

**BOARD OF HEALTH
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO. 2016 - _____

AN ORDINANCE TO AMEND CHAPTER 8.24 OF THE KITTITAS COUNTY CODE

WHEREAS, the Board of Health of Kittitas County hereby adopts this Ordinance pursuant to and by the authority of Chapter 70.05 of the Revised Code of Washington and Article 11, §11 of the Washington Constitution to enact regulatory measures to preserve, promote, and improve the public health; and

WHEREAS, the purpose of this Ordinance 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 person who will or should be especially protected or benefited by this Ordinance; and

WHEREAS, the provisions of this Ordinance shall be liberally construed for the accomplishment of its purpose; and

WHEREAS, nothing contained in this Ordinance 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, Kittitas County, or any of its officers, employees, or agents, for any injury or damage resulting from the failure of any person subject to Chapter 8.24 of the Kittitas County Code to comply with this Ordinance, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of the above referenced Chapter on the part of the Board of Health, Kittitas County, or any of its officers, employees, or agents; and

WHEREAS, the Board of Health wishes to establish regulations governing the use of electronic cigarettes and other electronic nicotine delivery systems in Kittitas County facilities and other public places; and

WHEREAS, the Board of Health finds that the increasing use of unregulated electronic nicotine delivery systems may present a threat to public health; and

WHEREAS, clinical studies on the safety and efficacy of electronic nicotine delivery systems have not been submitted to the U.S. Food and Drug Administration and consumers have no way of knowing whether electronic nicotine delivery systems are safe or what types or concentrations of potentially harmful chemicals are contained in liquid nicotine used in electronic nicotine delivery systems; and

WHEREAS, electronic nicotine delivery systems present a substantial risk of nicotine and other substance addiction, and resultant potential harm to the public health due to secondhand electronic nicotine delivery system vapor; and

WHEREAS, a public hearing was held on August 18, 2016 and the public was provided due notice and opportunity to provide testimony on the proposed ordinance; and

WHEREAS, the Kittitas County Board of Health believes that adopting this ordinance would be in the best interest of Kittitas County; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Health of Kittitas County that Chapter 8.24 of the Kittitas County Code is amended, with underlined language added, lined out language deleted, and all other language remaining in full force and effect, as follows:

Section 1. Kittitas County Code Chapter 8.24 titled Smoking in Public Places is amended to read:

Smoking and Vaping.

Section 2. Kittitas County Code Section 8.24.010 is amended to read:

8.24.10 Definitions.

1. "Smoke" or "smoking" means the carrying, ~~or~~ smoking, or use of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.
2. "Electronic Vapor Device" means any electronic product that can be used to aerosolize and deliver nicotine and/or other substances to the person inhaling from the device, including but not limited to, an electronic or e-cigarette, e-cigar, e-pipe, e-pen, or any other such device, regardless of the details of the product appearance or marketed name.
3. "Liquid Nicotine" means any liquid product composed either in whole or in part of nicotine, propylene glycol and/or other similar substances and manufactured for use with an electronic cigarette or electronic nicotine delivery system.
4. "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 regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. 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.

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, any place

where tobacco or tobacco products are sold, 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. 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.

5. "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 RCW 70.160.075, of twenty-five 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. 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.
6. "Retail outlet" means each place of business from which vapor products are sold to consumers.
7. "Primary retail activity" means the business activity that generates at least 51% of the business' income.

Section 3. Kittitas County Section 8.24.030 titled Owners, lessees to post signs prohibiting smoking is amended to read:

8.24.030 Owners, lessees to post signs prohibiting smoking and vaping.

Section 4. Kittitas County Section 8.24.030 is amended as follows:

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 prohibit smoking in public places and places of employment and vaping in indoor public places not subject to the tasting exception and shall post signs prohibiting smoking and vaping 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 place. (Ord. 2009-13, 2009)

Section 5. Kittitas County Section 8.24.040 is amended as follows:

8.24.040 Intent of chapter as applied to certain private workplaces.

This chapter is not intended to regulate smoking or vaping in a private enclosed workplace, within a public place, even though such workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation. (Ord. 2009-13, 2009)

Section 6. Kittitas County Section 8.24.050 is amended as follows:

8.24.050 Intentional violation of chapter - Removing, defacing, or destroying required sign - Fine - Enforcement.

1. Any person intentionally violating this chapter by smoking in a public place or place of employment, or vaping in a prohibited area, or any person removing, defacing, or destroying a sign required by this chapter, is subject to penalties and enforcement under [Title 18 KCC](#), except that a notice of correction under [Chapter 18.02 KCC](#) shall not be required. Any person passing by or through a public place while on a public sidewalk or public right-of-way has not intentionally violated this chapter.
2. Any person intentionally violating section 030 of this chapter, is subject to penalties and enforcement under [Title 18 KCC](#), except that a notice of correction under [Chapter 18.02 KCC](#) shall not be required and the minimum penalty shall be \$100 for each day of violation under this chapter, not including statutory assessments. This penalty may not be waived, reduced, or suspended below the \$100.
3. Nothing in this Chapter shall in any way limit Local health departments, Local Law enforcement agencies and the county prosecutor from seeking to enforce [Chapter 70.160 RCW](#). (Ord. 2009-13, 2009)

Section 7. Kittitas County Code Section 8.24.070 is renumbered as 8.24.080.

Section 8. A new Kittitas County Code Section 8.24.070 is added as follows:

8.24.070 Electronic Vapor Devices.

No person may use an electronic vapor device in any indoor public place unless the public place is a licensed retail outlet where access by minors is prohibited. In licensed retail outlets where the primary retail activity is the sale and distribution of electronic vapor devices and liquid nicotine, tastings and samplings are permitted within the licensed premises. In licensed retail outlets where access by minors is prohibited, and the primary retail activity is not the sale and distribution of electronic vapor devices and liquid nicotine, any tastings or samplings may only be offered in an enclosed area separated from all other business activity.

Section 9. Effective date

This ordinance shall become effective immediately upon adoption.

Section 10. County Website

The Kittitas County Information Technology Department is charged with incorporating and updating the amendment and enactment authorized herein on the Kittitas County website.

Section 11. Scrivener's Errors

The Prosecuting Attorney's Office is charged with identifying and correcting any scrivener's errors arising out of the amendment and enactment process. No further authorization will be

required from the Board of Health for the Prosecuting Attorney's Office to effect correction of scrivener's errors relating to this Ordinance.

Section 12. Severability

If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

ADOPTED this _____ day of _____, 2016.

**BOARD OF HEALTH
KITITAS COUNTY, WASHINGTON**

Obie O'Brien, Chairman

ATTEST:
CLERK OF THE BOARD

Rich Elliott, Vice-Chairman

Candi Blackford

John Asriel M.D., Board Member

APPROVED AS TO FORM:

Gary Berndt, Board Member

Deputy Prosecuting Attorney

Paul Jewell, Board Member