

ORDINANCE NO.

**AN ORDINANCE ADOPTING A NEW CHAPTER
TO PROVIDE FOR THE PROHIBITION OF SMOKING AND VAPING IN PUBLIC PLACES**

WHEREAS, extensive medical and scientific research confirms that secondhand smoke is harmful to individuals who smoke and to non-smoking adults and children causing eye, nose and throat irritation, aggravating lung and heart diseases including emphysema and is linked to various kinds of cancers; and

WHEREAS, the Washington State Legislature has recognized the public health impact of secondhand smoke and enacted RCW 70.160, the Washington Clean Indoor Air Act, and the People of the Washington State have revised RCW 70.160 through Initiative 901 to further protect the public from hazardous environmental smoke, which passed by voter approval and became effective in December 2005 as the Smoking in Public Places law; and

WHEREAS, RCW 70.160 empowers local health departments to enforce the duties of owners or persons in control of public places and places of employment to ensure establishments are in compliance with the Smoking in Public Places law; and

WHEREAS, RCW 70.160 authorized local health departments to adopt regulations as required to implement the chapter; and

WHEREAS, 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 addition; and

WHEREAS, e-liquids consumed in vapor products can contain marijuana or THC concentrates and may also be used for the purpose of illegal drug use; and

WHEREAS, the use of vapor products in public places and places of employment complicates enforcement of laws prohibiting use of marijuana in public places and places of employment; and

WHEREAS, Skagit County has experienced a significant increase in youth usage of e-cigarettes and other vapor products; and

WHEREAS, local data shows that 18% of Skagit County twelfth grade students reported past e-cigarette use; and

WHEREAS, Skagit County twelfth graders reported using nicotine in their e-cigarettes 53% of the time, while 21% of twelfth graders reported using THC in their e-cigarettes; and

WHEREAS, the use of vapor products is not harmless and vapor products have not been approved for use as smoking cessation aids by the United States Food and Drug Administration; and

WHEREAS, scientific analysis, including 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; and

WHEREAS, 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; and

WHEREAS, the Washington State Legislature enacted ESSB 6328 in 2016, establishing RCW 70.345 Vapor Products which regulates the sales and promotion of vapor products, prohibits vaping in certain public places where children congregate, and allows political subdivisions to further regulate the use of vapor products in indoor public places and outdoor public places where children congregate, including, but not limited to, real property under the control of child care facilities or schools, playgrounds, parks, beaches, athletic fields, and stadiums; and

WHEREAS, the majority of public feedback received in Skagit County supports regulation of e-cigarettes and vaping; and

WHEREAS, the quality of individual citizen's health, access to clean air, and benefit to public health and safety are a priority; and

WHEREAS, reduced access and exposure to smoking and vaping for children and youth promotes a healthier environment; and

WHEREAS Skagit 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 pursuant to RCW 70.05.060, and

WHEREAS, a presentation calling for public hearing was held on March 12, 2019; and

WHEREAS, Notice of Public Hearing was published in the Skagit Valley Herald on March 14 and 21, 2019, and published on the Skagit County website beginning March 12, 2019, and

WHEREAS, a staff report, draft ordinance and supporting documents were published on the Skagit County website beginning March 12, 2019, and

WHEREAS, a public hearing was held on April 9, 2019 at 3:00 pm to take public comment;

NOW, THEREFORE, BE IT ORDAINED that the Skagit County Board of Health finds that prohibiting smoking and vaping in public places will serve the public interest and further public health.

NOW, THEREFORE, BE IT FURTHER ORDAINED the Board adopts the chapter to be codified in Title 12 Skagit County Code as set forth in Exhibit A (attached), effective 90 (ninety) days from execution of this ordinance.

WITNESS our hands and the official seal of our office this 23th day of April, 2019.

**BOARD OF HEALTH
SKAGIT COUNTY, WASHINGTON**



Lisa Janicki, Chair



Ron Wesen, Commissioner



Kenneth A. Dahlstedt, Commissioner

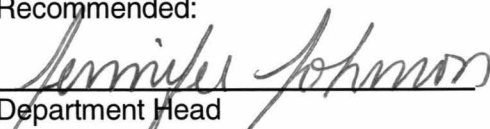
Attest:



Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:



Department Head

County Administrator

Approved as to form:



Civil Deputy Prosecuting Attorney

SKAGIT COUNTY CODE

Chapter 51 in Title 12

Smoking and Vaping in Public Places

(with technical adjustments given passage of Tobacco 21 law (EHB 1074-SL))

Chapter 51

Smoking and Vaping in Public Places

Sections:

12.51.010	Authority, Applicability, and Purpose
12.51.020	Adoption by Reference of RCW 70.160
12.51.030	Definitions and Local Supplemental Definitions
12.51.040	Smoking and Vaping Prohibited in Public Places, Places of Employment, and Outdoor Public Places where Children Congregate
12.51.050	Vaping Prohibited Within Twenty-five Feet of Public Places or Places of Employment
12.51.060	Required Signage
12.51.070	Tastings
12.51.080	Enforcement Procedures
12.51.090	Requests for Reconsideration and Appeals
12.51.100	Severability
12.51.110	References to State Law
12.51.120	Effective Date

12.51.010 Authority, Applicability, and Purpose.

- (1) The statutory authority for the adoption of this Chapter is provided in RCW 70.160, Smoking in Public Places, RCW 70.345 Vapor Products, and the authority of RCW 70.05.060 to preserve, promote, and improve the public health.
- (2) These regulations apply to the prohibition of smoking and the prohibition of vaping in indoor public places, places of employment, and certain outdoor public places.
- (3) These regulations supplement but do not replace the regulations adopted by the United States Food and Drug Administration and 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.
- (4) The purpose of this Chapter is to protect and promote the health, safety, and welfare of the public by reducing the potential for public exposure to nicotine, harmful and potentially harmful chemicals, and other drugs. This regulation is not intended to restrict smoking or vaping in private facilities which are occasionally open to the public, except upon the occasions when a facility is open to the public.
- (5) This regulation does not preclude or prohibit any property owner from implementing “no smoking” and/or “no vaping” policies that are more restrictive than this ordinance, on, or within, any property or structures under their control.
- (6) Nothing contained in this regulation is intended to be nor shall be construed to create or form the

basis for, any liability on the part of the Skagit County Public Health Department 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 Department.

12.51.020 Adoption by Reference of RCW 70.160.

RCW 70.160 known as Smoking in Public Places is adopted and incorporated in this Chapter by this reference.

12.51.030 Definitions and Local Supplemental Definitions.

Pursuant to the authority provided by RCW 70.160 and for the sake of clarity in the application of RCW 70.160, the following local supplemental definitions relative to certain terminology found in RCW 70.160 are adopted and the following specific definitions shall apply to smoking and vaping in public places in Skagit County:

- (1) "Chapter" means a chapter in Skagit County Code.
- (2) "County" means Skagit County.
- (3) "Employee" means 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 Chapter.
- (4) "Employer" means 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.
- (5) "Health Officer" means the Health Officer of Skagit County, or the Health Officer's designee.
- (6) "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, the state of Washington, or other public entity, and includes a presumptively reasonable minimum distance, as set forth in Section 12.51.050 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 (75) percent of the sleeping quarters within a hotel or motel that are rented to guests. "Indoor 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.

- (7) "Outdoor public place" means a social space that is open and accessible to the public, but located outside of buildings.
- (8) "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 12.51.050 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.
- (9) "Retail outlet" means a place of business in Skagit County from which vapor products are sold to customers, but does not include any business 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.
- (10) "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, or marijuana.
- (11) "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 and after January 1, 2020 entry is restricted to persons twenty-one years of age and older.
- (12) "Vape" or "Vaping" means the use of a vapor product, or the act of inhaling/exhaling the vapor or aerosol from a vapor product.
- (13) "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 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.

12.51.040 Smoking and Vaping Prohibited in Public Places, Places of Employment, and Outdoor Public Places where Children Congregate.

(1) No person may smoke or vape in an indoor public place or in any place of employment except for the purpose of tastings within the premises of a vapor product retail outlet pursuant to Washington State Law and Section 12.51.070 of this Chapter.

(2) No person may smoke or vape in any outdoor public place that is real property under the control of a child care facility or school, and outdoor public places where children congregate, including, but not limited to: playgrounds, parks, beaches, athletic field, and stadiums.

12.51.050 Vaping Prohibited Within Twenty-five Feet of Public Places or Places of Employment.

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 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.

12.51.060 Required Signage.

In addition to requirements for signs prohibiting smoking as adopted by reference from RCW 70.160, 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 vaping. Signs shall be posted conspicuously at each building entrance. The owner or other person in charge of an outdoor public place where smoking and vaping is prohibited under 12.51.040 of this Chapter shall post signs in appropriate prominent

locations stating that smoking and vaping is 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."

12.51.070 Tastings.

No retail outlet may offer a tasting of vapor products unless all of the following conditions are met.

- A. The retail outlet is licensed by the state of Washington as a vapor product retailer pursuant to RCW 70.345 Vapor Products.
- B. Pursuant to RCW 70.345 Vapor Products, the retail outlet restricts entry to its premises to persons eighteen years or older, and after January 1, 2020 entry is restricted to persons twenty-one years or older, as specified by Washington State Law, products are tasted only within the retail outlet's premises and are not removed from within the premises by the customer, and a disposable mouthpiece tip or a disposable device is used if the customer is tasting from a vapor device owned and maintained by the retailer.
- C. Except for the limited and immediate purpose of tasting a vapor product solution or testing a device, the retail outlet does not allow vaping within its premises, including vapor products purchased for personal use from the retail outlet or brought into the retail outlet premises by any person, including employees.

12.51.080 Enforcement Procedures.

- (1) The Health Officer is authorized to administer and enforce this Chapter. Enforcement may include, but is not limited to, issuance of notices that a person is in violation of a requirement under this Chapter and issuance of enforcement orders.
- (2) The Health Officer or his/her duly authorized representative shall have the authority to seek entry and inspect any building, structure, property or portion thereof, at reasonable times for the purpose of determining compliance with and enforcing the provisions of this Chapter.
- (3) Violations. All violations of the requirements and restrictions in this Chapter are hereby declared to be detrimental to the public health, safety and welfare and are hereby declared to be public nuisances.
 - (a) Each violation of this Chapter 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.
 - (b) A notice of violation or order shall be served on the person or persons responsible for the violation either personally or by mailing via certified mail, return receipt requested, to the last known address of the violator. Service by certified mail is effective upon receipt or five (5) days after the date of mailing, whichever occurs first.

- (d) The Health Officer may at any time add to, rescind in part, or otherwise modify a notice of violation or order. The supplemental notice or order shall be governed by the same procedures applicable to notices and order.
 - (e) If a person or entity fails to remediate a violation by the remediation date in an order, the Health Officer may request the Prosecuting Attorney to bring a civil action against a violator.
- (4) Noncompliance. The failure to comply with the requirements and restrictions in this Chapter, including the failure to comply with a Health Officer order issued under this Chapter, and further including but not limited to the list of violations detailed below, is a continuing offense and shall be punishable by a civil penalty that may be assessed against a person or persons for each violation, and all costs incurred for enforcement of the violation. Civil penalties, when imposed, and all costs incurred for enforcement shall be in accordance with the "Schedule of Charges: Skagit County Public Health Department, Civil Penalties and Fines."

12.51.090 Requests for reconsideration and appeals.

(1) Requests for Reconsideration.

- (a) Persons named in a notice of violation, aggrieved by an enforcement order, or other Health Officer order may request reconsideration of the action by filing a request for reconsideration, on a form provided by Public Health and accompanied by the required filing fee, to Public Health within ten (10) business days of service of the action.
- (b) Requests for reconsideration shall identify alleged errors in the notice of violation, order, or other action and be supported by evidence, including statements and photographs as applicable, and by a written explanation including citation to applicable law and regulations. The Health Officer may rule on the request for reconsideration without a hearing; however, an aggrieved person may request a meeting with the Health Officer, which may be granted at the Health Officer's discretion.
- (c) The Health Officer shall issue a written decision within thirty (30) days of receipt of the request for reconsideration unless additional time is justified by good cause. Service of the decision shall be effective upon personal service on the person(s) requesting the reconsideration, or five (5) days after mailing the decision, via certified mail return receipt requested, to the address provided in the request for reconsideration.

(2) Appeals of Health Officer's Decision on a Request for Reconsideration.

- (a) Persons aggrieved by the Health Officer's decision on a request for reconsideration may appeal by filing a notice of appeal, on a form provided by Public Health, accompanied by the

required filing fee, to Public Health within ten (10) business days of service of the Health Officer's decision.

(b) The request for appeal must be served to the Skagit County Public Health Department with a copy to the Skagit County Board of Health.

(i) A fee in the amount listed in the most current Skagit County Public Health Department Schedule of Charges is due and payable to the Skagit County Public Health Department when an appeal of the Health Officer's reconsideration decision is made to the Board of Health.

(c) The Board of Health will hear the appeal within sixty (60) days of receipt of the application to appeal the Health Officer's decision.

(3) The filing of a request for hearing or appeal pursuant to this Section shall operate as a stay from a fine or civil penalty. There shall be no stay from a Health Officer order for immediate compliance with this Chapter when a public health threat exists.

12.51.100 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this Chapter be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this regulation.

12.51.110 References to State Law.

Any and all reference to state statutes are in effect as referenced above or as hereinafter amended by state authority.

12.51.120 Effective Date.

This Ordinance shall take effect and be in force ninety (90) days after its passage.