

ORDINANCE NO. 2015-_____

An ORDINANCE relating to the regulation of smoking in public places by adoption of the Legislature’s enactment of Chapter 70.160, RCW, Smoking in Public Places; the regulation of inhalant delivery systems; and the amendment to Title 24 of the Clark County Code, Chapter 24.20.

WHEREAS, the Washington State Legislature enacted Chap. 70.160, RCW, Smoking In Public Places, formerly referred to as the Washington Clean Indoor Air Act, and Clark County adopts those same provisions now in this ordinance to assist in clarity, uniformity and implementation of the law; and

WHEREAS, the Clark County Board of County Councilors constitutes the Clark County Board of Health. *RCW 70.05.035*. The Board of Health is a policymaking body for the entire County and adopts rules necessary to carry out its policies. *RCW 70.05.060*; and

WHEREAS, the Board of Health finds that “inhalant delivery systems” are battery-powered devices designed to deliver nicotine flavor and other substances through a vapor inhaled by the user and are commonly known as “vapes,” “electronic cigarettes,” “e-cigars”, “e-cigarillo’s,” “e-pipes,” “e-hookahs,” and “electronic nicotine delivery systems.” For the purpose of this ordinance, “inhalant delivery system” is defined as follows:

Inhalant delivery system – a device that can be used to deliver liquid nicotine, or other liquids or solids in the form of the vapor or aerosol to a person inhaling from the device; or

A component of a device described above, or a substance in any form sold for the purpose of being vaporized or aerosolized by a device

described in this section, whether the component or substances is sold separately or is not sold separately.

An “inhalant delivery system” does not include any product that has been approved by the United States FDA for sale as a tobacco cessation product, or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and

WHEREAS, the Clark County Board of Public Health finds that the emergence of new and unregulated inhalant delivery systems present a threat to public health; and

WHEREAS, inhalant delivery systems, as defined above, cause users to inhale vaporizing liquid nicotine, or other liquids or solids created by heat through an electronic ignition system and exhales vapor during use; and

WHEREAS, studies on inhalant delivery systems vapors’ emissions and cartridge contents have found a number of dangerous substances including the following:

- 1) Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium;
- 2) PM2.5, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects, such as skin, eye, and respiratory irritation, neurological effects, damage of reproductive systems, and even premature death from heart attacks and stroke;
- 3) Inconsistent labeling of nicotine inhalant delivery system products; and
- 4) In one instance, diethylene glycol, an ingredient found in antifreeze, which is toxic to humans; and

WHEREAS, clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over 400 brands of inhalant delivery systems that are on the market and, for this reason, consumers currently have no way of knowing:

- 1) whether inhalant delivery systems are safe;
- 2) what types or concentrations of potentially harmful chemicals the products contain;

- 3) what dose of nicotine or other chemicals the products deliver; and
- 4) the toxicity of vapor emissions; and

WHEREAS, inhalant delivery system devices present a substantial risk of nicotine and other substance addiction, and resultant harm to the public health and safety due to the secondhand vapor emissions. In addition, the use of electronic smoking devices in public places and places of employment complicates enforcement of the state and county laws governing the smoking of tobacco products in public places; and

WHEREAS, Clark County Public Health has received calls from concerned citizens and business owners regarding the safety of inhalant delivery system devices; and

WHEREAS, Article XI, Section 11 of the Washington State Constitution, RCW 35A.63.220 and RCW 36.70A.390 authorize the County to adopt interim land use regulations and official control and the Clark County Board of Health deems it to be in the public interest to adopt the regulations and prohibitions set forth in this Ordinance under this authority; and

WHEREAS, a public hearing was held on the regulations set forth in this Ordinance on April 22, 2015, and the Clark County Board of Health weighed the testimony received at the hearing in amending this Ordinance; now, therefore,

BE IT ORDERED, RESOLVED AND DECREED BY THE BOARD OF HEALTH OF CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. Amendatory. The title of Chapter 24.20 of the Clark County Code, “Regulation of Smoking in Public Places,” is amended to read as follows:

Chapter 24.20 Regulation of Smoking in Public Places, ~~Electronic Smoking Devices and Unapproved Nicotine Delivery Products to Minors~~ and Inhalant Delivery Systems

Section 2. Amendatory. Section 3 of Ordinance 2011-06-09, and codified as CCC 24.20.010, are each amended to read as follows:

24.20.010 Purpose and policy declared.

- (1) This chapter is enacted in the exercise of the board of health powers of Clark County to protect and preserve public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.
- (2) It is the specific purpose of this chapter to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish special benefits for any particular class or group of persons.
- (3) The board of health finds that the emergence of new, unregulated electronic smoking devices and unregulated nicotine delivery products or vaping devices (hereinafter “inhalant delivery systems”) presents a threat to public health. ~~Electronic smoking devices and other unapproved nicotine delivery products~~ Inhalant delivery systems have a strong appeal to youth due to their high-tech design and availability in child-friendly flavors like chocolate and strawberry. Current state and federal law prohibits minors from legally purchasing, using or possessing tobacco in any form. FDA-approved nicotine delivery devices or nicotine replacement therapy are not approved for persons younger than eighteen (18) years.

Section 3. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.015, are each amended to read as follows:

24.20.015 Smoking in public places.

The Washington Legislature enacted Chapter 70.160 RCW, Smoking in Public Places, formerly known as the Washington Clean Indoor Air Act. Clark County adopts the provisions and standards of Chapter 70.160 RCW with regard to both lighted tobacco products as defined in Chapter 70.160 RCW and inhalant delivery systems as defined in CCC 24.20.030 and directs the health department to administer its implementation.

Section 4. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.020, are each amended to read as follows:

24.20.020 Findings – Intent – Inhalant Delivery Systems.

- (1) The U.S. Food and Drug Administration (FDA) warns that ~~electronic cigarettes may be harmful to adults~~ inhalant delivery systems present a threat to public health. This warning is based on testing of inhalant delivery systems that were found to contain ingredients known for toxicity to humans. Clinical studies about the safety and efficacy of their intended use have not been submitted to the FDA. For this reason, consumers currently have no way of knowing:
 - (a) Whether ~~electronic cigarettes~~ inhalant delivery systems ~~electronic cigarettes~~ are safe for their intended use;
 - (b) What are the long and short term health effects of secondhand vapor emissions;
 - (c) What types or concentrations of potentially harmful chemicals the products contain; or
 - (~~e~~) (d) What amount of nicotine is present in the products.

The FDA has raised concerns that ~~electronic cigarettes~~ inhalant delivery systems, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead them to try conventional tobacco products. Unlike tobacco products, there is currently no regulation prohibiting the sale of these nicotine products to youth.

- (2) One danger of ~~electronic cigarettes~~ inhalant delivery systems is accidental poisoning if the liquid nicotine is ingested or absorbed through the skin.
- (3) The Federal Family Smoking Prevention and Tobacco Control Act of 2009 banned candy and fruit-flavored cigarettes because the evidence demonstrated that flavored tobacco products are attractive to youth as they disguise the taste of tobacco. Young people believe that flavored tobacco products are less addictive and less harmful and those who smoke are far more likely to use flavored tobacco products than adults. Flavoring for ~~electronic cigarettes~~ inhalant delivery systems is available in candy and fruit flavors, just as cigarettes were prior to the Family Smoking Prevention and Tobacco Control Act.
- (4) The manufacturers of ~~electronic cigarettes~~ inhalant delivery systems market their products as harmless and as a safe alternative to smoking. They also make misleading claims that may impact a young person's decision to use an electronic cigarette which can lead to nicotine

~~dependence. Electronic cigarettes Inhalant delivery systems are currently available to youth to purchase since, unlike cigarettes, there are no restrictions on age. Inhalant delivery systems have a high appeal to youth due to their high-tech design and availability in child-friendly flavors like chocolate and strawberry. They also presented a substantial risk of nicotine addiction and result in harm to the public health and safety. In addition, the use of electronic smoking devices in public places and places of employment return smoking to the public consciousness and complicates enforcement of the state and county laws governing the smoking of tobacco products in public places.~~

Section 5. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.030 (1) and (7), are each amended to read as follows:

24.20.030 Definitions.

As used in this chapter, the following terms shall be defined as follows:

- (1) ~~“Electronic smoking device” or “e-cigarette” means an electronic or battery operated mechanism, the use of which resembles smoking, that can be used to deliver nicotine or other substances to the person inhaling from the device. “Electronic smoking device” or “e-cigarette” includes, but is not limited to, an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe and an electronic hookah. “Electronic smoking device” or “e-cigarette” does not include a cigarette, as defined in Chapter 82.24 RCW, or tobacco products, as defined in Chapter 82.26 RCW.~~ “Inhalant delivery systems” – a device that can be used to deliver liquid nicotine, or other liquids or solids in the form of the vapor or aerosol to a person inhaling from the device; or a component of a device described above or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this section, whether the component or substances are sold separately or are not sold separately. This definition also includes accessories naturally used with this delivery system or its components.

An “inhalant delivery system” does not include any product that has been approved by the United States FDA for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

A component of a device described above or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this section, whether the component or substance is sold separately or is not sold separately.

An inhalant delivery system does not include any product that has been approved by the United States FDA for sale as a tobacco cessation product or for other therapeutic purposes, if the product is marketed and sold solely for the approved purpose.

* * * * *

- (7) “Seller” means any person who sells, distributes with an economic or a business purpose, offers for sale or offers to exchange for any form of consideration, ~~electronic smoking devices or unapproved nicotine delivery products.~~ inhalant delivery systems.

(11) Inhalant delivery system store” means any business, that possesses all of the following characteristics:

- (a) within a building or portion thereof;
(b) possessing an independent ventilation system and mitigation measures that prevent transfer of Inhalant vapors to neighboring structures; and
(c) which exclusively sells, markets and or distributes inhalant delivery systems.

Section 6. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.040, **are** each amended to read as follows:

24.20.040 Age identification requirement.

Each seller shall verify by means of photographic identification specified in RCW 70.155.090 that no person purchasing ~~electronic smoking devices or unapproved nicotine delivery devices~~ inhalant delivery systems is younger than eighteen (18) years old, except that no such verification is required for any purchaser over twenty-six (26) years old.

Section 7. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.050 (1) and (2), are each amended to read as follows:

24.20.050 Sale to minors prohibited.

- (1) No person shall sell, give or furnish, or cause or allow to be sold, given or furnished, ~~electronic smoking devices~~ inhalant delivery systems to a minor unless those products have been approved or otherwise certified for lawful sale by the FDA and approved for use by minors, and the products are sold, given or otherwise furnished pursuant to that approval and in full compliance with any related FDA rules, regulations or other requirements.
- (2) No person shall sell, give or furnish, or cause or allow to be sold, given or furnished, any ~~unapproved nicotine delivery devices product~~ inhalant delivery systems to a minor.

Section 8. New. A new section, codified as Section 24.20.055, is added to the Clark County Code to read as follows:

24.20.055 Prohibition signage to be posted – identification required.

- (1) Any person selling, marketing, displaying, giving or distributing inhalant delivery systems or their components shall display a printed sign, posted so that it is clearly visible to anyone purchasing e-cigarettes or their components, which sign must be in contrasting colors and at least 20 point type and must read substantially as follows:

PHOTO ID REQUIRED

THE SALE OF INHALANT DELIVERY SYSTEMS OR THEIR COMPONENTS TO PERSONS UNDER THE AGE OF 18 ARE STRICTLY PROHIBITED. CCC 24.20.050. IF YOU ARE UNDER 18, YOU COULD BE SUBJECT TO PENALTY FOR POSSESSING OR PURCHASING INHALANT DELIVERY SYSTEMS OR RELATED DEVICES OR THEIR COMPONENTS. CCC 24.20.090.

- (2) When there may be a question of a person's age, identification of at least sufficiently referenced in RCW 70.15 5.090 shall be required by any person selling, giving, or distributing inhalant delivery systems or their components.

Section 9. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.060, are each amended to read as follows:

24.20.060 Sampling prohibited.

- (1) No person shall sell, give or furnish, or cause or allow the sale, giving or furnishing of ~~electronic smoking devices~~ inhalant delivery systems to a minor, including any sampling, unless those products have been approved or otherwise certified for legal sale by the FDA and approved for use by minors, and the products are sold, given or otherwise furnished pursuant to that approval and in full compliance with any related Food and Drug Administration rules, regulations or other requirements.
- (2) No person shall sell, give or furnish, or cause or allow to be sold, given or furnished any ~~unapproved nicotine delivery devices product~~ inhalant delivery systems, including sampling., to a minor.
- (3) **Sampling is prohibited in all public places and places of employment with the sole exception that that sampling is permitted in an inhalant delivery system store.**

Section 10. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.070, are each amended to read as follows:

24.20.070 Coupons.

To help prevent minors from accessing ~~electronic smoking devices or unapproved nicotine delivery products~~ inhalant delivery systems, no person shall give or distribute ~~electronic smoking devices or unapproved nicotine delivery products~~ inhalant delivery systems to a person by a coupon if the coupon is redeemed in any manner that does not require an in-person transaction in a retail store.

Section 11. Amendatory. Section 1 of Ordinance 2011-06-09, and codified as CCC Section 24.20.080, are each amended to read as follows:

24.20.080 Mechanical sales restricted.

No person shall sell or permit to be sold ~~electronic smoking devices or unapproved nicotine delivery products~~ inhalant delivery systems through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten (10) feet from all entrance or exit ways to and from each premises.

Section 12. New. A new section, codified as Section 24.20.085, is added to the Clark County Code to read as follows:

24.20.085 Use prohibited in public places and places of employment.

- (1) The use of inhalant delivery systems in public places and places of employment is prohibited **except as set forth in 24.20.060 (3)**. Owners, or in the case of a leased or rented space the lessee or other person in charge, shall prohibit the use of inhalant delivery systems in public places and places of employment.
- (2) Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall post signs prohibiting use of inhalant delivery systems as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the premises.

Section 13. New. A new section, codified as CCC Section 24.20.100, is added to the Clark County Code to read as follows:

24.20.100 Applicability.

- (1) **Applicability.** This chapter applies to the sale and distribution of inhalant delivery systems to the extent not preempted by federal law, including but not limited to the regulation of those products by the United States FDA.
- (2) **Severability.** If any provision of this rule or its application to any person or circumstance is held invalid, the remainder of the rule or the application of the provision to other persons or circumstances is not affected.

Section 14. Effective Date. This ordinance shall take effect on June 1, 2015.

Section 15. Instructions to the clerk.

The Clerk to the Board shall:

1. Record a copy of this ordinance with the Clark County Auditor.
2. Transmit a copy of this ordinance to Code Publishing , Inc. to update the electronic version of the Clark County Code.

ADOPTED on this ___day of _____, 2015 .

Attest:

BOARD OF HEALTH
FOR CLARK COUNTY, WASHINGTON

Clerk of the Board

David Madore, Chair

APPROVED AS TO FORM ONLY:
Tony Golik, Prosecuting Attorney

Tom Mielke, Councilor

By: _____
Jane E. Vetto
Deputy Prosecuting Attorney

Jeanne Stewart, Councilor