

Superseded 7/1/2018

10-8-41.6 Regulation of retail tobacco specialty business.

- (1) As used in this section:
 - (a) "Community location" means:
 - (i) a public or private kindergarten, elementary, middle, junior high, or high school;
 - (ii) a licensed child-care facility or preschool;
 - (iii) a trade or technical school;
 - (iv) a church;
 - (v) a public library;
 - (vi) a public playground;
 - (vii) a public park;
 - (viii) a youth center or other space used primarily for youth oriented activities;
 - (ix) a public recreational facility; or
 - (x) a public arcade.
 - (b) "Retail tobacco specialty business" means a commercial establishment in which:
 - (i) the sale of tobacco products accounts for more than 35% of the total annual gross receipts for the establishment;
 - (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total annual gross receipts for the establishment; and
 - (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act.
 - (c) "Tobacco product" means:
 - (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;
 - (ii) a tobacco product as defined in Section 59-14-102, including:
 - (A) chewing tobacco; or
 - (B) any substitute for a tobacco product, including flavoring or additives to tobacco; and
 - (iii) tobacco paraphernalia as defined in Section 76-10-104.1.
- (2) The regulation of a retail tobacco specialty business is an exercise of the police powers of the state, and through delegation, to other governmental entities.
- (3)
 - (a) Except as provided in Subsection (7), and beginning July 1, 2012, a municipality shall require an entity to be licensed as a retail tobacco specialty business to conduct business as a retail tobacco specialty business in a municipality.
 - (b) A municipality may issue a retail tobacco specialty business license to an entity if the entity complies with the provisions of Subsection (5).
- (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity that conducts a retail tobacco specialty business in a municipality shall be licensed by the municipality as a retail tobacco specialty business.
- (5)
 - (a) A municipality may not issue a license to a retail tobacco specialty business if it is located within:
 - (i) 1,000 feet of a community location;
 - (ii) 600 feet of another retail tobacco specialty business; or
 - (iii) 600 feet from property used or zoned for:
 - (A) agriculture use; or
 - (B) residential use.
 - (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property

boundary of the community location, or agricultural or residential use, without regard to intervening structures or zoning districts.

- (6)
- (a) Nothing in this section:
 - (i) requires a municipality to issue a business license to a retail tobacco specialty business; or
 - (ii) prohibits a municipality from adopting more restrictive requirements on a tobacco specialty business than provided for in this section.
 - (b) A municipality may revoke a business license issued under this section:
 - (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
 - (ii) if a licensee violates the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
 - (iii) under other provisions of state law or local ordinance.
- (7)
- (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has a business license and is operating lawfully in a municipality on or before May 8, 2012, is exempt from Subsections (4) and (5).
 - (b) A retail tobacco specialty business may maintain an exemption under Subsection (7)(a) if:
 - (i) the business license is renewed continuously without relapse or permanent revocation;
 - (ii) the retail tobacco specialty business is not closed for business or otherwise suspends the sale of tobacco products for more than 60 consecutive days;
 - (iii) the retail tobacco specialty business does not substantially change the business premises or its business operation; and
 - (iv) the retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including zoning ordinances, building codes, and the business license issued prior to May 8, 2012.