

DISCUSSION DRAFT ONLY
Kitsap Public Health Board Ordinance XXXX-XX
Regulations Restricting the Use, Sale, and Availability of Vapor Products

SECTION 1. AUTHORITY, PURPOSE, AND INTENT

- A. These regulations pertaining to restrictions on the use, sale, and availability of vapor products are adopted by the Kitsap Public Health Board pursuant to, and by the authority of, Chapter 70.05 Revised Code of Washington (RCW) to preserve, promote, and improve the public health.
- B. The purpose of these regulations is to protect the health, safety, and welfare of the public by reducing the potential for public exposure to nicotine, other drugs, and potentially harmful chemicals, and by restricting sales of, access to, and use of vapor products by minors. These regulations also establish requirements for permitting, assessment of costs, and enforcement of the same.
- C. It is expressly the purpose of these regulations to provide for, and promote the health of, the general public and not to create or otherwise establish or designate any particular class or group of persons who will, or should, be especially protected or benefitted by the terms of these regulations.
- D. Nothing contained in these rules and regulations is intended to be, nor shall be construed to create or form the basis for any liability on the part of the Kitsap Public Health Board or the Kitsap Public Health District, or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of the Kitsap Public Health District.

SECTION 2. FINDINGS

- A. Vapor products are devices, objects, and substances used to, or associated with, heating a chemical solution to produce vapor or aerosol intended for inhalation. Vapor products include, but are not limited to, electronic cigarettes (i.e., e-cigarettes), vaporizers, vape pens, electronic hookahs, electronic drug delivery devices, electronic nicotine delivery systems, flavored vapor solutions or “e-juices” or “e-liquids”, and other items used to heat and aerosolize liquid solutions so that they may be easily inhaled. Vapor products do not include and drug, device, or combination product approved for sale by the United States Food and Drug Administration (i.e., FDA) that is marketed and sold for such approved purpose.
- B. Unlike tobacco and tobacco products, vapor products are not currently regulated by the federal government, and are unregulated by the State of Washington with the exception of a prohibition on sales to minors (RCW 26.28.080). Vapor products are not approved by the FDA as a safe and effective smoking cessation aids, and short and long term health effects of using vapor products are not well understood or documented.

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- C. Some e-juices or e-liquids have been tested and shown to contain nicotine, propylene glycol, glycerin, diacetyl, acetylpropionyl, formaldehyde, acetaldehyde, benzene, cadmium, isoprene, lead, nickel, nitrosonornicotine, toluene, volatile organic compounds, ultra-fine particles, flavorings, water, and/or other chemicals. These chemicals are also present in the secondhand aerosol exhaled by people who use vapor products. The e-juice solutions created by mixing these chemicals are not standardized or regulated, and manufacturers and retailers are not required to disclose chemical content. The net effects of mixing, heating, vaporizing, and inhaling e-juice chemical mixtures is unknown. The long-term effects of secondhand exposure to these vaporized chemicals is also unknown.
- D. Nicotine is a known neurotoxin and highly addictive, especially for youth. Firsthand or secondhand exposure to nicotine 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. Testing has shown that the actual nicotine concentrations of e-juice products do not match the levels claimed on the packaging, and that nicotine has been found in e-juice products that were labelled as nicotine-free.
- E. Propylene glycol causes eye, throat, and airway irritation, and long term exposure may result in children developing asthma. Diacetyl is known to cause lymphocytic bronchiolitis, or “popcorn lung”, a debilitating and progressively worsening disease that causes cough and shortness of breath. Acetylpropionyl was found by the National Institute for Occupational Safety and Health to cause lung and brain damage in rats. Formaldehyde is commonly used as an industrial fungicide, germicide, disinfectant, and preservative, and is a known carcinogen in humans. Exposure to ultra-fine particles may exacerbate respiratory ailments like asthma, and constrict arteries which could trigger a heart attack.
- F. Nicotine is a poison that is especially toxic in liquid form. Liquid nicotine e-cigarette refills pose a particular risk to children. Just a few drops of e-juice absorbed by the skin or swallowed can send a child to the emergency room. Ingesting as little as one-third ounce of e-juice, which is less than the amount of liquid in an individually wrapped coffee creamer container, may be fatal to children.
- G. The lack of federal or state laws prohibiting the use of vapor products in public places, like the prohibitions on tobacco, means that people currently can legally vape in places where it is illegal to smoke, unless the property or business owner implements their own anti-vaping rules. This lack of consistency between tobacco and vapor product regulations is confusing for the public and sends a mixed message to youth.
- H. Vapor products have a high appeal to youth and vapor product use is rapidly increasing among teens and young adults, including those who have never smoked cigarettes or used other tobacco products. According to the National Youth Tobacco Survey, in 2011, 1 in 20 high school students reported ever using e-cigarettes, and 1 in 50 reported using an e-cigarette in the past 30 days. In the 2014 survey, rates increased to 1 in 4 high school students

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reporting ever using an e-cigarette, and more than 1 in 8 has used an e-cigarette in the past 30 days. Especially concerning is that students who had never smoked a cigarette, but had used e-cigarettes, were twice as likely to begin smoking conventional cigarettes as those not using e-cigarettes.

- I. In Kitsap County, e-cigarette use in the past 30 days among high school students tripled between 2011 and 2014, to about 1 in 4 students.
- J. As noted in a September 2013 letter from National Association of Attorneys General to the Food and Drug Administration, e-liquid, or e-juice, comes in a variety of enticing flavors, such as cherry, chocolate, gummy bear, and bubble gum, many of which appeal to children. According to a June 17, 2014, article by Brady Dennis in the Washington Post, approximately 7,764 flavors of e-liquid are available through e-cigarette websites.
- K. Vapor products are also commonly used to inhale marijuana, tetrahydrocannabinol (or THC, the effective chemical in marijuana), or other drugs (legal or illegal). Enforcement of state law prohibiting the 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 vaped. A recent study of high school students published in the journal of *Pediatrics* found that the practice of using vapor products, like e-cigarettes, to vaporize marijuana was common.
- L. As reported by Americans for Nonsmokers' Rights, the World Health Organization recommends that vapor products not be used indoors, especially in smoke-free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws.
- M. The National Institute for Occupational Safety and Health recommends that employers "establish and maintain smoke-free workplaces that protect those in workplaces from involuntary, secondhand exposures to tobacco smoke and airborne emissions from e-cigarettes and other electronic nicotine delivery systems."
- N. The American Industrial Hygiene Association recommends that vapor products be included in smoke-free laws "because e-cigarettes are a potential source of pollutants, their use in the indoor environment should be restricted, consistent with current smoking bans, until and unless research documents that they will not significantly increase the risk of adverse health effects to room occupants."
- O. The American Public Health Association adopted a resolution, "Supporting Regulation of Electronic Cigarettes," that outlines seven action steps including "States and municipalities [should] enact and enforce laws...prohibiting the use of e-cigarettes in all enclosed areas of public access and places of employment. These standards should be incorporated into existing clean indoor air laws."

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- P. The Kitsap Public Health Board recognizes the health risks of nicotine exposure via firsthand or secondhand smoke, as well as the potential for health risks associated with the many other components of liquid nicotine formulations and the aerosols generated by heating, inhaling, and exhaling e-juice mixtures. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit the use of vapor products, or “vaping”, in public places and places of employment.

SECTION 3. APPLICABILITY

- A. These regulations shall apply to all persons and in all territory within the boundaries of Kitsap County, except actions by persons on lands under the jurisdiction of the Federal Government or recognized Native American Nations and Tribes.
- B. These regulations prohibit the use of vapor products in public places and places of employment with very limited exceptions, prohibit the use of vapor products by minors, and require annual operating permits and periodic inspections of persons or businesses that sell or distribute vapor products in Kitsap County.
- C. Any person passing by or through a public place while on a public sidewalk, or public right of way, has not intentionally violated these regulations.
- D. This ordinance is not intended to restrict vaping in private facilities which are occasionally open to the public, except upon the occasions when the facility is open to the public.

SECTION 4. DEFINITIONS

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

- A. **Employee:** Any individual who is employed by an employer in return for the payment of direct or indirect monetary wages 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 direction of an owner, lessee or other person in charge of a place that is subject to the provisions of this ordinance.
- B. **Employer:** Any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity that pays another person direct or indirect monetary wages or profit in consideration for such other person’s providing services on the premises of the employer, or who otherwise directs another person to perform work or render services on the premises of the employer. “Employer” shall also mean the owner(s) of a sole proprietorship, partnership, corporation, association, nonprofit organization, or other business entity.

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- C. **Health Officer:** The Health Officer, or the Health Officer’s representative, of the Kitsap Public Health District.
- D. **Independent ventilation system:** A mechanical ventilation system for a building, or part of a building, that is not shared in any way with another building or part of the same building and that is permitted and approved by a local building official.
- E. **Minor:** Any person under the age defined pursuant to RCW 26.28.080, as currently exists or as hereafter may be amended.
- F. **Open to the public:** Means explicitly or implicitly authorizing or inviting entry or use by the public. Factors relevant to the determination of whether a portion of a building other than a private residence is "open to the public" include, but are not limited to:
1. Whether the owner, lessee or person in charge of a portion of a building permits or invites entry to the portion of the building by individuals other than employees who perform work or persons who meet selective, restrictive and limited criteria for entry;
 2. Whether the owner, lessee or person in charge of a portion of a building directs, authorizes or otherwise engages in advertising or promotion to the public to encourage occupancy or use of the portion of the building;
 3. Whether the portion of the building, or any area adjacent thereto, features signage indicating that the portion of the building is open; or
 4. Whether the owner, lessee or person in charge of a portion of a building also owns, operates or leases a retail business that is open to the public, the retail business is in the same building where vaping occurs and the area where vaping occurs is open to the customers of the retail business.
- G. **Permit holder:** A person in possession of a permit pursuant to **Section** of these regulations 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.
- H. **Place of employment:** 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 (25 feet) from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where vaping is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; outdoor beer and wine gardens; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

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- I. **Presumptively reasonable distance:** Vaping is prohibited within a presumptively reasonable minimum distance of twenty-five (25) feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where vaping is prohibited so as to ensure that smoke does not enter the area through entrances, exits, open windows, or other means.
- J. **Public place:** That portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where vaping is prohibited. Public places include, but are not limited to: schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, 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 unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.
- K. **Sample:** A product distributed to members of the public at no cost for product promotion purposes.
- L. **Sampling:** To try, use, taste, or inhale a product wholly supplied by a vapor product retail outlet and through devices wholly supplied by a vapor product retail outlet.
- M. **Seller:** A person, or persons, who sell or allow sampling of vapor products in accordance with these regulations.
- N. **Vape or Vaping:** The use of a vapor product, or the act of inhaling/exhaling the resultant vapor or aerosol from a vapor product.
- O. **Vapor product:** Any device, object, or substance used to, or associated with, heating a solution to produce vapor or aerosol intended for inhalation; includes, but is not limited to, electronic cigarettes (or “e-cigarettes”), electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, vape pens, steam stones, electronic juice (or “e-juice”), electronic liquid (or “e-liquid”), batteries, chargers, cables, or similar products or devices, as well as any parts that can be used to build or use such devices. “Vapor product” 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 purposes.

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- P. **Vapor product retail outlet:** A seller of vapor products at a physical location within Kitsap County. Such seller is required to hold a valid permit from the Kitsap Public Health District. Does not include any business that is licensed for the sale of recreational or medical marijuana by the state of Washington and/or the Washington State Liquor and Cannabis Board.
- Q. **Vapor product retail outlet exclusively selling vapor products:** A vapor product retail outlet that exclusively sells vapor products, and does not sell any other products notwithstanding vapor product paraphernalia.

SECTION 5. VAPING PROHIBITED IN PUBLIC PLACES OR PLACES OF EMPLOYMENT

- A. No person may use a vapor product in a public place or any place of employment.
- B. No person may use a vapor product within the presumptively reasonable distance of a public place or place of employment.
- C. Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under this ordinance shall prohibit vaping in public places and places of employment, including within the presumptively reasonable distance as that term is defined in Section 4 of these regulations.
- D. Nothing in these regulations shall prevent the owner, or person in charge, of a private place from prohibiting the use of vapor products within that place.

SECTION 6. REQUIRED SIGNAGE

- A. Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under these regulations shall post signs prohibiting the use of vapor products. Signs shall be posted conspicuously at each building entrance. Signs prohibiting the use of vapor products may be combined with signs prohibiting smoking, such as “No Smoking. No Vaping.” or “No Smoking or Vaping Allowed.”
- B. In addition to the signage requirements of Section 6.A., above, except for the limited extent of the exception in Section 6.C., below, each vapor product retail outlet or seller of vapor products shall display a sign prohibiting vapor product sales or sampling to minors. The sign shall:
1. Be posted so that it is clearly visible to anyone purchasing or sampling vapor products from the seller;
 2. Be in contrasting colors with at least twenty (20) point type; and

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3. Contain “THE SALE OR SAMPLING OF VAPOR PRODUCTS TO PERSONS, OR FOR PERSONS, UNDER AGE 18 IS STRICTLY PROHIBITED BY LAW. NICOTINE IS TOXIC. KEEP ALL VAPOR PRODUCTS AWAY FROM CHILDREN.”

C. A vapor product retail outlet exclusively selling vapor products with a valid Category 2 permit pursuant to Section 11.E. of these regulations is not required to display the sign required under Section 6.A., above, at its permitted premises.

SECTION 7. LIMITED EXCEPTION FOR SAMPLING OF VAPOR PRODUCTS AT SPECIFIC PERMITTED RETAIL OUTLETS

A. The Health Officer is authorized to grant a limited exception to the requirement in Section 5 of these regulations for sampling vapor products within vapor product retail outlets exclusively selling vapor products that meet all requirements of these regulations and are duly permitted according to Section 11.E.

B. Nothing in this section or these regulations may be construed to authorize, approve, or allow smoking or the use of vapor products in lounges or other areas that meet the definition of public places or places of employment.

SECTION 8. AGE VERIFICATION REQUIREMENT – SALE OR DISTRIBUTION TO MINORS PROHIBITED

A. Each seller shall verify by means of photographic identification in the same manner as required in RCW 70.155.090 so that no person purchasing or sampling vapor products is a minor.

B. No person shall sell, give, or furnish, or cause or allow to be sold, given, or furnished, vapor products to a minor.

C. 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 9. POSSESSION BY MINORS PROHIBITED

A. No minor shall purchase, possess, or obtain a vapor product.

B. A minor with parental authorization to participate in a vapor product purchase or vapor product regulations compliance check, as part of an enforcement activity of the Health Officer or any other authorized municipal entity, the county, the state, or any department or agency thereof, is not subject to the requirements of this section.

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SECTION 10. RESTRICTIONS ON SALE, AVAILABILITY, COUPONS, DISCOUNTS, AND SAMPLES

- A. No person shall 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 11.E. of these regulations 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 shall give, or cause or allow to be given, a vapor product or sample to any person at no cost, or nominal cost, except to the limited extent allowed at vapor product retail outlets that have a Category 2 permit pursuant to Section 11.E. of these regulations.
- D. No person shall give or distribute vapor products to any person by coupon unless such coupon can only be redeemed through an in-person transaction in an approved vapor product retail outlet with age verification in accordance with Section 8 of these regulations.

SECTION 11. VAPOR PRODUCT RETAIL OUTLETS --- PERMIT REQUIRED

- A. Any person selling vapor products in Kitsap County shall only do so at a vapor product retail outlet and shall have a valid permit issued by the Health Officer in accordance with these regulations. Businesses licensed or endorsed to sell recreational marijuana or medical marijuana by the state of Washington and/or Washington State Liquor and Cannabis Board are exempt from these regulations.
- B. A separate permit is required for each vapor product retail outlet location, shall 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. Permits shall be valid for one year at a calendar cycle determined by the Health Officer, and shall be renewed annually. The Health Officer may, at his/her discretion, prorate the fee for an initial permit. Fees are non-refundable.
- D. Each vapor product retail outlet must display its permit in the same manner as required for display of a business license.
- E. All vapor product retail outlets shall be permitted under one of the following categories:

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1. Category 1 - Sales Only at Vapor Product Retail Outlets. Category 1 permits may be issued to vapor product retail outlets that demonstrate compliance with the requirements of Sections 5, 6, 8, and 10 of these regulations.
2. Category 2 – Sales with Limited Sampling at Vapor Product Outlets Exclusively Selling Vapor Products. Category 2 permits allowing a limited exception for sampling under Section 7 of these regulations may be issued to each vapor product retail outlet that demonstrates compliance with all of the requirements of Category 1 and the following additional requirements:
 - a. The vapor product retail outlet exclusively sells only vapor products and does not sell any other products;
 - b. Entrance to the premises of the vapor product retail outlet is restricted at all times to persons of legal age to purchase vapor products 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 product within the permitted vapor product retail outlet;
 - d. The permit holder shall not allow samples to be removed from the premises;
 - e. The permit holder shall not allow the consumption or use of any vapor product purchased at the vapor product retail outlet or vapor products brought into the premises by any person;
 - f. The permit holder and employees of the vapor product retail outlet shall not use vapor products within the permitted premises and shall at all times comply with Section 5 of these regulations;
 - g. Seating for customers shall be limited to no more than five (5) seats within a vapor product retail outlet, and all customer seats shall be located at a sales counter;
 - h. The permit holder shall not allow customers or non-employees to remain on the premises except for the lawful purchase or limited sampling of vapor products as allowed under these regulations. The permit holder shall 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. The permit holder shall not charge any type of entry, admission, membership, or any other similar type of fee to access the premises or conduct sampling;
 - j. The permit holder provides evidence that the premises of the vapor product retail outlet has 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 (or should this be from a building official?) certifying that the premises of the vapor product retail outlet:
 1. Is 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

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- neighboring building according to Section 4.E. of these regulations;
OR
2. Is located in a multi-tenant building with a separate ventilation system from other tenant spaces in the building that will prevent vapors and aerosols from sampling from being drawn into, or discharged into, any other area of the building and 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 4.E. of these regulations. Such multi-tenant buildings shall not share attic space or utilize drop ceilings that may allow vapors and aerosols to pass into adjacent tenant spaces in a manner other than through the ventilation system.
 - k. Vapor product retail outlets selling vapor products in Kitsap County prior to the effective date of these regulations shall have one (1) year after being issued a valid Category 2 permit to comply with the ventilation requirements in Section 11.E.2.j. of these regulations, providing that the retail outlet meets all other Category 2 permit requirements.
- F. As a condition of approval for a vapor product retail outlet permit, the permit holder is required to be in compliance with all other permits, licenses, or other regulations which may be required by the Kitsap Public Health District, any other municipal entity, Kitsap County, and/or the State of Washington.

SECTION 12. PERMIT APPLICATION AND REVIEW PROCEDURES – NEW AND ANNUAL RENEWAL PERMITS

- A. All retail outlets that intend to sell vapor products shall make application to the Health Officer through forms or systems determined by the Health Officer.
- B. All permit applications shall include the applicable fees as established in the current fee schedule adopted by the Kitsap Public Health Board in accordance with RCW 70.05.060(7).
- C. Retail outlets selling vapor products in Kitsap County prior to the effective date of these regulations shall submit a permit application to the Health Officer no later than sixty (60) days after the effective date of these regulations. Any retail outlet selling vapor products in Kitsap County prior to the effective date of these regulations that does not have an approved permit from the Health Officer within 150 days after the effective date of these regulations shall no longer sell any vapor product in Kitsap County.
- D. After the effective date of these regulations, all retailers shall obtain an approved permit from the Health Officer prior to selling any vapor product in Kitsap County, and shall renew the permit annually.
- E. The Health Officer shall respond to permit applications within thirty (30) days of receipt of a fully completed application.

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- F. The Health Officer shall only approve permit applications or annual permit renewals for vapor product retail outlets that are in compliance with these regulations. The Health Officer may inspect vapor product retail outlets to determine compliance with these regulations in accordance with Section 13 of these regulations.
- G. The Health Officer may refuse, deny, or revoke a permit under these regulations if he/she has reasonable cause to believe that the applicant has willfully withheld information requested for determining eligibility of the applicant to receive or renew a permit, or if the Health Officer has reasonable cause to believe the information submitted in the permit application is false or misleading or not made in good faith, or for noncompliance with these regulations.

SECTION 13. ADMINISTRATION AND ENFORCEMENT

- A. The Health Officer is authorized to administer and enforce these regulations.
- B. The Health Officer is authorized to adopt additional rules or policies consistent with the provisions of these regulations for the purpose of enforcing and carrying out its provisions. Nothing in these rules and regulations is intended to abridge or alter the rights of action by the state or by persons, which exist in equity, common law or other statutes to abate non-compliance with these regulations.
- C. Right of Entry and Inspection
 - 1. Whenever necessary to make an inspection to enforce or determine compliance with the provisions of these regulations, and other relevant laws and regulations, or whenever the Health Officer has cause to believe that a violation of these regulations has or is being committed, the Health Officer or his/her duly authorized inspector may, in accordance with federal and state law, seek entry of any building, structure, property or portion thereof at reasonable times to inspect the same.
 - 2. If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.
 - 3. If consent to enter said building, structure, property, or portion thereof is not provided by the owner, occupier, permit holder, or other persons having apparent control of the premises, the Health Officer may enter said premises only to the extent permitted by federal and state law.
 - 4. If consent to enter said building, structure, property, or portion thereof is not provided by the owner, occupier, permit holder, or other persons having apparent control of the premises, the Health Officer shall also have recourse to any other remedies provided by law to secure entry, including but not limited to search warrants.

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5. Failure or refusal to allow timely and reasonable inspection by the Health Officer to determine compliance with these regulations, or as part of a permit application or renewal process, may result in denial or revocation of a permit.

D. Notice and Order to Correct Violation

1. Issuance. Whenever the Health Officer determines that violation of these regulations has occurred or is occurring, he/she may attempt to secure voluntary correction by sending a Notice and Order to Correct Violation to the person(s) responsible for the alleged violation.
2. Content. The notice and order to correct violation shall contain:
 - a. The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;
 - b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
 - c. A description of the violation and a reference to that provision of the regulation, which has been violated;
 - d. A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;
 - e. A statement that each violation of this regulation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation;
 - f. A statement that repeat violations are subject to a civil fine of up to one hundred dollars for each violation.
3. Service of Order. The Notice and Order to Correct Violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violations by regular and certified mail, postage prepaid, return receipt requested, to such person as his/her last known address. Proof of service shall be made at the time of service by a written declaration under penalty of perjury executed by the persons affecting the service, declaring the time and date of service and the manner by which service was made.
4. Extension. Upon written request received prior to the correction date or time, the Health Officer may extend the date set for corrections for good cause. The Health Officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.

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5. Supplemental Order to Correct Violation. The Health Officer may at any time add to, rescind in part, or otherwise modify a Notice and Order to Correct Violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations.
6. Enforcement of Order. If, after any order is duly issued by the Health Officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer may:
 - b. Pursue any other appropriate remedy at law or equity, including but not limited to, revocation of Food Service Establishment Permits for businesses permitted by the Kitsap Public Health District.

E. Permit Violation, Suspension, Revocation and Appeal

1. Permit Violation. Any violation of a permit requirement issued pursuant to these regulations shall be a violation of these regulations.
2. Suspension of Vapor Product Retail Outlet Permit. The Health Officer may suspend any permit issued under these regulations for violations of these regulations as follows:
 - a. Permit suspension shall be carried out through the Notice and Order to Correct Violation provisions specified in Section 13.D., and the suspension shall be effective upon service of the Notice and Order to Correct Violation upon the permit holder or person in charge. The permit holder may appeal such suspension as provided in Section 15 of these regulations.
 - b. Permit suspension shall remain in effect until the Health Officer finds the retail outlet to be in compliance with the requirements of these regulations.
 - c. Any person whose permit has been suspended may at any time make written application for a re-inspection for the purpose of reinstatement of the permit. The application must include a signed statement explaining how the conditions and violations causing the suspension of the permit have been corrected.
 - d. Within five (5) business days following receipt of a written request for a re-inspection, the Health Officer will make a re-inspection, and reinstate the permit if the person is in compliance with these regulations.
3. Revocation of Permits.
 - a. The Health Officer may revoke a Vapor Product Retail Outlet Permit if serious and repeated violation(s) of any requirements of these regulations have occurred.

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- b. Such permit revocation shall be carried out through the Notice and Order to Correct Violation provisions specified in Section 13.D., and the revocation shall be effective upon service of the Notice and Order to Correct Violation upon the holder or operator. The holder or operator may appeal such revocation, as provided in Section 15 of these regulations.
 - c. A permit may be suspended pending its revocation or a hearing relative to revocation.
- F. As an alternative to the enforcement provisions set out above, the Health Officer may determine that the violation of any provision of these regulations is designated as a Class 1 civil infraction pursuant to RCW 7.80, *Civil Infractions*.
- G. The Health Officer may issue a notice of civil infraction if she or he has reasonable cause to believe that a person has violated any provision of these regulations, or has not corrected a violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard, and determined as described in RCW 7.80 and any applicable court rules.

SECTION 14. REBUTTALS

- A. 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 25 feet is a reasonable minimum distance, as defined in Section 4, by making application for a hearing with the Health Officer. A completed “Application for Administrative Meeting or Appeal Hearing” for rebutting the presumptively reasonable distance requirement must be accompanied by all of following:
- 1. An application fee for Appeal Hearing with Health Officer as established in the most recent Environmental Health Program Service Charges approved by Kitsap Public Health Board.
 - 2. A written description of the proposed reduction in the presumptively reasonable distance requirement as defined in Section 4.
 - 3. A detailed map showing the specific area to be considered for a reduced separation distance along with the location of all entrances, exits, windows that open, and ventilation intakes within 25 feet of the proposed vaping area.
 - 4. A written explanation by the applicant describing why the presumptively reasonable distance of 25 feet cannot be met and why consideration for a reduced separation distance is necessary.
 - 5. A written justification from the applicant describing the clear and convincing evidence they have gathered that demonstrates that given the unique circumstances presented by

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the location of entrances, exits, windows that open, ventilation intakes or other factors, smoke will not infiltrate into the facility.

6. A written explanation from the applicant describing how they will monitor the effectiveness of the reduced distance in keeping smoke from infiltrating into the facility, and what action they will take if smoke is determined to be entering the facility at a future time.
- B. The application for reduction in the 25 foot requirement applies only to the area addressed in the application and not to the entire structure or any other area near or around the facility.
 - C. The Health Officer shall administratively make a determination on the application to rebut the presumptively reasonable distance. This decision may be appealed to the Kitsap Public Health Board in accordance with Section 15.B.
 - D. Any approval taken on the application submitted will need to endure a reasonable test of time and if future complaints are received against the facility because of exposure to vapors or aerosols, further inspections may be warranted and possible modification or revocation of the approval may be required.

SECTION 15. APPEAL

- A. Appeal of Public Health Action – Health Officer Administrative Hearing.

Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation, or enforcement action conducted by the Kitsap Public Health District, may request a hearing before the Health Officer or his or her designee. The appellant shall submit the request in writing, through completion of an “Application for Administrative Meeting or Appeal Hearing” form with the appropriate fee, and shall include the specific statements of the reason why error is assigned to the decision of Health District. Such request shall be presented to the Health Officer within ten (10) business days of the action appealed. Upon receipt of such request together with the hearing fee, the Health Officer shall notify the person of the time, date, and place of such hearing, which shall be set at a mutually convenient time not more than fifteen (15) business days from the date the request was received. Upon completion of the hearing, the Health Officer shall provide a decision in writing to the appellant within fifteen (15) business days from the date of the hearing.

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B. Appeal of Administrative Hearing/Decision.

1. Any person aggrieved by the findings or required actions of an administrative hearing, or of an administrative decision by the Health Officer regarding the rebuttal of the presumptively reasonable distance, shall have the right to appeal the matter by requesting a hearing before the Kitsap Public Health Board. Such notice of appeal shall be in writing through completion of an “Application for Administrative Meeting or Appeal Hearing” form and presented, with the appropriate hearing fee as established in the current Health District fee schedule, to the Health Officer within five (5) business days of service of the findings and actions from the administrative hearing. All requests shall contain a description of the action, decision or policy for which the hearing is requested, and the basis on which it is being contested. The appellant and the Health Officer may submit additional information to the Kitsap Public Health Board for review.
2. The notice and order to correct violation shall remain in effect during the appeal. Any person affected by the notice and order to correct violation may make a written request for a stay of the decision to the Health Officer within five (5) business days of the Health Officer’s decision. The Health Officer will grant or deny the request within five (5) business days.
3. Upon receipt of an appeal pursuant to this section together with the hearing fee, the Health Officer shall set a time, date, and place for the requested hearing before the Kitsap Public Health Board Hearings Board and shall give the appellant written notice thereof. The hearing shall be set at a mutually convenient time not more than thirty (30) business days from the date the appeal was received by the Health Officer.

SECTION 10. SEVERABILITY.

Should any paragraph, phrase, sentence or clause of these regulations be declared invalid or unconstitutional for any reason, the remainder of these regulations shall not be affected thereby.

SECTION 11. REPEALER

Reserved.

SECTION 12. EFFECTIVE DATE.

This ordinance shall take effect immediately.