

ENVIRONMENTAL HEALTH CODE

Chapter 9

Restrictions on the Use of Vapor Products

Adopted by Tacoma-Pierce County Board of Health on July 6, 2016

SECTION 1: Title

This Chapter 9 may be cited and referred to, and shall be known as, the “Restrictions on Sale, Use, and Availability of Vapor Products Regulations.”

SECTION 2: Authority and Purpose

- A. Tacoma-Pierce County Board of Health (Board of Health) enacts the regulations set forth in this Chapter under the general authority of Article 11, §11 of the Washington Constitution and RCW 70.05.060 and the specific authority set forth in RCW 70.160.080 and the amendments to Title 70 RCW set forth in 2016 Wash. Laws Ch. 38. 64th Leg., 1st Spec. Sess.
- B. The purpose of these regulations is to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of person who will or should be especially protected or benefited by this Chapter. The provisions of this Chapter shall be liberally construed for the accomplishment of its purposes.
- C. These regulations supplement but do not replace the regulations enacted by the state of Washington and enforced by the Liquor and Cannabis Board regarding the licensure and regulation of vapor product promotions and sales at retail or the regulations adopted by the Food and Drug Administration.
- D. It is the specific intent of this Chapter to place the obligation of complying with its requirements upon the owner of each establishment within its scope, and no provision nor term used in this title is intended to impose any duty whatsoever upon the Board of Health, Tacoma-Pierce County Health Department (Health Department), or any of its officers or employees, for whom the implementation or enforcement of this Chapter shall be discretionary and not mandatory.
- E. Nothing contained in this Chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the Board of Health, the Health Department, or any of its officers or employees, for any injury or damage resulting from the failure of any person subject to this Chapter to comply with this Chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this Chapter of the part of the Board of Health, the Health Department, or its officers or employees.

SECTION 3: Findings

The Board of Health finds that the availability and use of vapor products have increased dramatically in recent years, and that the use of such products has become commonplace. The

low cost of these products, as compared to cigarettes, is a key factor with respect to their popularity. Despite their popularity and the resultant rapid expansion of the vapor products market, commerce in such products is wholly unregulated and is not subject to the same legal requirements that are applicable to commerce in cigarettes and other tobacco products.

Vapor products often have a high appeal to youth due to their high technology design and availability in child-friendly flavors. They also can present a substantial risk of nicotine addiction and resultant harm to the public health and safety.

The United States Food and Drug Administration has conducted laboratory tests on numerous brands of vapor product liquids and found that they can contain potentially hazardous chemicals and carcinogens in addition to nicotine. Although some vapor products claim not to contain nicotine, there is no regulatory program to monitor this assertion. The United States Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and is a highly toxic substance.

The potential inhalation of nicotine, carcinogens and toxic substances can cause adverse effects on adolescent brain development. When exposed to heat, nicotine solutions used in vapor products can generate a range of chemical byproducts that may have adverse health consequences when inhaled. The specific chemistry of the liquid nicotine solutions used in vapor products is not standardized and neither manufacturers nor retailers are required to disclose the chemical contents of the solutions. Consumers, therefore, have no way of determining exactly what substances they are inhaling or what the health consequences of such inhalation might be.

Access to vapor products is particularly problematic with respect to teenagers. In 2013, more than a quarter of a million youth who had never smoked a cigarette had used vapor products, reflecting more than a three-fold increase in the number of youth using vapor products during a three year period. When asked through the 2013 Washington state Health Youth Survey, approximately 25% of Pierce County 12th graders claimed to have used electronic cigarettes in the past month.

Recent research also shows that middle and high school students that have used vapor products were almost two times more likely to have intentions to use regular cigarettes than youth that have not used vapor products. A 2011 Centers for Disease Control and Prevention (CDC) study showed 61% of middle school students and 80% of high school students who use vapor products also used traditional cigarettes.

The Board of Health also recognizes the potential harm of vapor product emissions. Since vapor products are not regulated for safety and do not require labeling, liquid contents vary. Scientific research has shown that secondhand exposure to vapor product emissions, such as with electronic cigarettes, can expose people who are not vaping to health risks from nicotine, particulates, toxic organic chemicals and other compounds.

The use of vapor products in public places and places of employment could also increase social acceptance of vaping, provide models for unhealthy behavior, and complicate enforcement of state and local laws governing the vaping of tobacco products in public places.

Such statistics underscore the urgent need for the creation of a comprehensive regulatory framework governing youth access to such products and to protect the general public from the effects of vapor emissions.

SECTION 4: Definitions

As used in this Chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

- A. "Employee" means any individual who is employed by an employer in return for the payment of direct or indirect monetary wages or profit, any individual who volunteers his or her services to an employer for no monetary compensation, or any individual who performs work or renders services, for any period of time, at the direction of an owner, lessee or other person in charge of a place that is subject to the provisions of this Chapter.
- B. "Employer" means any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity that pays another person direct or indirect monetary wages or profit in consideration for such other person's providing services on the premises of the employer, or who otherwise directs another person to perform work or render services on the premises of the employer. "Employer" shall also mean the owner(s) of a sole proprietorship, partnership, corporation, association, nonprofit organization, or other business entity.
- C. "Indoor public place" means the interior portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, , of twenty-five feet from entrances, exits, windows that open and ventilation intakes that serve an enclosed area where vaping is prohibited. A public place does not include a private residence unless the private residence is used to provide permitted child care, foster care, adult care, or other similar social service care on the premises.

"Indoor public place" includes, but is not limited to, schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries,

restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, vape shops and lounges, hookah lounges and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. "Public place" does not include a private residence. This Chapter is not intended to restrict vaping in private facilities that are occasionally open to the public except upon the occasions when the facility is open to the public.

- D. "Nicotine-Free" means a vapor product that has been determined, on the basis of information provided by the manufacturer and/or the results of analysis by an analytical laboratory, to contain either no or negligible levels of nicotine.
- E. "Open to the public" means explicitly or implicitly authorizing or inviting entry or use by the public. Factors relevant to the determination of whether a portion of a building or an affiliated outdoor eating or drinking area, other than a private residence, is "open to the public" include, but are not limited to:
 - 1. Whether the owner, lessee or person in charge permits or invites entry by individuals other than employees who perform work or persons who meet selective, restrictive and limited criteria for entry;
 - 2. Whether the owner, lessee or person in charge directs, authorizes, or otherwise engages in advertising or promotion to the public to encourage occupancy or use;
 - 3. Whether signage is present indicating that the building, a portion thereof, or an affiliated outdoor area is open to the public; or
 - 4. Whether the owner, lessee or person in charge also owns, operates, or leases a retail business that is open to the public, the retail business is in the same building where vaping occurs and the area where vaping occurs is open to the customers of the retail business.
- E. "Outdoor public place" means a social space that is open and accessible to the public, but located outside of buildings.
- F. "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to, entrances and exits to the places of employment, and including a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open and ventilation intakes that serve an enclosed area where vaping is prohibited, work areas, restrooms, conference and classrooms, break rooms and cafeterias and other common areas. A private residence or home-based business, unless used to provide permitted child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment."

- G. “Retail Outlet” means each place of business from which vapor products are sold to customers.
- H. “Tasting” means to try or taste a vapor product in a retail outlet where entry is restricted to persons eighteen years of age or older.
- I. “Vape” or “Vaping” means consuming, inhaling or tasting of any kind of vapor product.
- J. “Vapor product”
 - 1. Means any combustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance.
 - 2. Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.
 - 3. Does not include any product that meets the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

SECTION 5: Vaping Prohibited in Public Places and Places of Employment

- A. No person may use vapor products in an indoor public place or in any place of employment, except in the limited situations described in Section 6.
- B. No person may use vapor products in any outdoor public place where children congregate. This includes, but is not limited to, real property that is under the control of child care facilities or schools, playgrounds, parks, beaches, athletic fields, and stadiums.

SECTION 6: Tasting

No retail outlet may offer a tasting of vapor products to the general public unless all of the following conditions are met.

A. Licensed Retailer

The retail outlet must be authorized to sell vapor products pursuant to a state license issued under the amendments to Title 70 RCW set forth in 2016 Wash. Laws Ch. 38, 64th Leg., and 1st Spec. Sess.

B. Ventilation

- 1. The license holder must retain at the retail outlet acceptable documentation that demonstrates the retail outlet has a suitable ventilation system. A suitable

ventilation system meets the “Smoking Lounge” standards for Retail Stores of TABLE 403.3, MINIMUM VENTILATION RATE of the 2012 International Mechanical Code, as now or hereafter amended, or the equivalent standards required by the jurisdictional Building Official.

2. Acceptable documentation means a written statement signed by a heating, ventilation, air-conditioning and refrigeration (HVAC/R) contractor holding a valid registration with the Department of Labor and Industries pursuant to Chapter 18.27 RCW, a Professional Engineer, or the jurisdictional Building Official, affirming that the ventilation system meets the standards described in the above subsection. Acceptable documentation shall be provided to the Health Department upon request.

C. Customers

1. Entry into the premises must be restricted to persons eighteen years of age or older.
2. Tasting must not be used to encourage nicotine addiction by promoting vapor products to “never users” of traditional, tobacco-containing products.

D. Vapor Products: E-Liquid and Equipment

1. E-liquids used for tasting must be owned by the license holder and provided at no cost solely for the limited and immediate purpose of testing a vapor solution or device.
2. E-liquid tasting provided to customers must be nicotine-free.
3. License holders must be able to demonstrate that e-liquids used for tasting are nicotine-free.
4. Persons who are not customers of a retail outlet, including employees, are not permitted to taste or use vapor products inside a retail outlet.
5. Tastings must be offered only within the retail outlet operated by the licensee and the products tasted must not be removed from the premises by the customer.

E. No Admission Charge

Entry, admission, membership or similar charges or fees associated with access to the retail outlet or sampling are prohibited.

F. Duration

1. The license holder shall only allow tastings at the sales counter.
2. No more than three (3) customers may taste at one time.

G. Lounges

The licensee shall not facilitate or allow prolonged, continuous presence of customers on its premises by equipping the retail outlet with seating arrangements or entertainment, including, but not limited to television viewing, computer stations or video/gaming devices, designed to encourage lounging within the retail outlet.

H. Hygiene

1. Tasting techniques and products must be hygienic.
2. If the customer is tasting from a vapor device owned and maintained by the retailer, then a disposable mouthpiece tip shall be attached to the vapor product being used by the customer for tasting or the vapor device shall be disposed of after each tasting.

I. A violation of this section is a misdemeanor.

SECTION 7: Owners, Lessees to Post Signs Prohibiting Vaping

Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this Chapter shall prohibit the vaping of products in public places and places of employment and shall post signs prohibiting the use of vapor products as appropriate under this Chapter. Signs shall be posted conspicuously at each building entrance. Retail outlets regulated under this Chapter shall post signs at each entrance and in at least one location within the retail outlet.

SECTION 8: Application to Modify Presumptively Reasonable Minimum Distance

- A. Owners, operators, managers, employers or other persons who own or control an indoor public place or place of employment may seek, via a Variance or Waiver pursuant to Chapter 1 of the Environmental Health Code, to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the health officer. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes or other factors, vapor will not infiltrate or reach the entrances, exits, open windows or ventilation intakes or enter into the public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
- B. All persons seeking to modify the presumptively reasonable twenty-five foot distance shall use the application form provided by the Health Department. An application shall not be complete unless it is accompanied by the applicable fee in the amount set forth in the most recent Environmental Health Program Fee Schedule approved by the Board of Health.

SECTION 9: Enforcement

Except as provided below, the health officer or designee is authorized to enforce this Chapter in accordance with the provisions of Chapter 1 of the Environmental Health Code and consistent with the following subsections.

- A. The health officer or designee shall have the same right of entry as set forth in Chapter 1, Section 15 of the Environmental Health Code in order to assure compliance with and enforce these regulations.
- B. The Health Department may work with the Liquor and Cannabis Board to conduct inspections to assure compliance.
- C. The Health Department may impose the following administrative civil penalties if the Health Department determines there has been a violation of any section of this Chapter.
 - 1. A monetary penalty of up to two hundred for the first violation within any three-year period;
 - 2. A monetary penalty of up to six hundred dollars for the second violation within any three-year period;
 - 3. A monetary penalty of up to one thousand dollars for the third violation within any three-year period; and
 - 4. A monetary penalty of up to two thousand dollars for the fourth and any subsequent violations within any three-year period.
- D. Penalties may be appealed pursuant to Chapter 1 of the Environmental Health Code. The health officer may reduce or waive penalties applied under this Chapter if the elements of proof are inadequate or if there are mitigating circumstances.

SECTION 10: Inspections and Fees

The health officer is authorized to charge a fee for any re-inspection of a place regulated under this Chapter when an initial inspection results in the finding of a violation and the re-inspection also results in the finding of a violation. The re-inspection fees shall be as set forth in the most recent Environmental Health Program Fee Schedule approved by the Board of Health. The obligation to pay inspection and re-inspection fees is in addition to any civil penalties that may be levied pursuant to Section 9, above.

SECTION 11: Applicability

This Chapter applies to the use and tasting of vapor products and to the extent not preempted by state or federal law, including, but not limited to, the regulation of those products by the United States Food and Drug Administration.

SECTION 12: Waivers or Variances

Requests for waivers or variances from the regulations set forth in the Chapter 9 shall be governed by Chapter 1, Section 14 (Variance or Waiver) of the Environmental Health Code, as now or hereafter amended.

SECTION13: Severability

The provisions of this Chapter are hereby declared to be separate and severable. If any section, sentence, clause or phrase of this Chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause, or phrase of this Chapter.