

GRANT COUNTY

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(509) 754-6060



HEALTH DISTRICT

1038 W. Ivy Avenue
Moses Lake, WA 98837
(509) 766-7960

Ordinance 2014-2

Rules and Regulations of the Grant County Health District Restricting the Sale, Marketing, Use, and Availability of Electronic Vapor Devices and E-Liquid.

Section 1. Authority and Purpose

- (1) Pursuant to the authority of RCW 70.05.060 (Powers and duties of local board of health) and under the general authority of Article 11, §11 of the Washington Constitution, these regulations are hereby established restricting the sale, marketing, use, and availability of electronic vapor devices and e-liquid.
- (2) 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 person who will or should be especially protected or benefited by this Ordinance. The provisions of this Ordinance shall be liberally construed for the accomplishment of its purposes.
- (3) 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, the Health District, 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 Ordinance, 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 District, or its officers or employees.
- (4) Per RCW 26.28.080 (1), every person who sells or gives, or permits to be sold or given, to any person under the age of eighteen years a vapor product is guilty of a gross misdemeanor.

Section 2. Administration

Where the provisions of any local, State, or federal regulation shall conflict with this Ordinance, the more strict regulation shall apply, with the order of enforcement proceeding from federal, State, and then Health District.

Section 3. Definitions

- (1) “Board of Health” means the Grant County Board of Health.
- (2) “E-Liquid” also known as e-juice means nicotine or non-nicotine containing liquid, often flavored, used in an electronic vapor device.
- (3) "Electronic vapor 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 vapor device" includes, but is not limited to, a vapor product, a personal vaporizer, an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, and an electronic hookah. "Electronic vapor device" does not include a cigarette, as defined in RCW 82.24.010, tobacco products, as defined in RCW 82.26.010, or a product approved for sale by the U.S. Food and Drug Administration as a Drug, Device, or Combination Product, as those terms are defined in the Federal Food, Drug and Cosmetic Act.”
- (4) “Health District” means the Grant County Health District.
- (5) “Health Officer” means the Grant County Health Officer.
- (6) "Minor" means any person younger than eighteen years old.
- (7) "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.
- (8) "Seller" means any person who sells or distributes with an economic or a business purpose, or offers to exchange for any form of consideration, electronic vapor devices or e-liquid.
- (9) “Vending Machine” means a machine or other mechanical device that accepts payment and dispenses electronic vapor devices or e-liquid as defined by this Ordinance.

Section 4. Findings

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

Electronic vapor devices, commonly referred to as electronic cigarettes or e-cigarettes, are battery operated devices, some of which closely resemble cigarettes. They do not contain tobacco, although the nicotine may have been extracted or derived from tobacco. People who use electronic vapor devices inhale vaporized or aerosolized liquid nicotine, or other liquids, created by heat through an electronic ignition system and exhale the vapor in a way that mimics smoking.

Electronic vapor devices have not to date been successfully tested as a method to quit smoking and the United States Food and Drug Administration has not approved these devices for smoking cessation.

There are multiple recipes and manufacturers of e-liquid used in electronic smoking devices and there are no standards, no testing, and no labeling requirements. It is unknown what chemicals have been added to the unknown nicotine concentration. Nicotine is a highly addictive, fast acting, and potentially harmful drug known to negatively affect the arteries, heart, and brain.

Electronic vapor devices have a strong 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 public health and safety. In addition, there are concerns that the use of electronic vapor devices in public places and places of employment could increase social acceptance of smoking, provide models for unhealthy behavior, expose bystanders to potentially unhealthy second hand vapors, and complicate enforcement of the state and local laws governing the smoking of tobacco products in public places. Lastly, electronic vapor devices represent a renormalization of publicly inhaling nicotine which is contrary to public health efforts of the past 50 years.

Section 5. Sale or Distribution to Minors Prohibited

- (1) Each seller shall verify by means of photographic identification listed in RCW 70.155.090 that no person purchasing electronic vapor devices or e-liquid is younger than eighteen years old.
- (2) No person shall sell, give, or furnish, or cause or allow to be sold, given, or furnished, electronic vapor devices or e-liquid to a minor.
- (3) All electronic vapor devices and e-liquids offered for over the counter sale must be stored behind the counter in an area accessible only to the seller or under lock and key.

Section 6. Purchasing or Possession by a Minor Prohibited

It is prohibited for a minor to purchase, possess, or obtain electronic vapor devices or e-liquid.

Section 7. Marketing Requirements

No electronic vapor device and e-liquid advertising in Grant County may contain any statement, picture, or illustration that:

- (1) Is false or misleading;

Section 8. Sales from Mechanical Equipment Restricted

No person shall sell or permit to be sold electronic vapor devices or e-liquid through vending machines except where minors are lawfully prohibited.

Section 9. Use in Public Places

It shall be prohibited to use an electronic vapor device in any place where smoking is prohibited per RCW 70.160 (Smoking in Public Places) except establishments where the only retail activity is the sale, distribution, or sampling of electronic vapor devices and e-liquids, and access by minors is prohibited.

Section 10. Required Signage

Sellers shall display a printed sign, posted so that it is clearly visible to anyone purchasing electronic vapor devices or e-liquid. The sign must be in contrasting colors and at least 20-point type, and must read substantially as follows:

“THE SALE AND USE OF ELECTRONIC VAPOR DEVICES AND E-LIQUID IS PROHIBITED TO PERSONS UNDER AGE 18.”

Section 11. Administrative Appeals

(1) Right to an administrative appeal hearing.

- a. Any aggrieved person may appeal any order, notice of violation, administrative civil penalty assessment, requirement, permit, decision, or determination made by the Health Officer or an administrative official in the administration or enforcement of this ordinance.
- b. An aggrieved person is a person whose interests are, or will likely be, specifically and perceptibly harmed by a requirement, permit, decision determination or order made by the Health Officer or his/her designee, and where a decision in favor of that person would substantially eliminate the harm caused, or likely to be caused, by the requirement, permit, decision or determination or order.
- c. A request for an administrative appeal hearing shall be filed in writing with the Health District and any applicable fee shall be paid within fifteen calendar days of the date of the notice of the decision being appealed, on a form provided by the department. The hearing request shall operate as a stay of the required action or decision, except in the case of an emergency order issued by the Health District. The hearing shall be conducted within thirty calendar days of the filing of the request for hearing, unless alternative scheduling is mutually agreed to in writing by the parties.
- d. Notice of an administrative appeal hearing shall be given to the person requesting the hearing, the applicant, and property owner as applicable.

(2) Administrative appeal hearing procedures.

- a. The administrative appeal hearing shall be an open record hearing presided over by the Health Officer and shall be either tape recorded or video recorded at the discretion of the Health Officer. Evidence shall not be accepted after the hearing is closed unless expressly permitted by the presiding officer or by written agreement of the parties.

- b. The persons to whom notice of the administrative appeal hearing was given and the Health District staff may offer such evidence as they deem necessary and shall produce such evidence as the health officer may deem necessary to obtain an understanding and determination of the issues.
- c. The burden of establishing a violation shall be on the Health District; and shall be established by a preponderance of the evidence.
- d. The Health Officer shall determine the relevancy and materiality of the evidence offered. Conformance to legal rules of evidence shall not be required. All evidence shall be taken in the presence of all parties recorded as present, exhibits, affidavits, and documents may be considered as evidence but shall be given only such weight as the Health Officer deems appropriate.
- e. Testimony of witnesses may be presented. The Health Officer shall determine from the evidence presented at the administrative appeal hearing whether or not the notice, decision, or determination that is being appealed should be affirmed, modified or reversed.
- f. The hearing may be continued from time to time without further mailed or delivered notice.
- g. The Health Officer shall maintain a record of documents presented.

If any party who requests an administrative appeal hearing fails to attend or participate in a hearing, the Health Officer may enter a decision denying the party's request, or may conduct the hearing without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

The Health Officer shall issue a written decision concerning the disposition of the administrative hearing within ten business days of the hearing date, and may require additional actions as part of the decision.

All decisions of the Health Officer shall be final unless review is sought by the filing of an appeal with the Board of Health in accordance with section 12 within ten days from the date of the decision.

Section 12. Appeals to Board of Health

(1) An appeal to the Board of Health may be filed by any aggrieved party who participated in an administrative appeal hearing to the Health Officer pursuant to Section 11. The appeal shall be commenced by filing a written request on forms prescribed by the Health District and must be filed with the health officer within ten days of the date of the decision or order which is the subject of the appeal.

(2) The appeal must cite with particularity the order or decision being appealed from and the reasons for the appeal. A copy of the order or decision appealed from shall be attached to the appeal. The appeal filing shall be accompanied by any applicable filing fee.

(3) The Board of Health shall have the authority to determine initially whether any such appellant has standing to challenge a decision or final order of the Health Officer and whether such appeal was timely filed.

(4) The Board of Health may join appeals that present substantially similar issues that reasonably should be joined.

(5) The proper filing of an appeal to the Board of Health shall stay the Health Officer's decision during the pendency of the appeal, except in the case of an emergency order.

(6) The appeal to the Board of Health shall be scheduled for the next regularly scheduled Board of Health meeting. At the hearing, the Board of Health shall provide each party an opportunity to be heard, to present evidence, and to show why the Health Officer's order or decision should be sustained, modified or reversed. The Board of Health shall be bound by the regular rules of evidence pertaining to superior court trials. Within this framework, the Board of Health shall make such rulings on evidence and procedure as it deems appropriate and may develop guidelines for the conduct of such hearings.

(7) The record made at such hearing shall be capable of being transcribed at the request of the parties or the Board of Health.

(8) The Board of Health shall decide the matter under appeal by a majority vote of the Board of Health, and shall enter a written decision together with findings of fact and conclusions of law and an appropriate order sustaining, modifying, or reversing the order or decision of the Health Officer and shall serve them on all parties within thirty five days of the close of the hearing.

(9) All decisions of the Board of Health shall be final unless an aggrieved person files an appeal with the Superior court for Grant County within thirty days from the date of the decision. Such appeals to Superior Court shall be on the record and neither new testimony nor evidence shall be taken. Such appeals shall not operate as a stay of any required action or approval contained in the decision of the Board of Health.

(10) An aggrieved party must exhaust the administrative remedies provided for in these sections 11 and 12 before seeking other or additional relief in a court of law. An aggrieved party who fails to exhaust the remedies provided by these sections waives its challenge and has failed to exhaust all administrative remedies thereby precluding any appeal of the Health Officer's or Board of Health's decision(s) to a court of law.

Section 13. Penalties

Anyone failing to comply with any of the terms of this Ordinance shall be in violation of this Ordinance. The Health District may proceed to commence a civil action to recover a penalty of

\$100.00 for each violation of this Ordinance. Each day a continuing violation exists shall be considered a separate violation.

Section 14. Applicability

This Ordinance applies to the sale and distribution of all electronic vapor devices and e-liquid to the extent not preempted by federal and State law, including, but not limited to, the regulation of those products by the United States Food and Drug Administration

Section 15. Severability

The provisions of this Ordinance 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 Ordinance.

Section 16. Effective Date

Passed by the Grant County Board of Health and signed by the Chair on September 10, 2014 with the Ordinance going into effect on January 1, 2015.

Attest:

Pattie Anderson, Clerk

Tony Massa, Chair

Katherine Kenison
Health District Attorney

Date