

ORDINANCE NO. H-08-2020

An ordinance adopting a new Article VIII to the Sanitary Code for Thurston County regarding smoking and vaping in public places and places of employment, amending Article I, sections 12.3, 12.4, 13, 18.2, 19.1, adopting a new Article I, subsection 19.5.4, and amending Article I, Appendix A, section I of the Sanitary Code for Thurston County.

WHEREAS, the Thurston County Board of Health adopts the following findings:

1. Extensive medical and scientific research confirms that secondhand smoke is harmful to individuals who smoke and to non-smoking adults and children, and causes eye, nose and throat irritation, aggravates lung and heart diseases including emphysema, and is linked to various kinds of cancers. The studies confirm there is no risk-free level of secondhand smoke exposure.
2. Chapter 70.160 RCW, Smoking in Public Places, regulates smoking in public places and places of employment, and authorizes local health departments to adopt regulations as required to implement the chapter.
3. As reported by the U.S. Surgeon General and Department of Health and Human Services, vapor products, including electronic cigarettes (e-cigarettes), commonly contain nicotine, a highly addictive drug that negatively impacts the developing brain, and present a substantial risk of nicotine or other substance addiction.
4. Scientific analysis by the United States Food and Drug Administration, the United States Surgeon General, and the National Academies of Sciences, Engineering and Medicine shows the vapor or aerosol emitted by the use of vapor products contains particles of solvents, flavorings, and chemical byproducts produced in the heating process that may result in adverse health consequences from direct or passive exposure, especially in vulnerable populations such as children, pregnant women, and individuals with compromised lung function or cardiovascular conditions.
5. The use of vapor products has not been approved as a smoking cessation aid by the United States Food and Drug Administration.
6. E-liquids consumed in vapor products can contain marijuana or THC concentrates and the use of vapor products in public places and places of employment complicates enforcement of laws prohibiting use of marijuana in public.
7. Thurston County has experienced a significant increase in youth use of e-cigarettes and other vapor products, with 48% of 12<sup>th</sup> graders having tried vaping at some point in their lifetime and 32% of 12<sup>th</sup> graders currently vaping, according to the 2018 Healthy Youth Survey.

8. The 2018 Healthy Youth Survey data shows that 52% of Thurston County 12<sup>th</sup> graders who use vapor products use them for nicotine and 10% for THC (marijuana).
9. Chapter 70.345 RCW regulates the sale, promotion, and use of vapor products, and prohibits vaping in elevators and certain public places where children congregate. RCW 70.345.210 allows political subdivisions to further regulate the use of vapor products in outdoor public places where children congregate, such as schools, playgrounds, and parks, and allows local regulation in indoor public places except where tasting and sampling is allowed in retail outlets licensed by the Washington State Liquor and Cannabis Board.
10. Smoking and vaping have been prohibited in any park, preserve or on any trail owned by Thurston County since August 2018;
11. Current state laws fail to prohibit vaping in many locations where smoking is prohibited, despite the potential harm both may cause to users and to others from secondhand exposure.
12. The lack of regulations prohibiting vaping in public places sends a mixed message to youth, may renormalize the use of nicotine, and may adversely impact the health of both vapor product users and non-users.
13. Smoking and vaping should be prohibited in outdoor public places where children congregate because of the particular public health risks they pose to youth.
14. County-wide regulations that prohibit smoking and vaping in indoor public places, places of employment, and certain outdoor public places where children may congregate will help to protect the health of the community.
15. The Thurston County Board of Health has the authority to enact local rules and regulations as are necessary in order to preserve, promote and improve the public health and to establish fees pursuant to RCW 70.05.060.

NOW, THEREFORE, THE THURSTON COUNTY BOARD OF HEALTH hereby ordains as follows:

SECTION 1. A new Article VIII of the Sanitary Code for Thurston County is hereby adopted as attached hereto and incorporated herein by reference.

SECTION 2. Article I, section 12.3 of the Sanitary Code for Thurston County is amended to read as follows:

**12.3 Civil Infractions.** Violations of the provisions of this Article, Article III, Article IV, Article V, ~~or Article VI,~~ or Article VIII of this Code are designated as civil infractions pursuant to Chapter 7.80 RCW and Section 18 of this Article.

SECTION 3. Article I, section 12.4 of the Sanitary Code for Thurston County is amended to read as follows:

**12.4 Administrative Civil Penalties.** Violations of the provisions of Article III, Article IV, ~~or Article V, or Article VIII~~, with the exception of Section 21 of Article V (Residential Sharps Wastes), may be assessed a civil penalty pursuant to Section 19 of Article I.

SECTION 4. Article I, section 13 of the Sanitary Code for Thurston County is amended to read as follows:

Any person may request a waiver of a specific requirement of this Code in accordance with this section, with the exception of Article IV (Governing Treatment, Dispersal and Disposal of Sewage) and Article VIII (Governing Smoking and Vaping in Public Places and Places of Employment). The waiver request shall be submitted on a form provided by the health officer along with the applicable fee set forth in Article I, Appendix A. A request for a waiver of any provision of Article IV shall be subject to the provisions of Article IV. An application to rebut the presumptively reasonable minimum distance of twenty-five (25) feet for smoking or vaping shall be subject to the provisions of Article VIII.

SECTION 5. Article I, section 18.2 of the Sanitary Code for Thurston County is amended to read as follows:

**18.2 Determination of Civil Infractions.** Violations of the provisions of Articles I, III, IV, V, ~~and VI, and VIII~~ of this Sanitary Code are designated as civil infractions pursuant to Chapter 7.80 RCW. Civil infractions shall be heard and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules.

SECTION 6. Article I, section 19.1 of the Sanitary Code for Thurston County is amended to read as follows:

**19.1 Issuance.** When the health officer determines that a violation of Article III, IV, ~~or Article V, or Article VIII~~, with the exception of Article V, Section 21 ("Residential Sharps Waste"), has occurred, the health officer may issue a Notice of Civil Penalty to the person responsible for the violation.

SECTION 7. Article I, subsection 19.5.4 of the Sanitary Code for Thurston County is adopted to read as follows:

**19.5.4 Civil Penalties for violations of Article VIII shall be assessed pursuant to the schedule listed in Article VIII, Section 7.2.2.**

SECTION 8. Article I, Appendix A, section I of the Sanitary Code for Thurston County is amended to read as follows:

I. Article I – Administrative Hearings and Reviews

- A. Administrative Review of Waivers or Variances [1] . . . . . \$390.00
- B. Administrative Hearings for Waivers and Variances When Requested by Applicant . . . . . \$1,025.00
- C. Administrative Hearings and Appeals Convened Under Article I, Section 8.1 . . . . . \$1,025.00
- D. Appeals to the Board of Health . . . . . \$1,025.00
- E. Administrative Review of Application to Rebut the 25-Foot Setback for Smoking or Vaping . . . . . \$390 + \$ 225/hour after 1.5 hours

SECTION 9. SEVERABILITY. If any provision of this Ordinance or its application to any person or circumstance is, for any reason, declared invalid, illegal or unconstitutional in whole or in part, the remainder of this ordinance or the application of the provision to other persons or circumstances shall not be affected.


SECTION 10. EFFECTIVE DATE. This ordinance shall take effect on January 1, 2021.

Adopted: October 13, 2020

ATTEST:

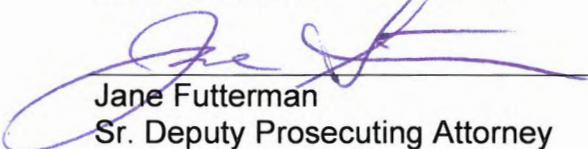
  
Clerk of the Board

BOARD OF HEALTH  
Thurston County, Washington

  
Tye Menser, Chair

APPROVED AS TO FORM:

JON TUNHEIM  
PROSECUTING ATTORNEY

  
Jane Futterman  
Sr. Deputy Prosecuting Attorney

  
John Hutchings, Vice-chair

  
Gary Edwards, Commissioner

## Article VIII

### RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH GOVERNING SMOKING AND VAPING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

#### Section 1 Authority and Purpose.

- 1.1 The purpose of this Article is to protect and promote public health by reducing the potential for public exposure to nicotine, harmful and potentially harmful chemicals, and other drugs.
- 1.2 This Article is adopted pursuant to the authority of RCW 70.05.060, and in accordance with chapter 70.160 RCW and chapter 70.345 RCW to prohibit smoking and vaping in indoor public places, places of employment, and certain youth-oriented outdoor public places throughout Thurston County.
- 1.3 Nothing contained in this Article is intended to be nor shall be construed to create or form the basis for any liability on the part of the Thurston County or its elected officials, 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 Thurston County.

**Section 2 Adoption by Reference of Chapter 70.160 RCW.** Chapter 70.160 RCW, Smoking in Public Places, is adopted and incorporated in this Article by this reference, except where the provisions of this Article are more stringent. In the event of conflict between this Article and the provisions of chapter 70.160 RCW, this Article shall apply unless the provision of chapter 70.160 RCW is more stringent, in which case the provisions of chapter 70.160 RCW shall govern.

**Section 3 Definitions and Local Supplemental Definitions.** The following definitions are adopted and shall apply to this Article. These definitions are supplemental to the definitions set forth in Article I and Chapter 70.160 RCW.

- 3.1 “**Employee**” means any individual who is employed by an employer in return for the payment of wages, benefits, profits, or other compensation, and includes such an individual during any time that the employee volunteers their services to the employer for no monetary compensation.
- 3.2 “**Employer**” means any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity of any kind that pays another person monetary wages, profit, pays through a contract,

or provides any other benefit in consideration for such other person's providing services for the employer.

"Employer" shall also mean the owner(s), shareholders or member(s) of a sole proprietorship, corporation or limited liability company, association, nonprofit organization, or other business entity.

- 3.3 **"Indoor public place"** means 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 or a public entity, and regardless of whether a fee is charged for admission, and includes 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 or vaping is prohibited.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, taxis, buses, for hire conveyances, 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, clubs, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five (75) percent of the sleeping quarters within a hotel or motel that are rented to guests.

"Indoor Public Place" also includes any public or private place that is open to the public regardless of whether dues, a cover charge or a fee is charged or there are restrictions for the privilege of admission, such as an age requirement.

"Indoor Public Place" also includes any place used by a membership association or club when non-member guests are present or permitted.

- 3.4 **"Place of employment"** means any area under the control of a public or private employer where employees are required to work, congregate, or 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, as set forth in Section 5 of this Article, of twenty-five (25) feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking or vaping is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas.

"Place of employment" also includes any outdoor venue or workspace that is adjacent to or adjoined with an indoor place of employment where employees are required to pass through during employment, including but not limited to food or beverage service areas such as on decks or patios.

- 3.5 **“Playground”** means any improved area open to the public that is designed, equipped, and set aside for play which is not intended for use as an athletic playing field or athletic court, including but not limited to any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.
- 3.6 **“Retail outlet”** means a place of business from which vapor products are sold to customers, but does not include any business licensed or endorsed for the sale of marijuana by the state of Washington and/or the Washington State Liquor and Cannabis Board.
- 3.7 **“Smoke”** or **“smoking”** means the carrying, use, or smoking of any kind of lighted, combustible, smoldering, or burning cigarette, pipe, cigar, hookah or other lighted smoking equipment including but not limited to tobacco, flavored tobacco products such as shisha, and marijuana.
- 3.8 **“Tasting”** means to try or taste a vapor product in a retail outlet where entry is restricted to persons twenty-one years of age and older, as specified by RCW 70.345.100.
- 3.9 **“THC”** means delta-9 tetrahydrocannabinol or combined delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid from any part of the plant *Cannabis*.
- 3.10 **“Vape”** or **“vaping”** means the use of a vapor product, or the act of inhaling/exhaling the vapor or aerosol from a vapor product.
- 3.11 **“Vapor product”** means any noncombustible product intended for use to inhale substances that may contain nicotine, THC, or other solution or substance and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, used to produce vapor or aerosol from a solution or other substance intended for inhalation.
- “Vapor product” includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, steam stones, or similar products or devices, as well as any parts that can be used to build such products or devices.
- “Vapor product” does not include any drug, device, or combination product that has been approved by the United States Food and Drug Administration for legal sales for use as a smoking cessation product or other medical purposes, and is marketed and sold for such approved purpose.
- 3.12 **“Youth-oriented outdoor public place”** means the following areas where children congregate that are located outside of buildings and that are open to the public, regardless of whether dues, a cover charge or a

fee is charged or there are restrictions for the privilege of admission, such as an age requirement:

- a playground
- real property under the control of a child care facility
- real property under the control of a public or private school that is a kindergarten, elementary, or secondary school

“Youth-oriented outdoor public place” also includes any such place used by a membership association or club when non-member guests are present or permitted.

#### **Section 4 Smoking and Vaping Prohibited in Public Places, Places of Employment, and Youth-Oriented Outdoor Public Places.**

- 4.1 Smoking and vaping are prohibited in indoor public places and places of employment except for the purpose of tastings within the premises of a licensed vapor product retail outlet that restricts entry to its premises to persons twenty-one years or older, pursuant to RCW 70.345.100.
- 4.2 Smoking and vaping are prohibited in the following youth-oriented outdoor public places:
  - a playground
  - real property under the control of a child care facility
  - real property under the control of a public or private school that is a kindergarten, elementary, or secondary school
- 4.3 It is a violation of this article for any owner, operator, manager, employer, or any other person who owns, controls, or is in charge of a public place or place of employment to allow or permit smoking or vaping in an area where smoking or vaping is prohibited by this article.
- 4.4 Presumption. Whenever an individual is found to be smoking or vaping within a public place or place of employment when an owner, operator, manager, employer, or other person in charge is present on the premises, there shall be a rebuttable presumption that the owner, operator, manager, employer, or any other person who owns, controls, or is in charge of the premises, allowed or permitted smoking or vaping.
- 4.5 This article is not intended to restrict smoking or vaping in a private indoor place which is only occasionally open to the public and is not a place of employment, except upon the occasions when a facility is open to the public.



## **Section 5 Vaping and Smoking Prohibited Within Twenty-five Feet of Public Places or Places of Employment.**

Vaping and smoking are 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 and vaping are prohibited so as to ensure that smoke or vapor 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 of employment for the purposes of this article. Any person passing by or through a sidewalk or public right-of-way that is not within a youth-oriented outdoor public place has not intentionally violated this chapter.

- 5.1 **Rebuttal Application.** 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 twenty-five (25) feet is a reasonable minimum distance by submitting a complete application on the form provided by the Health Officer along with the applicable fee set forth in Article I, Appendix A and any additional documents and information required by 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 or smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
- 5.2 **Decision.** The Health Officer will review all the information submitted and any additional information available that is relevant to the request, and may approve or deny a rebuttal application, or a portion of the request, and may set conditions, restrictions, and time limits as part of any decision. The Health Officer may only approve a rebuttal application if clear and convincing evidence establishes that the rebuttal request meets the standards of this Article and adequately protects public health and safety. The decision shall be in writing and issued to the applicant by mailing, delivering, or emailing it to the address provided on the application form.
- 5.3 **Appeal.** Any person aggrieved by a decision denying a rebuttal application, in whole or in part, may appeal the decision to the hearing officer pursuant to Article I, Section 8.

**Section 6 Required Signs.** Owners, or in the case of leased or rented space the lessee or other person in charge, of an indoor public place or place of employment shall post signs prohibiting smoking and vaping. Signs shall be posted conspicuously at each building entrance. The owner or other person in charge of a youth-oriented outdoor public place where smoking or vaping is prohibited under Section 4 of this Article shall

post signs in appropriate prominent locations stating that smoking and vaping are prohibited. Signs prohibiting vaping may be combined with signs prohibiting smoking, such as “No Smoking. No Vaping.” or “No Smoking or Vaping Allowed.”, and for exterior buildings, “No Smoking or Vaping Allowed within 25 Feet of Doorway or Entrance.”

**Section 7 Enforcement.**

7.1 The Health Officer is authorized to administer and enforce this Article in accordance with Article I, provided that until July 1, 2021, all violations shall be addressed by providing warnings and information regarding actions needed to comply with the provisions of this Article. Use of other enforcement of this Article will not commence until July 1, 2021.

7.2 When an owner, operator, manager, employer, or any person who owns, controls, or is in charge of a public place or place of employment violates a provision of this Article, the Health Officer may initiate enforcement actions, or any other legal proceeding authorized by law, including but not limited to any one of the following:

7.2.1 **Civil Infraction.** The violation of any provision of this Article is designated as a Class 1 civil infraction pursuant to chapter 7.80 RCW. A notice of infraction shall be issued in accordance with Article I.

7.2.2 **Civil Penalties.** The Health Officer may impose civil penalties for violations of this Article or for refusal to comply with lawful orders written pursuant to this Article. Such penalties shall be issued and be imposed in accordance with the provisions contained in Article I of the Thurston County Sanitary Code. Civil penalties for violations of this Article shall be assessed pursuant to the following schedule:

- (a) First day of each violation . . . . . \$100.00
- (b) Second day of each violation . . . . \$200.00
- (c) Third day of each violation . . . . . \$300.00
- (d) Fourth day of each violation . . . . . \$400.00
- (e) Each additional day beyond . . . . . \$500.00 per day  
four days

7.2.3 Other civil or criminal action may be initiated as set forth in Article I.

**Section 8 Appeals.** Any person aggrieved by an order or decision made by the Health Officer or an administrative official may appeal the action in accordance with Article I of the Sanitary Code for Thurston County.

**Section 9 Fees.**

Fees shall be charged in accordance with the fee schedule adopted in Article I, Appendix A.

**Section 10 References to State Law.** All reference to state statues are those in effect as referenced above or as hereafter amended.

**Section 11 Severability.** If any provision of this Article or its application to any person or circumstance is held invalid, the remainder of this Article or the application of the provision to other persons or circumstances shall not be affected.