

SECTION 1. AUTHORITY, PURPOSE, AND INTENT

- A. These regulations prohibiting the use of vapor products (“vaping”) in indoor public places are adopted by the Kitsap Public Health Board (Public Health Board) pursuant to, and by the authority of, Chapter 70.05 Revised Code of Washington (RCW) and Engrossed Substitute Senate Bill (ESSB) 6328 to preserve, promote, and improve the public health.

- B. The purpose of these regulations is to protect the health, safety, and welfare of the public by reducing the potential for public exposure to nicotine and other potentially harmful chemicals by restricting the use of vapor products, also known as electronic nicotine delivery systems and e-cigarettes, in indoor public places.

- C. It is expressly the purpose of these 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 benefitted by the terms of these regulations.

- D. Nothing contained in these rules and regulations is intended to create, nor shall be construed to create or form the basis for, any liability on the part of the Public Health Board or the Kitsap Public Health District (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 Health District.

SECTION 2. FINDINGS

The Public Health Board recognizes that vaping, or the use of e-cigarettes and other vapor products, may be less harmful to the user than smoking tobacco. However, there are no peer reviewed studies that prove that vaping is safe for the user, or that second hand vapor product emissions are not a health threat to non-users.

The Public Health Board also recognizes that e-cigarettes may help some people quit using tobacco. However, e-cigarettes and vapor products are not approved by the Federal Food and Drug Administration (FDA) as safe and effective smoking cessation aids, and the long-term health effects from using vapor products or being exposed to vapor product emissions are unknown.

The Public Health Board finds that the lack of vapor product industry standards and certification surrounding vapor product manufacturing, testing, labelling, and inspection likely create highly variable products and byproducts that make health studies and findings even more difficult to obtain at this time.

Nicotine, one of the main chemical components of most e-liquid concoctions, is a highly addictive and toxic chemical. Young adults and children are especially vulnerable to nicotine addiction and its toxic effects. Vapor products have a high appeal to youth, and use of vapor products by youth is increasing rapidly. Therefore, there is strong concern that the lack of regulations prohibiting the use of vapor products in indoor public places sends a mixed message to youth, may renormalize the use of nicotine, and hence increase nicotine addiction in those most vulnerable. Regardless of the source, the inhalation and ingestion of nicotine is not safe and causes ill health effects.

Lastly, while the Public Health Board agrees that consenting adults have the right to choose for themselves what legal activities to engage in, and what legal chemicals to ingest or inhale, the Public Health Board also recognizes that its paramount responsibility is to protect the public health. And since e-cigarette and vapor product use has not been proven safe, and since nicotine is a highly addictive and toxic chemical --- especially for youth --- the Public Health Board is compelled to adopt regulations prohibiting the use of e-cigarettes and vapor products in indoor public places to protect the health of those adults who choose not to expose themselves to vapor product emissions, and to protect the health of youth who may not have the choice to avoid exposure to vapor product emissions.

The adoption of this ordinance prohibiting the use of vapor products in indoor public places will limit exposure to nicotine by youth, furthering both the recent FDA ruling deeming that vapor products, hookahs, and cigars shall be regulated like tobacco products, and Engrossed Substitute Senate Bill (ESSB) 6328 restricting sales to, and possession by, youth.

SECTION 3. ADMINISTRATION

- A. The Health Officer and/or his or her designated representative shall administer and enforce these regulations under the authority of RCW 70.05.070.
- B. The Health Officer is authorized to take other such actions as he or she deems necessary to maintain public health and sanitation and to ~~carry out the purpose of~~ administer and enforce this ordinance under the authority of RCW 70.05.070. Any additional policies or standards deemed necessary by the Health Officer shall be in writing and readily available for public inspection and viewing.
- C. The Public Health Board may charge fees for the administration of this ordinance under the authority of RCW 70.05.060.
- D. The Health Officer may collect fees for the administration of this ordinance under the authority of RCW 70.05.070.

SECTION 4. 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. These regulations prohibit the use of vapor products in indoor public places, except those places licensed by the state of Washington as a vapor product retailer pursuant to ESSB 6328, or those vapor product retailers already in existence as of the effective date of this ordinance that have applied to the state for a license within thirty days of the liquor and cannabis board prescribing the form for an application for a license, are in the process of being so licensed, and whose application has not been denied.
- C. Any person passing by or through a public place while on a public sidewalk, or public right of way, has not intentionally violated these regulations.
- D. This ordinance is not intended to restrict vaping in private facilities which are occasionally open to the public, except upon the occasions when a facility is open to the public.
- E. This ordinance does not preclude or prohibit any property owner from implementing “no vaping” policies on, or within, any property or structures under their control.

SECTION 5. DEFINITIONS

Terms not specifically defined herein shall be construed according to their common dictionary definition.

- A. **Health District:** The Kitsap Public Health District.
- B. **Health Officer:** The Health Officer, or the Health Officer’s representative, of the Kitsap Public Health District.
- C. **Indoor 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 vaping is prohibited. Indoor 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, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating

rinks, casinos, reception areas, places of employment as defined in this ordinance, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. An indoor 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.

- D. **Minor:** Any person under the age defined pursuant to RCW 70.155.010, as currently exists or as hereafter may be amended.
- E. **Open to the public:** Means explicitly or implicitly authorizing or inviting entry to, 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 vaping occurs and the area where vaping occurs is open to the customers of the retail business.
- F. **Place of employment:** Any indoor 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 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 licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.
- G. **Presumptively reasonable distance:** Vaping 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 vaping is prohibited, so as to ensure that vapor product aerosols do not enter the area through entrances, exits, open windows, or other means. The "presumptively reasonable distance" is considered part of an indoor public place or place for the purposes of this ordinance.

H. **Public Health Board:** The Kitsap Public Health Board.

I. **Vape or Vaping:** The use of a vapor product, or the act of inhaling/exhaling the resultant vapor or aerosol from a vapor product.

J. **Vapor product:** Any device, object, or substance used for, or associated with, heating a solution to produce vapor or aerosol intended for inhalation; includes, but is not limited to, electronic cigarettes (or “e-cigarettes”), electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, vape pens, steam stones, electronic juice (or “e-juice”), electronic liquid (or “e-liquid”), batteries, chargers, cables, or similar products or devices, as well as any parts that can be used to build or use such devices. “Vapor product” includes any Electronic Nicotine Delivery System (ENDS) product ~~does not include product that is~~ regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

SECTION 6. VAPING PROHIBITED IN INDOOR PUBLIC PLACES

A. No person may use a vapor product in any indoor public place, unless such place is exempt from these regulations in accordance with Section 4.B. of this ordinance. ~~authorized to allow use of vapor products under state license pursuant to ESSB 6328.~~

B. No person may use a vapor product within the presumptively reasonable distance of an indoor public place, unless such place is exempt from these regulations in accordance with Section 4.B. of this ordinance. ~~authorized to allow use of vapor products under state license pursuant to ESSB 6328.~~

C. Owners, or in the case of leased or rented space the lessee or other person in charge, of an indoor public place, ~~unless such place is authorized to allow use of vapor products under state license pursuant to ESSB 6328,~~ shall prohibit vaping in indoor public places, including within the presumptively reasonable distance as that term is defined in Section 5 of these regulations, unless the place is exempt from these regulations in accordance with Section 4.B. of this ordinance. -

D. Nothing in these regulations shall prevent the owner, lessee, or person in charge, of a private place or area from prohibiting or allowing the use of vapor products within that place or area.

SECTION 7. REQUIRED SIGNAGE

Indoor Public Places Where Vaping is Prohibited: Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under these regulations shall post signs prohibiting the use of vapor products. Signs shall be posted conspicuously at each building entrance. Signs prohibiting the use of vapor products may be combined with signs prohibiting

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Regulations Prohibiting Vaping in Indoor Public Places

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smoking, such as “No Smoking. No Vaping.” or “No Smoking or Vaping Allowed.” or “No Smoking or Vaping Allowed within 25 Feet of Doorway or Entrance.”

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SECTION 8. ADMINISTRATION AND ENFORCEMENT

- A. The Health Officer is authorized to administer and enforce these regulations.
- B. The Health Officer is authorized to adopt additional rules or policies consistent with the provisions of these 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.
- C. Right of Entry and Inspection
 - 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.
 - 3. If consent to enter said building, structure, property, or portion thereof is not provided by the owner, occupier, or other persons having apparent control of the premises, the Health Officer may enter said premises only to the extent permitted by federal and state law.
 - 4. If consent to enter said building, structure, property, or portion thereof is not provided by the owner, occupier, or other persons having apparent control of the premises, the Health Officer shall also have recourse to any other remedies provided by law to secure entry.
- D. 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;

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- 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;
 - 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 the failure to obey the notice may result in the issuance of a notice of a Class 1 civil infraction pursuant to RCW 7.80, and/or the assessment of an administrative remedy.
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/or certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or the address currently on file with Kitsap County for property tax purposes. 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 pursue any other appropriate remedy at law or equity.
- E. As an alternative to the enforcement provisions set out above, the Health Officer may determine that the violation of any provision of these regulations is designated as a Class 1 civil infraction pursuant to RCW 7.80, *Civil Infractions*.

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- F. The Health Officer may issue a notice of civil infraction if she or he has reasonable cause to believe that a person has violated any provision of these regulations, or has not corrected a violation as required by a written Notice and Order to Correct Violation. Civil infractions shall be issued, heard, and determined as described in RCW 7.80 and any applicable court rules.

SECTION 9. REBUTTALS

- A. Owners, operators, managers, employers, or other persons who own or control an indoor public place may seek to rebut the presumption that 25 feet is a reasonable minimum distance, as defined in Section 5, 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 the 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 vaping 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.

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- 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 Public Health Board in accordance with Section ~~4~~10.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 exposure to vapors or aerosols, further inspections may be warranted and possible modification or revocation of the approval may be required.

SECTION 10. 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 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 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 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 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 11. 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 12. REPEALER

Reserved.

SECTION 13. EFFECTIVE DATE.

This ordinance shall take effect immediately.