
SMOKING IN PUBLIC PLACES ORDINANCE

Adopting and Implementing Chapter 70.160 RCW As Amended by Initiative 901

WHEREAS, extensive medical and scientific research confirms that secondhand smoke is harmful to smokers and nonsmokers alike causing eye, nose and throat irritation, aggravating lung and heart diseases including emphysema and is linked to various kinds of cancers; and

WHEREAS, additional medical and scientific research concludes that carbon monoxide levels in rooms and vehicles where smoking occurs often exceed maximum permissible safety levels and that other hazardous compounds are released into the environment by tobacco smoke including but not limited to: tar, nicotine, nitrogen dioxide, ammonia, benzene, formaldehyde, hydrogen sulfide, hydrogen cyanide, and arsenic; and

WHEREAS, the Washington State Legislature has recognized the increasing evidence posed by environmental smoke in the workplace and has therefore enacted Chapter 70.160 RCW, "Smoking in Public Places" (SIPP); and

WHEREAS, the People of Washington State have recognized the increasing evidence posed by environmental smoke in the workplace and have therefore revised Chapter 70.160 RCW through Initiative No. 901, which further protected the public from hazardous smoke; and

WHEREAS, Chapter 70.160 RCW, as amended by the voters' approval of Initiative 901, became effective on December 8, 2006; and

WHEREAS, the Kitsap Public Health Board adopted an ordinance in order to comply with the enforcement and rebuttal requirements outlined in Chapter 70.160 RCW, as that statute was amended and revised by Initiative 901; and

WHEREAS, the Kitsap Public Health Board finds that changes in laws and technology regarding smoking products and implements necessitate revisions to the Kitsap Public Health Board Ordinance regarding smoking in public places.

NOW, THEREFORE, BE IT ORDAINED, that the Kitsap Public Health Board Ordinance 2013-01, Smoking in Public Places Ordinance, as set forth below and hereby incorporated by reference, be adopted and be effective immediately.

APPROVED: April 2, 2013



Commissioner Josh Brown, Chair
Kitsap Public Health Board

SECTION 1. AUTHORITY AND PURPOSE

- A. These smoking in public places rules and regulations are promulgated in furtherance of, and in accordance with, Smoking in Public Places (formerly Washington Clean Indoor Air Act), codified at Chapter 70.160 RCW and amended (effective December 8, 2005) by Initiative 901 and other pre-existing state laws that allow the State Board of Health and local Boards of Health to promulgate regulations that promote the health, safety and welfare of the citizens of this State. Initiative 901 was approved by the people of the State of Washington at the general election of November 2005. The legislation enacted through Initiative 901 recognizes the pervasive health hazard that is secondhand smoke. These rules are enacted to protect the public health and promote the safety and welfare of the citizens of Kitsap County. The rules and regulations herein govern the prohibition of smoking in public places and places of employment.
- B. It is expressly the purpose of these rules and regulations to provide for and promote the health of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of these rules and regulations.
- C. Nothing contained in these rules and regulations is intended to be, nor shall be construed to create or form the basis for any liability on the part of the Kitsap Public Health Board or the Kitsap Public Health District, or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of the Kitsap Public Health District.

SECTION 2. FINDINGS

The Kitsap Public Health Board recognizes that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and places of employment.

The Board further finds that with the passage of Initiative 502, questions have arisen about the applicability of Chapter 70.160 RCW and this ordinance to marijuana use. The Board finds that the state and local laws apply to all smoke and smoking, regardless of the product.

SECTION 3. APPLICABILITY

- A. These regulations shall apply to all persons and in all territory within the boundaries of Kitsap County, except actions by persons on lands under the jurisdiction of the Federal Government or recognized Native American Nations and Tribes.
- B. All public places and places of employment in Kitsap County as defined in Section 5 of this regulation are subject to this regulation.
- C. Any person passing by or through a public place while on a public sidewalk or public right of way has not intentionally violated this regulation.
- D. This ordinance is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.
- E. Any person intentionally violating Chapter 70.160 RCW, as amended, by smoking in a public place or place of employment, or any person removing, defacing, or destroying a sign required by this regulation may be referred to local law enforcement in accordance with RCW 70.160.070(3).

SECTION 4. ADOPTION BY REFERENCE

Pursuant to and by the authority of RCW 70.05, the Kitsap Public Health Board hereby adopts and incorporates herein Chapter 70.160 RCW, as currently exists or as hereafter may be amended.

SECTION 5. DEFINITIONS

Terms used in this regulation shall have the meaning provided in RCW 70.160, hereby adopted by reference, unless otherwise provided below.

- A. **Employee:** 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 ordinance.
- B. **Employer:** 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. **Health Officer:** The Health Officer or the Health Officer's representative, of the Kitsap Public Health District.
- D. **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 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 of a portion of a building permits or invites entry to the portion of the building 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 of a portion of a building directs, authorizes or otherwise engages in advertising or promotion to the public to encourage occupancy or use of the portion of the building;
 3. Whether the portion of the building, or any area adjacent thereto, features signage indicating that the portion of the building is open; or
 4. Whether the owner, lessee or person in charge of a portion of a building also owns, operates or leases a retail business that is open to the public, the retail business is in the same building where smoking occurs and the area where smoking occurs is open to the customers of the retail business.
- E. **Place of employment:** 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 (25 feet) from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; outdoor beer and wine gardens; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.
- F. **Presumptively reasonable distance:** Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five (25) feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that smoke does not enter the area through entrances, exits, open windows, or other means.

- G. Public place:** That 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 smoking is prohibited. Public places include, but are 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, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.
- H. Smoke or smoking:** The carrying or smoking of any kind of lighted pipe, cigar, cigarette, hookah, or any other lighted smoking equipment.

SECTION 6. SMOKING PROHIBITED AND REQUIRED SIGNAGE

- A.** No person may smoke in a public place or any place of employment.
- B.** Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under this ordinance shall prohibit smoking in public places and places of employment, including within the presumptively reasonable distance as that term is defined in Section 5.
- C.** Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under this ordinance shall post signs prohibiting smoking as appropriate under this regulation. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place.

SECTION 7. ADMINISTRATION AND ENFORCEMENT

The Kitsap Public Health District shall enforce these regulations regarding the duties of owners or persons in control of public places and places of employment through the following actions:

A. Enforcement Authority

The Health Officer shall have the authority to enforce the provisions of these regulations equally on all persons. The Health Officer is also authorized to adopt additional rules consistent with the provisions of these rules and regulations for the purpose of enforcing and carrying out its provisions. Nothing in these rules and regulations is intended to abridge or alter the rights of action by the state or by persons, which exist in equity, common law or other statutes to abate non-compliance with these regulations. This ordinance supplements and implements RCW 70.160 and provides additional remedies for enforcement. If a conflict exists in the interpretation of RCW 70.160 and these regulations, or in the interpretation of RCW 70.160 and these regulations, the more stringent regulation shall apply to better protect public health, welfare and safety.

B. Right of Entry

1. Whenever necessary to make an inspection to enforce or determine compliance with the provisions of these regulations, and other relevant laws and regulations, or whenever the Health Officer has cause to believe that a violation of these regulations has or is being committed, the Health Officer or his/her duly authorized inspector may, in accordance with federal and state law, seek entry of any building, structure, property or portion thereof at reasonable times to inspect the same.
2. If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

C. Notice and Order to Correct Violation

1. Issuance. Whenever the Health Officer determines that violation of these regulations has occurred or is occurring, he/she may attempt to secure voluntary correction by sending a Notice and Order to Correct Violation to the person(s) responsible for the alleged violation.
2. Content. The notice and order to correct violation shall contain:
 - a. The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;
 - b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

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- c. A description of the violation and a reference to that provision of the regulation, which has been violated;
 - d. A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;
 - e. A statement that each violation of this regulation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation;
 - f. A statement that repeat violations are subject to a civil fine of up to one hundred dollars for each violation; and
 - g. A statement that the failure to obey this notice may result in referral to the Kitsap County Prosecutor's Office to maintain an action for injunction to enforce RCW 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation.
3. Service of Order. The Notice and Order to Correct Violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violations by regular and certified mail, postage prepaid, return receipt requested, to such person as his/her last known address. Proof of service shall be made at the time of service by a written declaration under penalty of perjury executed by the persons affecting the service, declaring the time and date of service and the manner by which service was made.
4. Extension. Upon written request received prior to the correction date or time, the Health Officer may extend the date set for corrections for good cause. The Health Officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.
5. Supplemental Order to Correct Violation. The Health Officer may at any time add to, rescind in part, or otherwise modify a Notice and Order to Correct Violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations.
6. Enforcement of Order. If, after any order is duly issued by the Health Officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer may:
- a. Call upon the Kitsap County Prosecutor's Office to maintain an action for an injunction to enforce the provisions of this regulation and RCW 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation.

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- b. Pursue any other appropriate remedy at law or equity, including but not limited to, revocation of Food Service Establishment Permits for businesses permitted by the Kitsap Public Health District.

D. Injunction

Where a person to whom a Notice and Order to Correct Violation fails to comply with the Notice and Order to Correct Violation, the Health Officer may call upon the Kitsap County Prosecutor's Office to maintain an action for an injunction to enforce the provisions of this regulation and RCW 70.160.050, to correct a violation, and to assess and recover a civil penalty for that violation.

E. Permit Violation, Suspension, Revocation and Appeal

1. Permit Violation. Any violation of a permit requirement issued pursuant to these regulations shall be a violation of these regulations.
2. Suspension of Food Service Establishment Permit. The Health Officer may suspend any permit to operate a food establishment if violations of this ordinance continue after issuance of an injunction by the Superior Court.
 - a. Permit suspension shall be carried out through the Notice and Order to Correct Violation provisions specified in Section 7, and the suspension shall be effective upon service of the Notice and Order to Correct Violation upon the owner or person in charge. The holder or operator may appeal such suspension as provided in Section 9 of these regulations.
 - b. Permit suspension shall remain in effect until the regulatory authority finds the operation to be in compliance with the requirements of these regulations.
 - c. Any person who's Food Service Establishment Permit has been suspended may at any time make written application for a re-inspection for the purpose of reinstatement of the permit. The application must include a signed statement explaining how the conditions causing the suspension of the permit have been corrected.
 - d. Within two business days following receipt of a written request for a re-inspection, the regulatory authority will make a re-inspection, and reinstate the permit if the person is in compliance with these regulations.
3. Revocation of Permits.
 - a. The Health Officer may revoke a Food Service Establishment Permit if serious and repeated violation(s) of any requirements of these regulations have occurred.

- b. Such permit revocation shall be carried out through the Notice and Order to Correct Violation provisions specified in Section 7, and the revocation shall be effective upon service of the Notice and Order to Correct Violation upon the holder or operator. The holder or operator may appeal such revocation, as provided in Section 9 of these regulations.
- c. A permit may be suspended pending its revocation or a hearing relative to revocation pursuant to the provisions of Section 9 of these regulations.

4. Permit Appeal

- a. Any denial, suspension or revocation of a Food Service Establishment Permit by the Health Officer may be appealed.
- b. The appellant shall be the applicant for a Food Service Establishment who appeals a decision denying, suspending or revoking a Food Service Establishment Permit.
- c. The appeal procedure shall be carried out through the appeals process specified in Section 9.

SECTION 8. REBUTTALS

- A. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that 25 feet is a reasonable minimum distance, as defined in Section 5 above, by making application for a hearing with the Health Officer. A completed "Application for Administrative Meeting or Appeal Hearing" for rebutting the presumptively reasonable distance requirement must be accompanied by all of following:
 - 1. An application fee for Appeal Hearing with Health Officer as established in the most recent Environmental Health Program Service Charges approved by Kitsap Public Health Board.
 - 2. A written description of the proposed reduction in the presumptively reasonable distance requirement as defined in Section 5.
 - 3. A detailed map showing the specific area to be considered for a reduced separation distance along with the location of all entrances, exits, windows that open, and ventilation intakes within 25 feet of the proposed smoking area.
 - 4. A written explanation by the applicant describing why the presumptively reasonable distance of 25 feet cannot be met and why consideration for a reduced separation distance is necessary.

5. A written justification from the applicant describing the clear and convincing evidence they have gathered that demonstrates that given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes or other factors, smoke will not infiltrate into the facility.
 6. A written explanation from the applicant describing how they will monitor the effectiveness of the reduced distance in keeping smoke from infiltrating into the facility, and what action they will take if smoke is determined to be entering the facility at a future time.
- B. The application for reduction in the 25 foot requirement applies only to the area addressed in the application and not to the entire structure or any other area near or around the facility.
 - C. The Health Officer shall administratively make a determination on the application to rebut the presumptively reasonable distance. This decision may be appealed to the Kitsap Public Health Board in accordance with Section 9.B.
 - D. Any approval taken on the application submitted will need to endure a reasonable test of time and if future complaints are received against the facility because of secondhand smoke, further inspections may be warranted and possible modification or revocation of the approval may be required.

SECTION 9. APPEAL

- A. Appeal of Public Health Action – Health Officer Administrative Hearing.

Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation, or enforcement action conducted by the Kitsap Public Health District, may request a hearing before the Health Officer or his or her designee. The appellant shall submit the request in writing, through completion of an “Application for Administrative Meeting or Appeal Hearing” form with the appropriate fee, and shall include the specific statements of the reason why error is assigned to the decision of Health District. Such request shall be presented to the Health Officer within ten (10) business days of the action appealed. Upon receipt of such request together with the hearing fee, the Health Officer shall notify the person of the time, date, and place of such hearing, which shall be set at a mutually convenient time not more than fifteen (15) business days from the date the request was received. Upon completion of the hearing, the Health Officer shall provide a decision in writing to the appellant within fifteen (15) business days from the date of the hearing.

B. Appeal of Administrative Hearing/Decision.

1. Any person aggrieved by the findings or required actions of an administrative hearing, or of an administrative decision by the Health Officer regarding the rebuttal of the presumptively reasonable distance, shall have the right to appeal the matter by requesting a hearing before the Kitsap Public Health Board. Such notice of appeal shall be in writing through completion of an “Application for Administrative Meeting or Appeal Hearing” form and presented, with the appropriate hearing fee as established in the current Health District fee schedule, to the Health Officer within five (5) business days of service of the findings and actions from the administrative hearing. All requests shall contain a description of the action, decision or policy for which the hearing is requested, and the basis on which it is being contested. The appellant and the Health Officer may submit additional information to the Kitsap Public Health Board for review.
2. The notice and order to correct violation shall remain in effect during the appeal. Any person affected by the notice and order to correct violation may make a written request for a stay of the decision to the Health Officer within five (5) business days of the Health Officer’s decision. The Health Officer will grant or deny the request within five (5) business days.
3. Upon receipt of an appeal pursuant to this section together with the hearing fee, the Health Officer shall set a time, date, and place for the requested hearing before the Kitsap Public Health Board Hearings Board and shall give the appellant written notice thereof. The hearing shall be set at a mutually convenient time not more than thirty (30) business days from the date the appeal was received by the Health Officer.

SECTION 10. SEVERABILITY.

Should any paragraph, phrase, sentence or clause of these regulations be declared invalid or unconstitutional for any reason, the remainder of these regulations shall not be affected thereby.

SECTION 11. REPEALER

This ordinance repeals Kitsap County Board of Health Ordinance 2006-02 and replaces it in its entirety.

SECTION 12. EFFECTIVE DATE.

This ordinance shall take effect immediately.