

Intent to Enforce Vaping Devices under the Smoking in Public Places Law



Spokane Regional Health District (SRHD) is the local public health jurisdiction serving Spokane County. SRHD is responsible in the county for enforcing Washington’s Smoking in Public Places (SIPP) law, which was passed by voters in 2005. The law prohibits smoking in public places, places of employment, and within 25 feet of all doors, windows, and ventilation intakes. Under the law, business owners, or in the case of leased or rented space, the lessee is required to post signs prohibiting smoking at each building entrance and, for retail establishments, at locations throughout the facility. SRHD enforces SIPP by conducting random inspections and responding to complaints from the public. When a violation is witnessed, business owners may receive warnings and civil fines.

SRHD staff is proposing that the Board of Health adopt a resolution to enforce a prohibition on the use of vaping devices anywhere that smoking is prohibited.

Public Health Concerns

The public health concerns that inform SRHD staff’s intent to enforce vaping devices under the SIPP law are:

Secondhand vapor: Evidence indicates that the vapor/aerosol emitted by the use of vaping devices is a threat to public health. The aerosol produced by vaping devices can contain heavy metals, ultrafine particulate, and cancer causing agents like formaldehyde and nitrosamines.^{1,2} Vaping device emissions also contain volatile organic compounds (VOCs) and fine/ultrafine particles.³ These ultrafine particles can travel deep into the lungs and may lead to tissue inflammation⁴. When vaping devices are used, bystanders are exposed to the toxic chemicals and carcinogens through secondhand vapor. People exposed to vaping aerosol have been found to absorb nicotine at levels comparable to people exposed to secondhand smoke.⁵ The long-term health impacts of inhaling this vapor are unknown. Vulnerable populations, including pregnant women, children and people with cardiovascular conditions, may be at elevated risk.

Unknown Substances: Vaping devices can be used to consume any liquid, including liquid THC, the active ingredient in marijuana. Users can also create their own e-juice. It is impossible to know what product is being used in a vaping device, thus exposing bystanders to unknown substances and particulates.

Rising Youth Initiation: In 2014, 26 percent of high school sophomores in Spokane County reported using a vaping device in the past 30 days. This is over twice the rate of sophomores who reported smoking a cigarette in the past 30 days in the same year⁶. Preventing youth from addiction to nicotine is critical to continuing to drive down tobacco use. Youth are vulnerable to nicotine addiction and emerging research indicates that the use of vaping devices by youth may ultimately lead them to smoke cigarettes⁷.

¹ Goniewicz Maciej Lukasz et al., “Levels of selected carcinogens and toxicants in vapor from electronic cigarettes,” National Institutes of Health Public Access, pg. 6.

² Federal Drug Administration, “FDA and Public Health Experts Warn About Electronic Cigarettes,” News and Events, 2009.

³ Schripp et al., “Does e-cigarette consumption cause passive vaping?” *Indoor Air* 2013, 23: 25-31.

⁴ Schober et al., “Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarette consumers” *International Journal of Hygiene and Environmental Health* 2014, 217: 628-637.

⁵ Flouris et al., “Acute impact of active and passive electronic cigarette smoking on serum cotinine and lung function,” *National Center for Biotechnology Information* 2013 Feb;25(2): 91-101.

⁶ Washington State Healthy Youth Survey <http://www.askhys.net>

⁷ Rigotti, “e-Cigarette Use and Subsequent Tobacco Use by Adolescents New Evidence About a Potential Risk of e-Cigarettes,” *The Journal of the American Medical Association*, Vol 314, No. 7 2015;314(7):673-674.

Additional Rationale for Policy Change

Vaping devices are not regulated at the state or federal level in the same way that combustible and smokeless tobacco is regulated. In 2014, the Federal Drug Administration (FDA) proposed a deeming rule to include oversight of vaping devices under the existing Tobacco Control Act. However, adoption of the deeming rule is uncertain and the approval process may take many years to finalize. State legislation has been proposed, targeted at preventing youth access to vaping products. Provisions include: child-proof packing, warning labels and ingredient disclosures; storing products behind counter; restricting sampling, coupons and vending machines; and taxation. Neither the federal nor state regulations would include a prohibition on the use of vaping devices in public places in order to protect the public from secondhand vapor.

Regulations on vaping devices are primarily occurring at the local level. As of July 2015, there were 394 local and three state laws restricting use in public places⁸. In Washington State, five other counties have restricted the use of vaping devices in the same places where smoking is prohibited. Both King County and Pierce County addressed this in 2011, followed by Grant County in 2014 and Clark and Snohomish counties in 2015.

SRHD staff and other health districts have found that the use of vaping devices in public places and places of employment complicates enforcement of smoke-free laws and the prohibition on the use of marijuana in public. In addition, the use of vaping devices in public places and places of employment represents a renormalization of smoking, increases social acceptance of smoking and vaping, and provides models of unhealthy behavior that are contrary to public health efforts of the last 50 years.

Impact on SRHD Enforcement

As noted, the Tobacco Prevention and Control program at SRHD has a standardized process for enforcing the SIPP Law, which includes random inspections and response to complaints from the public. Enforcing vaping devices under the SIPP law will not require a significant increase to staff time beyond initial public education.

Overview of Policy Process

Under the guidance of the BOH Policy Committee and agency attorney, SRHD staff have drafted a resolution for BOH consideration and conducted public outreach to engage stakeholders of all perspectives. A public comment period will be held January 4, 2016 through February 5, 2016. During this time, the public can submit comment via email or postal mail. All comments will be compiled and shared with SRHD's Board of Health for review prior to a formal public hearing to occur at the regularly scheduled meeting in February 25, 2016. The Board of Health will have the option to vote on the issue in February following the public hearing or defer action to a future meeting.

Vaping devices are also known as electronic cigarettes, e-cigarettes, e-cigs, e-devices, e-pens, personal vaporizers, electronic nicotine delivery systems, vape-pens, and mods.

Vaping devices heat a liquid solution, usually containing nicotine, to simulate the feeling of smoking. Vaping devices produce an exhaled vapor that mimics smoke. Devices can be battery-powered or rechargeable; disposable or refillable. The liquid solution is often referred to as e-juice.

Vaping refers to the use of a vaping device. When a person inhales on a vaping device, the device heats the e-juice which produces an aerosol. This aerosol is typically referred to as "vapor."

⁸ American Nonsmokers' Rights Foundation <http://no-smoke.org/pdf/ecigslaws.pdf>

Details of Policy Process

Work on this policy has involved numerous SRHD leadership and staff, Board of Health (BOH) Policy Committee and the agency attorney.

April-May, 2015

- Health Policy and Communications Manager met with Tobacco Prevention and Control program staff to discuss policy options concerning tobacco, vaping and marijuana. Including vaping devices under SRHD enforcement of the Smoking in Public Places (SIPP) Law was discussed.
- Approval from Health Officer to proceed.
- Tobacco Prevention and Control program staff presented to BOH concerning the work of tobacco program, current trends regarding vaping devices. Staff proposed taking steps to include vaping devices under SIPP. BOH members were supportive.
- Health Policy and Communications Manager met with BOH Policy Committee and obtained their support of program and policy staff moving forward with the policy process.

June-August, 2015

- Program staff completed a detailed assessment of statewide local health jurisdiction policies and processes of the counties that currently or were proposing to prohibit vaping in public places and places of employment (King, Pierce, Clark, Grant and Snohomish).
- Program staff assembled an internal team to work on a resolution and develop a public outreach process: Health Policy and Communications Manager; Healthy Communities Manager; Tobacco, E-cigarette, and Marijuana Prevention Coordinator; Youth Tobacco Prevention Coordinator; and Communications Specialist.
- The team consulted with the SRHD attorney to ensure proper procedures were developed.
- Program staff developed a timeline that included BOH education and a public outreach plan.

September, 2015

- Health Policy and Communications Manager and program staff met with BOH Policy Committee to review proposed plan and receive guidance.
- BOH member Jon Snyder presented a reminder at monthly BOH meeting including a timeline and overview for the resolution.

October-November, 2015

- SRHD staff announced plans to propose a resolution through an article in the Spokesman Review and responded to subsequent media requests.
- SRHD staff hosted a meeting of business owners who sell vaping devices as their primary business to answer questions about proposed resolution and to listen to their feedback.
- Program staff announced the proposed resolution to community partners and prevention coalitions.
- SRHD staff developed education and outreach materials, including an overview of the project, answers to frequently asked questions and website content.

December, 2015

- SRHD issued a press release concerning the 10th anniversary of SIPP and highlighting the proposed resolution.
- Public comment period and public hearing were scheduled. Public announcement placed in Spokesman Review and on SRHD website detailing the process and including the draft resolution.

January 2016

- Comment period January 4th –February 5th
- Program staff invited participation in public process from stakeholders and partners (including vapor retail stores and prevention partners).
- Program staff and Health Policy and Communications Manager present at a BOH work session to review overview of project, themed notes from meeting with vaping device retail stores, and proposed resolution

Next Steps

- Program staff compile public comments for inclusion in February BOH meeting packet. (Public comment period closes February 5th, 2016.)
- Public hearing at February 25, 2016 BOH meeting.
- BOH option to vote on the proposed resolution during the February meeting or postpone to future meeting.
- Implementation of prohibition would occur approximately 90 days following passage of the resolution.