

RESOLUTION NO. 2011-4296

A RESOLUTION OF THE TACOMA-PIERCE COUNTY BOARD OF HEALTH AMENDING THE ENVIRONMENTAL HEALTH CODE BY ADDING A NEW CHAPTER 9 ENTITLED, "RESTRICTIONS ON SALE, USE, AND AVAILABILITY OF ELECTRONIC SMOKING DEVICES AND UNREGULATED NICOTINE DELIVERY PRODUCTS"

WHEREAS, Article 11, §11 of the Washington Constitution and RCW 70.05.060 authorize the Tacoma-Pierce County Board of Health (Board of Health) to enact regulations to preserve, promote, and improve the public health and provide for the enforcement thereof; and

WHEREAS, the Board of Health finds that with the emergence of new, unregulated electronic smoking devices and unregulated nicotine delivery products, regulations are required to restrict the sale, use, and availability of these devices and products in order to preserve, promote, and improve the public health of the citizens of Pierce County; and

WHEREAS, the Health Department staff is directed to continue to identify and evaluate existing and future research regarding the health risks and potential uses of electronic smoking devices and nicotine delivery products and to provide the Board of Health with a summary of said research and any proposed amendments to these regulations on or about June 1, 2013, or sooner if the Director of Public Health determines that a) the relevant research and supporting data indicate that the use of unregulated electronic smoking devices and unregulated nicotine delivery products causes harmful effects or b) there is evidence of significant public complaints or compliance problems; and

WHEREAS, the public has provided comment regarding the purpose and scope of the proposed regulations via a dedicated web site, a duly noticed public hearing held on May 16, 2011, and at the Board of Health's meetings on May 18 and June 1, 2011; and now, therefore;

THE TACOMA-PIERCE COUNTY BOARD OF HEALTH HEREBY RESOLVES AS FOLLOWS:

THAT: The Tacoma-Pierce County Health Department's Environmental Health Code is amended by adding a new Chapter 9 entitled, "Restrictions on Sale, Use, and Availability of Electronic Smoking Devices and Unregulated Nicotine Delivery Products," in the form attached hereto as Exhibit A and incorporated by this reference.

PASSED by the Tacoma-Pierce County Board of Health, signed by the Chair of the Board, and attested by the Board's Clerk in authentication of such passage this 1st day of June 2011.



Dick Muri, Chair, Board of Health

ATTEST:



Tawana Bellamy, Clerk, Board of Health



Tacoma - Pierce County
Health Department

Healthy People in Healthy Communities.
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REGULAR AGENDA
Resolution No. 2011-4296

BOARD OF HEALTH ACTION REQUEST FORM

1. Requesting Program / Division Environmental Health/Tobacco Prevention	Presenter Anthony L-T Chen Director of Health	Phone / Extension (253) 798-2955 Steve Marek
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2. Preparation of an Agenda Request/Resolution for the Board of Health meeting. Date: June 1, 2011

3. Request Summary: Authorization to

- ADD CHAPTER 9 – RESTRICTIONS ON SALE, USE, AND AVAILABILITY OF ELECTRONIC SMOKING DEVICES AND UNREGULATED NICOTINE DELIVERY PRODUCTS TO THE TACOMA-PIERCE COUNTY HEALTH DEPARTMENT’S ENVIRONMENTAL HEALTH CODE.

4. Background Information / Comments:

This regulation was developed by TPCHD staff and legal counsel and reflects concerns and suggestions expressed by community members, local organizations and Board of Health members. The “Restrictions on Sale, Use, and Availability of Electronic Smoking Devices and Unregulated Nicotine Delivery Products” Chapter is a new regulation intended to:

- Prohibit the sale of e-cigarettes and unregulated nicotine delivery products to minors;
- Limit the use of e-cigarettes in public places;
- Impose restrictions on the discounting of e-cigarettes and where they can be sampled;
- Includes enforcement provisions such as civil penalties and re-inspection fees.

5. Recommended Board of Health Action: Approve Resolution No. 2011-4296.

6. List all materials attached as backup information for the request:

- 1) Copy of Proposed Chapter 9 – Restrictions on Sale, Use, and Availability of Electronic Smoking Devices and Unregulated Nicotine Delivery Products.

7. Finance Information/Additional Revenue: N/A **Grantor / Contractor:** N/A

Source of Revenue: Federal: \$ State: \$
Pierce County: \$ City of Tacoma: \$ Other: \$ **Total: \$**

Additional Expenditure: N/A

Program Name: Acct. #: **Total: \$**

 Program/Division Director Approval	 Business Support Services Approval	 Director of Health Approval
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ENVIRONMENTAL HEALTH CODE

Chapter 9

Restrictions on Sale, Use, and Availability of Electronic Smoking Devices and Unregulated Nicotine Delivery Products

SECTION 1: Title

This Chapter 9 may be cited and referred to, and shall be known as, the “Restriction on Sale, Use, and Availability of Electronic Smoking Devices and Unregulated Nicotine Delivery Products Regulations.”

SECTION 2: Authority and Purpose

- A. The Tacoma-Pierce County Board of Health (Board of Health) enacts the regulations set forth in this chapter under the general authority of Article 11, §11 of the Washington Constitution and RCW 70.05.060.
- B. The purpose of these regulations is to provide for and promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of people who will or should be especially protected or benefited by this chapter. The provisions of this chapter shall be liberally construed for the accomplishment of its purposes.
- C. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the owner of each establishment within its scope, and no provision nor term used in this title is intended to impose any duty whatsoever upon the Board of Health, the Tacoma-Pierce County Health Department (Health Department), or any of its officers or employees, for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory.
- D. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the Board of Health, the Health Department, or any of its officers or employees, for any injury or damage resulting from the failure of any person subject to this chapter to comply with this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter of the part of the Board of Health, the Health Department, its officers or employees.

SECTION 3: Findings

The Board of Health finds that the emergence of new, unregulated electronic smoking devices and unregulated nicotine delivery products presents a threat to the public health.

Electronic smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, are battery operated devices, some of which closely resemble cigarettes, although they do not contain tobacco. People who use electronic smoking devices inhale vaporized liquid nicotine, or other liquids, created by heat through an electronic ignition system and exhale the vapor in a way that mimics smoking. In addition to electronic smoking devices, other unregulated nicotine delivery products have recently emerged on the market. These include bottled water products containing nicotine, sometimes referred to as "nico-water," and nicotine lollipops that taste and look exactly like regular candy lollipops but contain nicotine.

The United States Food and Drug Administration has conducted laboratory tests on numerous brands of electronic smoking devices and found that they contained toxic chemicals and carcinogens in addition to nicotine. Although some electronic smoking devices claim not to contain nicotine, there is no regulatory program to monitor this assertion. The United States Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and is a highly toxic substance.

Electronic smoking devices and other unregulated nicotine delivery products have a high appeal to youth due to their high technology design and availability in child-friendly flavors. They also present a substantial risk of nicotine addiction and resultant harm to the public health and safety. In addition, there are concerns that the use of electronic smoking devices in public places and places of employment could increase social acceptance of smoking, provide models for unhealthy behavior, and complicate enforcement of the state and local laws governing the smoking of tobacco products in public places.

SECTION 4: Definitions

- A. "Electronic smoking device" means an electronic or battery-operated device, the use of which resembles smoking, which can be used to deliver nicotine or other substances to the person inhaling from the device. "Electronic smoking device" 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" does not include a cigarette, as defined in RCW 82.24.010, tobacco products, as defined in RCW 82.26.010, or a nicotine delivery product device that is regulated by the U.S. Food and Drug Administration or can be prescribed by an authorized prescriber.
- B. "Employer" means 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.
- C. "Minor" means any person younger than eighteen years old.
- D. "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.
- E. "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. 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."

- F. "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether a fee is charged for admission. 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.
- G. "Seller" means any person who sells, provides samples, promotes, or distributes with an economic or a business purpose, or offers to exchange for any form of consideration, electronic smoking devices or unregulated nicotine delivery products.
- H. "Unregulated nicotine delivery product" means a product containing or delivering nicotine intended or expected for human consumption, or any part of such a product, that is not a cigarette, as defined by RCW 82.24.010, or a tobacco product, as defined by RCW 82.26.010, and that has not been approved or otherwise certified for sale by the United States Food and Drug Administration as a tobacco use cessation product, or for other medical purposes.

SECTION 5: Age Identification Requirement

Each seller shall verify by means of photographic identification listed in RCW 70.155.090 that no person purchasing electronic smoking devices or unregulated nicotine delivery devices is younger than eighteen years old.

SECTION 6: Sale or Distribution to Minors Prohibited

- A. No person shall sell, give or furnish, or cause or allow to be sold, given or furnished, electronic smoking devices to a minor unless those products have been approved or otherwise certified for legal sale by the United States Food and Drug Administration and approved for use by minors, and the products are being 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.
- B. No person shall sell, give or furnish, or cause or allow to be sold, given or furnished, unregulated nicotine delivery devices 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 at least eighteen years old.

SECTION 7: Sampling and Coupons

No person who manufactures, sells, or distributes electronic smoking devices or unregulated nicotine delivery products shall:

- A. Give, or cause or allow to be given, an electronic smoking device or unregulated nicotine delivery product to any person at no cost or at nominal cost, except at retail establishments

that exclusively sell or promote electronic smoking devices or unregulated nicotine delivery products; or

- B. Give, or cause or allow to be given, to any person a coupon which can be redeemed for electronic smoking devices or unregulated nicotine delivery products, except at retail establishments that sell or promote electronic smoking devices and public places where minors are lawfully prohibited, such as bars, taverns, and casinos and only if the coupon is redeemed in a manner that requires an in-person transaction in a retail store.

SECTION 8: Sales from Mechanical Equipment Restricted

No person shall sell or permit to be sold electronic smoking devices or unregulated nicotine delivery products through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited and not less than ten feet from all entrance or exit ways to and from each premise.

SECTION 9: Use of and Limitations Concerning Electronic Smoking Devices

- A. Owners, or in the case of leased or rented space, the lessee or other person in charge, may permit electronic smoking devices in places of employment that are not public places; retail establishments that exclusively sell or promote electronic smoking devices; and public places where minors are lawfully prohibited, such as bars, taverns, and casinos.
- B. Except as provided above, owners, or in the case of leased or rented space, the lessee or other person in charge, shall prohibit electronic smoking devices in public places. Provided, this Section 9 is not intended to prohibit the use of electronic smoking devices in a private enclosed workplace within a public place, even though such workplace may be visited by a non-user of an electronic smoking device.

SECTION 10: Enforcement

- A. Except as provided below, the health officer is authorized to enforce this chapter in accordance with Chapter 1.
- B. A violation of this chapter shall be subject to a civil penalty of up to one hundred dollars (\$100.00) and a reinspection fee in accordance with Section 11 below. Each day upon which a violation occurs, or is permitted to continue, constitutes a separate violation.
- C. The health officer may reduce or waive the penalties in this chapter if the elements of proof are inadequate or if there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a seller.

D. In the event a hearing is requested pursuant to Chapter 1, Section 13 (Appeals to the Hearing Examiner) of the Environmental Health Code, the prevailing party shall be entitled to reimbursement of attorney fees and costs, including fees and costs incurred in any subsequent appeal of the Hearing Examiner's decision, if any.

SECTION 11: Reinspection

The health officer 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 and the reinspection also results in the finding of a violation of these regulations. The reinspection fees shall be as set forth in the most recent Environmental Health Program Fee Schedule approved by the Board of Health. The obligation to pay reinspection fees is in addition to any civil penalties that may be levied pursuant to Section 11, above.

SECTION 12: Applicability

This chapter applies to the sale and distribution of all electronic smoking devices and unregulated nicotine delivery devices to the extent not preempted by federal law, including, but not limited to, the regulation of those products by the United States Food and Drug Administration.

SECTION 13: Severability

The provisions of this chapter are hereby declared to be separate and severable. If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause, or phrase of this chapter.