

Ordinance No. 1773

AN ORDINANCE regulating uses and sales of electronic vapor devices.

WHEREAS, Council has expressed concerns with regard to potentially regulating electronic vapor devices (E-Cigarettes) in the City of Washougal;

AND WHEREAS, the City Attorney's Office has reviewed the matter and reviewed how other jurisdictions are handling this issue and have come up with a proposed code section.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHOUGAL, WASHINGTON as follows:

Section I

That electronic vapor devices shall be regulated. A new code section is hereby adopted to regulate electronic vapor devices in the City of Washougal. A copy of the new code sections are attached hereto, marked as Exhibit "A" and by this reference incorporated herein.

Section II

This ordinance shall take effect on March 23, 2015 after its passage, posting and publication according to law.

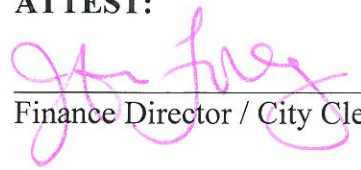
PASSED by the Council for the City of Washougal at a regular meeting this 23rd day of February, 2015.

City of Washougal, Washington



MAYOR

ATTEST:



Finance Director / City Clerk

APPROVED AS TO FORM:



City Attorney

Chapter 9.26

ELECTRONIC VAPOR DEVICES

Sections:

9.26.010	Purpose and intent.
9.26.020	Definitions.
9.26.030	Sampling and sales to minors prohibited.
9.26.040	Coupon redemption.
9.26.050	Possession by minors prohibited.
9.26.060	Prohibition signage to be posted – Identification required.
9.26.070	Mechanical sales restricted.
9.26.080	Use prohibited in public places and places of employment.
9.26.090	Penalties and enforcement.

9.26.010 Purpose and intent.

A. It is expressly the purpose of this chapter to protect, provide for, and promote the health, safety and welfare of the general public. Its provisions shall be liberally construed for the accomplishment of these purposes.

B. The intent of this chapter is to protect minors from the hazards of nicotine addiction and the dangers of inhaling other products with no regulatory oversight as to their purity, content, and potential negative health impact. The intent of this chapter is to also protect the general public from exposure to vapors and gas fumes of liquid nicotine and/or other substances for which there is no regulatory oversight as to their purity, content, and potential negative health impact to the general public.

C. The City of Washougal finds that the emergence of new, unregulated electronic smoking or vaping devices and unregulated nicotine delivery products present a threat to public health. Electronic smoking or vaping devices and other unapproved nicotine delivery products 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 18 years old.

D. The U.S. Food and Drug Administration (FDA) warns that electronic vapor devices have not been fully studied, so consumers currently don't know the potential risks of electronic vapor devices when used as intended, how much nicotine or other potentially harmful chemicals are being inhaled during use, or whether there are any benefits associated with using these products. The FDA has raised concerns that electronic vapor devices, which are often marketed in appealing flavors, can increase nicotine addiction among young people and may lead them to try conventional tobacco products. There is currently no regulation prohibiting the sale of electronic vapor devices to youth.

E. 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 vapor devices are available in candy and fruit flavors, just as cigarettes were prior to the Family Smoking Prevention and Tobacco Control Act.

F. The manufacturers of electronic vapor devices market their products as harmless and as a safe alternative to smoking. They also make claims that may impact a young person's decision to use an electronic vapor device which can lead to nicotine dependence. Electronic vapor devices are currently available to youth to purchase since, unlike cigarettes, there are no restrictions on age.

G. Electronic vapor devices may be used to inhale substances that are not regulated by the FDA, or state or federal law, which substances may be harmful to the user and others nearby. The Washington State Department of Health warns that secondhand vapor from electronic vapor devices may be unsafe.

9.26.020 Definitions.

As used in this chapter:

“Electronic vapor device”, “electric cigarette” or “e-cigarette” means an electronic or battery-operated device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that produce a vapor or gas from liquid nicotine or other liquid substances which is inhaled by a user simulating smoking. The term includes e-pens, e-hookahs, hookah pens, vape-pipes, vape-pens, and such other devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarettes, cigars, cigarillos, pipes, hookahs, or other smoking devices, and which enables its user to inhale vapor or gas derived from liquid nicotine or other substances.

“Minor” means someone under 18 years of age.

“Person” means any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or any other entity or business of any kind.

“Public place” shall have the meaning set forth in RCW 70.160.020(2).

“Place of employment” shall have the meaning set forth in RCW 70.160.020(3).

9.26.030 Sampling and sales to minors prohibited.

A. No person may give, distribute, transfer, sell, market, or offer electronic vapor devices, their components, or samples to persons under 18 years of age.

B. It is a defense to a prosecution for violation of this section when the person making the gift, distribution, transfer, sale, marketing, or offer as a gift, transfer, sale, marketing, or sample

reasonably relied on any of the officially issued identification referenced in RCW 70.155.090 showing the purchaser or recipient was at least 18 years old.

9.26.040 Coupon redemption.

No person shall give or distribute electronic vapor devices, or their components, to a person by a coupon if such coupon is redeemed in any manner that does require an in-person transaction in a retail store. The intent of this section is to help prevent purchase by minors.

9.26.050 Possession by minors prohibited.

No person under the age of 18 years old may possess, purchase, attempt to purchase, or otherwise obtain electronic vapor devices or their components. This prohibition does not apply to activities or enforcement actions under the control of a city, state, or federal law enforcement authority.

9.26.060 Prohibition signage to be posted – Identification required.

A. Any person selling, marketing, displaying, giving, or distributing electronic vapor devices, or their components, shall display a printed sign, posted so that it is clearly visible to anyone purchasing electronic vapor devices 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 ELECTRONIC VAPOR DEVICES OR RELATED DEVICES OR THEIR COMPONENTS TO PERSONS UNDER THE AGE OF 18 IS STRICTLY PROHIBITED – WMC 9.26.030. IF YOU ARE UNDER 18, YOU COULD BE SUBJECT TO PENALTY FOR POSSESSING OR PURCHASING ELECTRONIC VAPOR DEVICES OR RELATED DEVICES OR THEIR COMPONENTS – WMC 9.26.050.

B. When there may be a question of a person's age, identification of at least sufficiently referenced in RCW 70.155.090 shall be required by any person selling, giving, or distributing electronic vapor devices or their components.

9.26.070 Mechanical sales restricted.

A. No person shall sell or permit to be sold electronic vapor devices or their components through any device that mechanically dispenses such products unless the device is located fully within a premises from which minors are prohibited, or in industrial worksites where minors are not employed nor permitted, and not less than 10 feet from all entrance or exit ways to and from each such premises.

B. A person may request a written waiver for this section from the Code Enforcement Officer if the person can demonstrate to the Code Enforcement Officer's satisfaction that the premises is architecturally impracticable for the device to be located not less than 10 feet from all entrance and exit ways. Whether to grant a waiver is within the sole discretion of the Code Enforcement Officer.

9.26.080 Use prohibited in public places and places of employment.

A. The use of electronic vapor devices in public places and places of employment is prohibited. Owners, or in the case of a leased or rented space the lessee or other person in charge, shall prohibit the use of electronic vapor devices in public places and places of employment.

B. 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 electronic vapor devices 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.

9.26.090 Penalties and enforcement.

A. A minor that violates any provision of this chapter shall be subject to a civil penalty of \$250.00 per violation. Each transaction and/or incident of possession by a minor shall be considered a new and separate violation.

B. When a violation of WMC 9.26.060 occurs, a warning shall first be given to the owner or other person in charge. Subsequent violations are subject to civil fines. Each day upon which a violation occurs or is permitted to continue under WMC 9.26.060 constitutes a separate violation.

C. Any person other than a minor that violates any provision of this chapter shall be subject to a civil fine. Each transaction shall be considered a new and separate violation. Civil fines for a violation of any part of this chapter by any person other than a minor shall be as follows:

1. For a first violation, a civil fine of \$250.00 shall be assessed.
2. For a second violation, a civil fine of \$500.00 shall be assessed.
3. For a third and all subsequent violations, a civil fine of \$1,000 shall be assessed.

D. Civil penalties assessed may be enforced and collected in accordance with lien, personal obligation, and other procedures authorized by law.

E. This chapter may be enforced by the Police Department, Code Enforcement Officer, or the Community Development Director or his/her designee.