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DETERMINING IF ADJOINING BUSINESSES ARE SEPARATE:

Adult-Only Retail Tobacco Store

Amended 12/29/22

Adult-Only Retail Tobacco Store

For an establishment to meet the definition of an adult-only retail tobacco store (known under state law as “Retail Tobacco Store”) the following conditions must be met:

- The primary purpose of the establishment is to sell or offer for sale tobacco/vape related products and/or paraphernalia;
- The sale of other products is merely incidental;
- The establishment is not required to possess a retail food permit;
- Entry of persons younger than 21 years-old is prohibited at all times (including employees);
- The establishment must maintain proper state and local permits and licenses;
- The establishment occupies its own physical space; and
- It does not possess an alcohol, restaurant, or lottery license.

Separate, Stand-Alone Business Requirement

An Adult-Only Retail Tobacco Store is expected to be a stand-alone business, separate from any adjoining convenience store or retail space. If employees are being paid by one business and performing work at a second, then the two are not separate businesses. Factors to consider when determining whether adjoining spaces are in fact separate businesses include, but are not limited to the following:

- Status of employees
 - If two businesses ‘share’ employees they are not separate establishments unless the employees are clocking out of one business and into the other every time they cross over to help with a sale. Employee payroll records are helpful.
- Separate tax filings (both federal and state);
- Separate actual physical addresses;
- Separate list of employees;
- Separate DOR approval to collect sales tax;
- No capacity for the customer to access one store from the other; and
- In summary, could both spaces exist across the street from each other with their current configuration, business plan, and employees?