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**ENVIRONMENTAL HEALTH CODE**

**Chapter 9**

**Restrictions on the Use of Vapor Products**

Adopted by Tacoma-Pierce County Board of Health on July 6, 2016, Revised June 1, 2022

## SECTION 1: Title

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

## SECTION 2: Authority and Purpose

- A. Tacoma-Pierce County Board of Health (Board of Health) enacts the regulations 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 Chapter 70.345 RCW.
- 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 persons 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 continue to increase in popularity, especially in our youth. Recent policies have made strides in combating these increases such as raising the age of tobacco use to 21 years of age. These are great achievements, although vapor product use among our youth continues to be alarmingly high.

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

The inhalation of nicotine causes 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.

E-cigarette or vaping use-associated lung injury (EVALI) is a severe lung illness identified in 2019. The United States Centers for Disease Control and Prevention has identified Vitamin E acetate as the primary, but not the only cause for EVALI. There are many other substances and product sources in vaping materials that continue to be investigated.

Access to vapor products is particularly problematic with respect to teenagers. The U.S. Surgeon General declared vaping an epidemic among our youth in 2018. In 2018, Washington State Healthy Youth Data, found that 8 percent of Pierce County 12th graders said they had smoked cigarettes in the past 30 days. But nearly 30 percent said they had vaped—an increase from 18 percent in 2016

E-cigarettes continue to be the most commonly used tobacco product among high school and middle school students. Youth perceive them to be less harmful than using traditional tobacco. Youth who would never try traditional cigarettes report trying vapor products.

The Board of Health also recognizes the potential harm of vapor product emissions. 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 strengthening 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**

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

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4 A. "Employee" means any individual who is employed by an employer in return for the  
5 payment of direct or indirect monetary wages or profit, any individual who volunteers  
6 services to an employer for no monetary compensation, or any individual who performs  
7 work or renders services, for any period, at the direction of an owner, lessee or other  
8 person in charge of a place that is subject to the provisions of this Chapter.

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10 B. "Employer" means any person, sole proprietorship, partnership, corporation, association,  
11 nonprofit organization, or other entity that pays another person direct or indirect monetary  
12 wages or profit in consideration for such other person's providing services on the premises  
13 of the employer, or who otherwise directs another person to perform work or render  
14 services on the premises of the employer. "Employer" shall also mean the owner(s) of a  
15 sole proprietorship, partnership, corporation, association, nonprofit organization, or other  
16 business entity.

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18 C. "Indoor public place" means the interior portion of any building or vehicle used by and  
19 open to the public, regardless if the building or vehicle is owned in whole or in part by  
20 private persons or entities, the state of Washington, or other public entity, and regardless  
21 of whether a fee is charged for admission, and includes a presumptively reasonable  
22 minimum distance of twenty-five feet from entrances, exits, windows that open and  
23 ventilation intakes that serve an enclosed area where vaping is prohibited. A public place  
24 does not include a private residence unless the private residence is used to provide  
25 permitted childcare, foster care, adult care, or other similar social service care on the  
26 premises.

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

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

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42 D. "Open to the public" means explicitly or implicitly authorizing or inviting entry or use by the  
43 public. Factors relevant to the determination of whether a portion of a building or an  
44 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 childcare, 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" means any approved or unapproved product, including:

1. Any combustible or heated product that may contain nicotine and 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. 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.

- 1           3. Does not include any product that meets the definition of marijuana, useable  
2           marijuana, marijuana concentrates, marijuana-infused products, cigarette or  
3           tobacco products.  
4           4. Includes unapproved nicotine delivery product including products containing or  
5           delivering nicotine intended or expected for human consumption or any part of such  
6           a product, that is not a cigarette, as defined by RCW 82.24.010, or a tobacco  
7           product, as defined by RCW 82.26.010, and that has not been approved or  
8           otherwise certified for sale by the United States Food and Drug Administration as a  
9           tobacco use cessation products, or for other medical purposes.

#### 10 **SECTION 5: Use of Vapor Products in Public Places and Places of Employment -When Prohibited**

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- 12       A. No person may use vapor products in an indoor public place or in any place of employment;  
13       Provided, however the use of vapor products is permitted for tasting and sampling in indoor  
14       areas of retailer outlets.  
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16       B. No person may use vapor products in any outdoor public place where children congregate.  
17       This includes, but is not limited to, real property that is under the control of childcare  
18       facilities or schools, playgrounds, parks, beaches, athletic fields, and stadiums.  
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#### 21 **SECTION 6: Owners, Lessees to Post Signs Prohibiting Vaping**

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23       Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place  
24       regulated under this Chapter shall prohibit the vaping of products in public places and places of  
25       employment and shall post signs prohibiting the use of vapor products as appropriate under this  
26       Chapter. Signs shall be posted conspicuously at each building entrance. Retail outlets regulated  
27       under this Chapter shall post signs in accordance with the requirements of RCW 70.345.070.  
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#### 29 **SECTION 7: Application to Modify Presumptively Reasonable Minimum Distance**

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- 31       A. Owners, operators, managers, employers or other persons who own or control an indoor  
32       public place or place of employment may apply for a Variance or Waiver, pursuant to  
33       Chapter 1, Section 14 of the Environmental Health Code, to rebut the presumption that  
34       25 feet is a reasonable minimum distance. The presumption will be rebutted if the  
35       applicant can show by clear and convincing evidence that, given the unique circumstances  
36       presented by the location of entrances, exits, windows that open, ventilation intakes or  
37       other factors, v a p o r will not infiltrate or reach the entrances, exits, open windows or  
38       ventilation intakes or enter into the public place or place of employment and, therefore,  
39       the public health and safety will be adequately protected by a lesser distance.  
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41       B. All persons seeking to modify the presumptively reasonable 25-foot distance shall use the  
42       application form provided by the Health Department. An application shall not be complete  
43       unless accompanied by the applicable fee in the most recent Environmental Health  
44       Program Fee Schedule approved by the Board of Health.  
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## **SECTION 8: 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 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 a violation of any section of this Chapter.
  1. A monetary penalty of up to \$200 for the first violation within any 3-year period;
  2. A monetary penalty of up to \$600 for the second violation within any 3-year period;
  3. A monetary penalty of up to \$1,000 for the third violation within any 3-year period; and
  4. A monetary penalty of up to \$2,000 for the fourth and any subsequent violations within any 3-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 9: 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 8, above.

## **SECTION 10: 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 11: 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.

**SECTION12: 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.