacco Products as of the effective date of date of this [article / chapter].

NEW TOBACCO RETAILER means any Tobacco Retailer that is not engaged in the legal sale of Tobacco Products as of the effective date of date of this [article / chapter].

SCHOOL means a public or private kindergarten, elementary, middle, junior high, or high school.

5.2. Zoning Regulations. The following zoning controls shall regulate the siting of New Tobacco Retailers.

(a) A New Tobacco Retailer may be located only within an area zoned for light industrial or industrial use. In addition, no Tobacco Retailer shall be located within [XXXX] feet of the boundary of any residential zone or a parcel occupied by a school.

(b) No New Tobacco Retailer may be located within [XXXX] feet of any other Tobacco Retailer, as measured in a straight line from parcel boundary to parcel boundary.

5.3. Conditional Use Permits.

(a) A conditional use permit shall be required for all New Tobacco Retailers. A separate permit is required for each location where Tobacco Products are sold. A new conditional use permit is also required for any Existing Tobacco Retailer that seeks to sell tobacco products at a location other than or in addition to where such Existing Tobacco Retailer sold tobacco product as of the effective date of this [article / chapter]. The application review and approval procedures set forth in section [cross reference local conditional use permit procedures] of the zoning code shall apply to all applications for a use permit under this ordinance.

(b) Limited Number of Tobacco Retailers: The number of conditional use permits approved under this ordinance shall be no more than [XXXX].

(c) For New Tobacco Retailers, each application for a permit to conduct business shall include, in addition to such other information as reasonably required by the [Board of Selectmen], a plan for demonstrating the means by which the applicant will comply with the requirements of paragraph (d) of this section.

(d) Standard Conditions of Approval: In addition to any conditions of approval imposed by the [Board of Selectmen] every Tobacco Retailer permitted under this Section, and every employee of such Tobacco Retailer, shall comply with all local, state, and/or federal laws regarding the sale, advertising or display of Tobacco Products.

The number of approved Conditional Use Permits should be determined based on factors such as the population of the municipality and the number of existing tobacco retailers.

5.4. Suspension or Revocation of a Conditional Use Permit.

(a) Grounds for Suspension or Revocation: A Tobacco Retailer's conditional use permit shall be suspended or revoked if the Zoning Administrator finds, after notice and opportunity to be heard, that the Tobacco Retailer has violated any of the use permit conditions of approval, including without limitation the Standard Conditions of Approval set forth in 5.3(d) or of this [article / chapter].

(b) A suspension shall suspend the privilege of selling tobacco products for a stated period pursuant to paragraph (c) of this Section. Revocation shall be without prejudice to the filing of a new application for a conditional use permit following correction of the conditions that required the revocation of the conditional use permit.

(c) Suspension or Revocation of Conditional Use Permit: If the Zoning Administrator finds that there are grounds for the suspension or revocation of a conditional use permit, the following sanctions may be imposed: (i) amendment of the conditional use permit to impose additional conditions or restrictions to ensure present and future compliance with the conditions of the permit; and/or (ii) revocation of the Tobacco Retailer's conditional use permit; and/or (iii) suspension of operations or closing the retail outlet; and/or (iv) instituting in the name of the municipality any appropriate action, injunction, process of contempt or other proceeding to rectify the situation and to restrict or prevent operation until the situation has been rectified. Such penalties shall be in addition to any others authorized by State Statute or Local Ordinance.

(d) Appeal of Suspension and/or Revocation: The decision of the Zoning Administrator is appealable to the [secretary of the board of adjustment or development review board of the municipality or with the clerk of the municipality if no such secretary has been elected] and must be filed within 15 days of receipt of the determination of violation.

5.5. Administrative Fine/Penalties.

(a) If the Zoning Administrator finds, based on substantial record evidence, that any Tobacco Retailer has violated this ordinance or the terms and conditions of the Tobacco Retailer's conditional use permit, the Zoning Administrator may fine that Tobacco Retailer up to \$100 for each offense.

5.6. Enforcement.

(a) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance or a conditional use permit issued hereunder shall constitute a violation of this ordinance.

(b) Violations of this [article / chapter] and any conditional use permit issued hereunder are hereby declared to be public nuisances.

(c) In addition to other remedies provided by this [article / chapter] or by other law, a violation may be remedied by any appropriate action brought by the Zoning Administrator.

Section 6: Effective Date.

The effective date of this ordinance shall be ninety (90) days from the date of its enactment.