

SNOHOMISH HEALTH DISTRICT SANITARY CODE

Chapter 14

Restrictions on the Use, Sale, and Availability of Vapor Products

Section 14.1 Title, Authority, Purpose, and Applicability

- A. Title. The full title of this Chapter is “Restrictions on the Use, Sale, and Availability of Vapor Products in Snohomish County” which is codified as Chapter 14 of the Snohomish Health District Sanitary Code and it shall be known as the VAPOR PRODUCT CODE of the Snohomish Health District Board of Health.
- B. Authority. The Board of Health of the Snohomish Health District adopts this Chapter pursuant to and by the authority of Chapter 70.05 RCW to preserve, promote, and improve the public health.
- C. Purpose. This Chapter provides for the protection of the health, safety, and welfare of the public by reducing the potential for public exposure to nicotine, other drugs, and potentially harmful chemicals and by restricting sales of vapor products to reduce access and use by minors. This Chapter establishes additional requirements for permitting, assessment of costs, and enforcement of the same.

It is expressly the purpose of this Chapter 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 this Chapter.

It is the specific intent of this Chapter to place the obligation of complying with its requirements upon the individuals and owners of each establishment within its scope. No provision of nor term used in these rules and regulations is intended to impose any duty whatsoever upon Snohomish Health District nor any of its officers or employees.

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 Snohomish Health District or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to the 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 on the part of Snohomish Health District by its officers, employees, or agents.

- D. Applicability. This Chapter applies to the prohibition of use of vapor products in public places and places of employment with very limited exceptions, the prohibition of use of vapor products by minors, and the permit requirements of persons or businesses in Snohomish County that sell or distribute vapor products.

Except to the limited extent of Sections 14.4 and 14.6, this Chapter does not apply to any person or business that is licensed or endorsed for sales of recreational marijuana or medical marijuana by the state of Washington and/or the Washington State Liquor and Cannabis Board.

Section 14.2 Findings

Vapor products, including e-cigarettes, vape pens, electronic drug delivery devices, and other devices, heat a solution typically containing nicotine, flavorings, solvents, and other chemicals into an aerosol that users inhale. The availability and use of vapor products has dramatically increased in recent years, nationally and locally.

Vapor products are unregulated by the federal government, and unregulated by the State of Washington with the exception of a prohibition on sales to minors. Commerce in vapor products is not subject to the same legal requirements that are applicable to commerce in combustible and smokeless tobacco products, including requirements designed to reduce access by underage youth.

Vapor products containing nicotine are commonly marketed as a preferred alternative to smoking tobacco despite many unanswered questions about product safety, efficacy for harm reduction and cessation, and overall impact on public health.

Vapor products have a high appeal to youth and use is rapidly increasing among teens and young adults, including among those who have never smoked cigarettes or used other tobacco products. Inhalation of nicotine can cause adverse effects on adolescent brain development, lead to addiction to nicotine, and potentially lead to increased smoking.

Nicotine is a highly addictive drug and nicotine exposure, firsthand or passively, can adversely impact maternal and fetal health during pregnancy, and adversely impact adolescent brain development. Concentrated nicotine solutions used in vapor products can cause poisonings or death if ingested or absorbed through the skin, especially in children. Analyses have found disparities between the nicotine content claimed on product packaging and measured nicotine levels, including detection of nicotine in products labelled nicotine-free.

The chemical ingredients of solutions used in vapor products are not standardized or regulated, and neither manufacturers nor retailers are required to disclose chemical content. Consumers have no way of determining exactly what substances they are inhaling or what the health consequences of such inhalation might be. Scientific analysis, including by the United States Food and Drug Administration, shows vapor products release fine and ultrafine particles of solvents, flavorings, and chemical byproducts produced in the heating process that can include carcinogens, heavy metals, and other hazardous chemicals. Adverse health consequences may result from direct or passive exposure to this unknown mixture of potentially harmful chemicals, especially in vulnerable populations including children, pregnant women, and individuals with compromised lung function.

Vapor products are commonly used to inhale marijuana or THC concentrates, and may be used to inhale illegal drugs. Enforcement of state law prohibiting use of marijuana in public places and laws against use of illegal drugs is complicated by the use of vapor products in public places because property owners and others cannot discern the substance being inhaled.

Pursuant to Chapter 70.05 RCW, local jurisdictions are not only responsible to enforce the public health statutes of the state but are also charged with the duty and empowered to enact such local rules and regulations as are necessary in order to prepare, promote and improve the public health within its jurisdiction.

Section 14.3 Definitions

“Chapter” refers to a chapter of the Snohomish Health District Sanitary Code.

“District” refers to the Snohomish Health District.

“Employee” shall mean any individual who is employed by an employer in return for the payment of direct or indirect monetary wages, benefit, 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 explicit or implicit direction of an owner, shareholder, member, lessee or other person in charge of a place that is subject to the provisions of this ordinance.

“Employer” shall mean any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity of any kind that pays another person direct or indirect monetary wages, profit or provides any other benefit in consideration for such other person’s providing services on the premises of the employer. “Employer” shall also mean the owner(s), shareholders or member(s) respectively of a sole proprietorship, corporation or Limited Liability Corporation, association, nonprofit organization, or other business entity.

“Minor” means any person under the age defined pursuant to RCW 26.28.080, as currently exists or as hereafter may be amended, for selling or giving a vapor product to a minor.

“Permit holder” means a person in possession of a permit pursuant to Section 14.12 of this Chapter whether an individual, corporation, unincorporated association, proprietorship, firm partnership, joint venture, joint stock association, or other entity of business of any kind. In the case of any kind of business entity, “permit holder” is inclusive of all individuals who hold an ownership interest in that entity whether specifically named on the permit or not, i.e. inclusive of any shareholder, member, or partner.

“Person” means any natural person, individual, corporation, unincorporated association, proprietorship, firm partnership, joint venture, joint stock association, or other entity of business of any kind.

"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, as set forth in Section 14.6 of this Chapter, of twenty-five (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; and other common areas. “Place of employment” also means an outdoor venue or workspace that is adjacent to or enjoined with a business enterprise or work environment where employees are required to pass through during the course of employment; including but not limited to food/drink service areas such as on decks or outdoor areas. A private residence or home-based business, unless used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

“Public place” shall mean 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 includes a presumptively reasonable minimum distance, as set forth in Section 14.6 of this Chapter, of twenty-five (25) 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, 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, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, clubs, 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. "Public Place" also means any public or private place that is open to the general public regardless of whether dues, cover charges or a fee is charged or there are restrictions such as an age requirement for the privilege of admission, and includes any place used by a membership association or club at which non-member guests are present or permitted. This Chapter 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. A public place does not include a private residence unless the private residence is used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises.

"Sample" means a product distributed to members of the public at no or nominal cost for product promotion purposes.

"Sampling" means to try or taste a product.

"Seller" means any person who sells, provides samples, promotes, or distributes with an economic or business purpose, or offers to exchange for any form of consideration, a vapor product.

"Vaping" means the use of a vapor product, or inhaling of vapor or aerosol from a vapor product.

"Vapor product" means any: (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or (c) solution or substance intended for use in such a device, including, but not limited to, concentrated nicotine. "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 approved for sale by the United States food and drug administration that is marketed and sold for such approved purpose."

"Vapor product retail outlet" means a seller of vapor products at a physical location within Snohomish County. Such seller is required to hold a valid permit from the Snohomish Health District. "Vapor product retail outlet" does not include any business that is licensed or endorsed for the sale of recreational or medical marijuana by the state of Washington and/or the Washington State Liquor and Cannabis Board.

“Vapor product retail outlet exclusively selling vapor products” means a vapor product retail outlet that exclusively sells vapor products, and does not sell any other products notwithstanding vapor product paraphernalia.

Section 14.4 Vaping Prohibited in Public Places or Places of Employment

No person may use a vapor product in a public place or in any place of employment.

Section 14.5 Required Signage

- A. Owners, or in the case of a leased or rented space the lessee or other person in charge, or a place regulated under this Chapter shall prohibit the use of vapor products in public places and places of employment and shall post signs prohibiting the use of vapor products. Signs must be posted conspicuously at each building entrance. Signs prohibiting vaping may be combined with signs prohibiting smoking, such as “No Smoking. No Vaping” or “No Smoking or Vaping.”
- B. In addition to the requirements of Section 14.5 A above, except for the limited extent of the exception in Section 14.5 C, each seller of vapor products must display a sign concerning the prohibition of vapor product sales to minors close to the entrance of the retail outlet. The sign must:
 - 1. Be posted so that it is clearly visible to anyone purchasing vapor products from the seller;
 - 2. Be in contrasting colors with at least twenty (20) point type; and
 - 3. Read: THE SALE OF VAPOR PRODUCTS TO PERSONS, OR FOR PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY LAW. NICOTINE IS TOXIC. KEEP AWAY FROM CHILDREN.
- C. A vapor product retail outlet exclusively selling vapor products with a valid Category 2 permit pursuant to Section 14.12 of this Chapter is not required to display the sign required under Section 14.5 A above at its permitted premises.

Section 14.6 Vaping Prohibited Within Twenty-five Feet of Public Places or Places of Employment - Application to Modify Presumptively Reasonable Minimum Distance

Use of vapor products 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 use of vapor products is prohibited so as to ensure that vapor does not enter the area through entrances, exits, open windows, or other means. 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 making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, vapor will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.

Section 14.7 Limited Exception for Sampling of Vapor Products at Specific Permitted Retail Outlets

- A. The Snohomish Health District is authorized to grant a limited exception to the requirement in Section 14.4 of this Chapter for sampling vapor products within vapor product retail outlets exclusively selling vapor products that meet all requirements defined in this Chapter and are duly permitted according to Section 14.12 of this Chapter.
- B. Nothing in this section or chapter may be construed to authorize or approve smoking or the use of vapor products in lounges or other areas that meet the definition of public places or places of employment.

Section 14.8 Age Verification Requirement

Each seller shall verify by means of photographic identification listed in RCW 70.155.090 that no person purchasing vapor products is a minor, except that no such verification is required for any purchaser over twenty-six (26) years old.

Section 14.9 Sale or Distribution to Minors Prohibited

- A. No person shall sell, give, or furnish, or cause or allow to be sold, given or furnished, vapor products to a minor.
- B. It shall not be a violation of this section if the person making the sale, gift or otherwise furnishing the product reasonably relied on any of the officially issued identifications listed in RCW 70.155.090 showing that the purchaser or recipient was not a minor.

Section 14.10 Possession by Minors Prohibited

No minor shall purchase, possess, or obtain a vapor product. This provision does not apply if a minor, with parental authorization, is participating in a controlled purchase as part of an enforcement activity of the Snohomish Health District or any other authorized municipal entity, the county, the state or any department or agency thereof.

Section 14.11 Restrictions on Sale, Availability, Coupons, Discounts, and Samples

- A. No person may offer a vapor product for sale in an open, unsecured display that is accessible to the public without the intervention of a store employee, except in a retail outlet that has a valid Category 2 permit pursuant to Section 14.12 of this Chapter where minors are excluded at all times.
- B. No person shall sell or permit to be sold vapor products through any device that mechanically dispenses vapor products unless the device is located fully within premises from which minors are lawfully prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise.
- C. No person may give, or cause or allow to be given, a vapor product sample to any person at no cost or at nominal cost, except to the limited extent allowed at vapor product retail outlets that have a valid Category 2 permit pursuant to Section 14.12 of this Chapter.

- D. No person may give or distribute vapor products to a person by a coupon if such coupon is redeemed in any manner that does not require an in-person transaction in a permitted vapor product retail outlet with age verification pursuant to Section 14.8 of this Chapter.

Section 14.12 Permit Required for Vapor Product Retail Outlets

- A. Any person selling vapor products at a vapor product retail outlet in Snohomish County must have a permit issued by Snohomish Health District in accordance with this Chapter and Chapter 1.4 of the Snohomish Health District Sanitary Code. Businesses licensed or endorsed to sell recreational marijuana or medical marijuana by the state of Washington and/or the Washington State Liquor and Cannabis Board are exempt from this section.
- B. A separate permit is required for each vapor product retail outlet location, may not be resold, transferred or assigned by the permit holder, and is not valid for use by any other person or at any other location. A permit holder may not sell, offer, or distribute vapor products in any form from temporary locations or moveable vehicles.
- C. Each vapor product retail outlet must exhibit its permit in the same manner as required for the display of a business license.
- D. Permit Categories
 - 1. Category 1 – Sales at Vapor Product Retail Outlets. Category 1 permits may be issued to retail outlets meeting all requirements defined in Sections 14.5, 14.6, 14.8, 14.9, and 14.11 of this Chapter.
 - 2. Category 2 – Sales with Sampling at Vapor Product Retail Outlets Exclusively Selling Vapor Products. Category 2 permits allowing a limited exception for sampling under Section 14.7 of this Chapter may be issued to vapor product retail outlets meeting all the requirements of Category 1 and the following additional requirements:
 - (a) The retail outlet exclusively sells only vapor products and does not sell any other products notwithstanding vapor product paraphernalia;
 - (b) Entrance to the premises of the permitted vapor product retail outlet is restricted at all times to persons of legal age to purchase a vapor product, and minors are excluded;
 - (c) The samples are owned by the permit holder and provided at no cost by the permit holder solely for the limited and immediate purpose of testing a vapor solution or device;
 - (d) Sampling is offered only within the premises of the permitted vapor product retail outlet and the samples are not removed from the premises by the customer;
 - (e) The permit holder does not allow the consumption or use of any vapor product purchased on the premises or brought into the premises by any person;
 - (f) The permit holder and its employees shall not consume or otherwise use vapor products on the premises of the permitted vapor product retail outlet, except that one employee at a time may conduct a single sampling to demonstrate the use of a vapor product to a customer.
 - (g) Seating for customers is limited to no more than five (5) seats at a vapor product retail outlet which must be at a sales counter.
 - (h) The permit holder does not allow customers to remain on the premises except for the lawful purpose for which the vapor product retail outlet holds a permit, and does not facilitate prolonged, continuous presence of customers

on its premises by equipping the vapor product retail outlet with entertainment designed to encourage lounging within the retail outlet.

- (i) There is no entry, admission, membership or similar charge or fee associated with access to the premises or sampling.
- (j) The permit holder provides evidence that the premises of the vapor product retail outlet have an independent ventilation system by providing a signed letter, on appropriate letterhead, from a heating, ventilation, air-conditioning and refrigeration (HVAC/R) contractor holding a valid registration with the department of labor and industries pursuant to RCW 18.27 certifying that the premises of the vapor product retail outlet:
 - i. are located in a separate building with a ventilation system exhaust in compliance with the presumptive reasonable minimum distance from entrances, exits, windows that open, and ventilation intakes of any neighboring building according to Section 14.6 of this Chapter; or,
 - ii. if located in a multi-tenant building, have a separate ventilation system or are otherwise ventilated so that vapor from samplings is not drawn or released into any adjacent area of the multi-tenant building where use of vapor products is prohibited, and the ventilation system exhaust is in compliance with the presumptive reasonable minimum distance from entrances, exits, windows that open, and ventilation intakes of any neighboring building according to Section 14.6 of this Chapter.

Vapor product retail outlets selling vapor products in Snohomish County prior to the effective date of this Chapter have one year after being issued a valid Category 2 permit to comply with the above ventilation requirement, providing they meet all other Category 2 permit requirements.

- E. This permit does not exempt any permit holder from any other license, permit, or other regulations which may be required by any other municipal entity, the County and/or the State of Washington.

Section 14.13 Permit Application and Review Process

- A. Retail outlets selling vapor products in Snohomish County prior to the effective date of this Chapter must submit a permit application to Snohomish Health District no later than sixty (60) days after the effective date of this Chapter. By one hundred and fifty (150) days after the effective date of this Chapter, any such retail outlet without an approved permit may not sell any vapor product in Snohomish County.
- B. After the effective date of this Chapter, retailers must receive an approved permit from the District prior to selling any vapor products in Snohomish County.
- C. A District fee as set in the Snohomish Health District's Fee Schedule must accompany each person's vapor product retail outlet permit application.
- D. The District will respond to the applicant for permit within thirty (30) days of receipt of a fully completed application.
- E. Permit issuances and renewals are subject to the District's authority under Chapter 1 of the Snohomish Health District Sanitary Code and this Chapter, as well as the rules promulgated by the District.

- F. The District may refuse to issue a permit under this Chapter if the District has reasonable cause to believe the applicant has willfully withheld information requested for the purpose of determining eligibility of the applicant to receive a permit, or if the District has reasonable cause to believe the information submitted in the permit application is false or misleading or is not made in good faith.
- G. Each permit issued under this Chapter expires one year after the issue date. The permit will be continued annually if the permit holder has paid the required annual renewal permit fee and is otherwise compliant with all applicable provisions of this Chapter.
- H. Where a permit has been suspended or revoked, no vapor products may be sold during the period of suspension or revocation at that retail outlet.
- I. **Prior Revocation Applicant.** A permit holder whose permit has been previously revoked may make application for purposes of obtaining a new permit but such application fee shall be twice the fee for initial permit application and may be subject to additional conditions imposed on the permit due to a prior revocation. A permit holder who has been the subject or two or more revocations shall not be entitled to receive a new permit any earlier than one year from the date of the last revocation.
- J. **Appeal.** Any applicant for a permit who has been denied or whose permit has been conditioned or any permit holder whose permit has been suspended, modified, conditioned or revoked by the District may submit a written appeal in accordance with Chapter 1, Section 1.9.1 of the Snohomish Health District Sanitary Code.

Section 14.14 Enforcement Procedures

- A. The Snohomish Health District is authorized to enforce the restrictions and requirements of this Chapter; assess all costs of enforcement against the person or entity who is in non-compliance in accordance with Chapter 1.3 of the Snohomish Health District Sanitary Code; and otherwise pursue compliance with this Chapter.
- B. The Health Officer or designee may enforce the requirements and restrictions of this Chapter by one or a combination of the following by the issuance of a written order:
 - 1. requiring an informal administrative conference
 - 2. prohibiting certain conduct or directing certain conduct
 - 3. imposing a civil fine of up to \$100 for each violation. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.
 - 4. denying, suspending, modifying, or revoking a permit to operate as required under this Chapter.
 - 5. imposing additional conditions or measures on an existing or subsequent permit.The Health Officer or designee is authorized to pursue civil fines and costs including attorney fees by commencement of civil action in the name of the Snohomish Health District independent of and/or as a means of enforcing written orders of the Health Officer referenced above.
- C. **Authority to Inspect.** The Snohomish Health District shall have full power and authority to enter any place of business where vapor products are sold for purposes of enforcing the provisions of this Chapter. In the case of Category 1 permits, the District has the right to check identification for age verification of anyone it observes purchasing a vapor product, or

require that the retailer perform an age verification in the inspector's presence. In the case of Category 2 permits, the District has the right to check identification of anyone in or leaving the vapor product retail outlet for age verification, or require that the retailer perform an age verification in the inspector's presence of anyone in or leaving the vapor product retail outlet.

- D. Reinspection. The Health Officer or designee is authorized to charge a fee for any reinspection of a place regulated under these regulations when an initial inspection results in the finding of a violation of these regulations. The reinspection fee is in addition to any civil fines, costs allowed by Chapter 1.3 of the Snohomish Health District Sanitary Code or otherwise applicable to that permit holder.

Section 14.15 Fee Schedules

Fees for permits and other services provided for through the enactment of the provisions of this Chapter shall be as set forth in the Snohomish Health District's Fee Schedule. Such fees shall be set initially by the District's Board of Health, and shall be subject to revision commensurate with the cost of delivering the service, and the changing nature and complexity of the subject regulation. All fees collected under the provisions of this Chapter shall be payable to the Snohomish Health District.

Section 14.16 Severability

If any section, sentence, clause or phrase of this ordinance or any code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 14.17 Effective Date

This Ordinance shall take effect and be in force thirty (30) days after its passage.