

BEFORE THE BOARD OF HEALTH
SPOKANE REGIONAL HEALTH DISTRICT

RESOLUTION #16-01

RE: RESOLUTION ADOPTING RCW 70.160 BY REFERENCE AND PROHIBITING SMOKING, INCLUDING SMOKING OF TOBACCO, FLAVORED TOBACCO PRODUCTS AND MARIJUANA, AND VAPING OF ANY SUBSTANCE IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN SPOKANE COUNTY AND PROVIDING FOR ENFORCEMENT PURSUANT TO RCW 70.160.

WHEREAS, Article 11, Section 11 of the Washington State Constitution empowers local governing bodies to make and enforce, within their limits, local laws and regulations not in conflict with the general laws of the state; and

WHEREAS, RCW § 70.05.060(1) provides that local boards of health shall enforce the public health statutes of the state and rules promulgated by the state board of health and the secretary of health; and

WHEREAS, RCW § 70.05.060(3) authorizes local boards of health to enact such local rules and regulations as are necessary to preserve, promote and improve the public health and provide for the enforcement thereof; and

WHEREAS, the Washington State Legislature has recognized the public health impact of secondhand smoke and prohibited smoking in a public place or in any place of employment through the Smoking in Public Places law, codified at Chapter 70.160 RCW; and

WHEREAS, Chapter 70.160 RCW empowers local health jurisdictions to enforce the duties of owners or persons in control of public places and places of employment to ensure establishments are in compliance with the Smoking in Public Places law; and

WHEREAS, Chapter 70.160 RCW authorizes local health jurisdictions to adopt regulations as required to implement the chapter; and

WHEREAS, Spokane Regional Health District has requested and received public comment regarding the public health impacts of secondhand smoke and/or vapor from (1) tobacco and flavored tobacco products, (2) marijuana, and (3) vaping devices; and

WHEREAS, evidence from multiple studies, including those conducted by the United States Food and Drug Administration, indicates that the vapor produced by vaping devices is not safe, having been found to contain chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium; ultrafine particulates, acrolein, tin, toluene and aluminum which are associated with a range of negative health effects such as skin, eye and respiratory irritation, neurological effects, damage of reproductive systems and premature death from heart attacks and stroke; and toxic chemicals such as diethylene glycol which is toxic to humans; and

WHEREAS, there are no standards, no testing and no labelling requirements for vaping devices or vaping substances, and vaping devices can be used to consume any liquid or substance, including those created by the user, making it impossible to know what products are being used in a vaping device nor what substances remain in the vapor; and

WHEREAS, vaping devices may contain nicotine and present a substantial risk of nicotine and other substance addiction; and

WHEREAS, vaping devices have a strong appeal to youth due to their high technology design and flavors attractive to youth, as evidenced by a recent survey in which 26 percent of high school sophomores in Spokane County reporting use of a vaping device in the past 30 days which is over twice the rate of sophomores who reported smoking a cigarette, exposing youth to the adverse effects of nicotine on brain development, the strong risk of nicotine addiction in youth, and the potential to initiate the smoking of cigarettes as indicated by emerging research ; and

WHEREAS, vaping devices have not been successfully tested as a proven method to quit smoking and the United States Food and Drug Administration has not approved vaping devices for smoking cessation; and

WHEREAS, the use of vaping devices in public places and places of employment complicates enforcement of the state and county laws prohibiting smoking in public places and places of employment; and

WHEREAS, Spokane Regional Health District has received calls from concerned citizens and business owners regarding the safety of vaping devices and has heard from business owners interested in banning the use of vaping devices in public places and places of employment; and

WHEREAS, 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;

WHEREAS, the Board of Health finds that secondhand smoke from tobacco, including flavored tobacco products, presents a threat to the citizens of Spokane County; and

WHEREAS, the Board of Health finds that secondhand smoke from smoking marijuana presents a public health threat to the public health of the citizens of Spokane County;

WHEREAS, the Board of Health finds that secondhand vapor and/or aerosol emitted by the use of vaping devices contains chemicals and other substances that present a threat to the public health of the citizens of Spokane County and an elevated risk to pregnant women, children and people with cardiovascular conditions; and

WHEREAS, RCW 70.160 provides an effective enforcement mechanism to ensure that business owners and those in charge of establishments regulate smoking and vaping activity within their establishments;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF HEALTH, as follows:

1. Chapter 70.160 RCW is adopted by reference.
2. Smoking, including smoking of tobacco, flavored tobacco products and marijuana, and vaping of any substance is prohibited in public places and places of employment in Spokane County.
3. SRHD adopts the following additional provisions prohibiting smoking flavored tobacco products, smoking marijuana and vaping any substance in public places and places of employment in Spokane County and providing for enforcement pursuant to RCW 70.160.

a. The following additional language is added to RCW 70.160.020:

(1) "Smoke" or "smoking" means the carrying, use or smoking of any kind of lighted, combustible, smoldering, burning or heated pipe, cigar, cigarette, hookah or any other lighted or heated smoking equipment: for use with substances including but not limited to tobacco, flavored tobacco products such as shisha, steam stones or marijuana.

(2) "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, 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 licenses child care, foster care, adult care, or other similar social service care on the premises.

Public place includes, but is 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 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.

Public place also means any public or private place that is open to the general public regardless of whether membership dues, cover charges or a fee is charged or there are restrictions such as an age requirement for the privilege of admission, and includes any place used by a membership association or club at which non-member guests are present or permitted.

(3) "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, of twenty-five (25) 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 childcare, foster care, adult care, or other similar social service care on the premises, is not a place of employment. Place of employment also means an outdoor venue or workspace that is adjacent to or enjoined with a business enterprise or work environment where employees are required to pass through during the course of employment; including but not limited to food/drink service areas such as on decks or outdoor areas.

(4) "Employee" means any individual who is employed by an Employer in return for the payment of direct or indirect monetary wages, benefit, or profit, any individual who volunteers his or her services to an employer for no monetary compensation or any individual who performs work or renders services, for any period of time, at the explicit

or implicit direction or authority of an employer, owner, shareholder, member, lessee, volunteer or any other person in charge of a place that is subject to the provisions of Chapter 70.160 RCW. An Employer/Owner is also considered an Employee when performing services at a place of employment. This definition shall also include persons working for an employer or in a public place in the capacity of an independent contractor.

(5) "Employer" means any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity of any kind that pays one or more employees direct or indirect monetary wages, benefits, 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), shareholders or member(s) of a sole proprietorship, partnership, corporation, association, nonprofit organization, or other business entity.

(6) "Sample" or "sampling" means a product distributed to members of the public at no or nominal cost for product demonstration or promotion purposes.

(7) "Vaping" means the use of a vaping device or inhaling of vapor or aerosol from a vaping device, and includes sampling.

(8) "Vaping device" means any device that employs a battery or other means to heat or aerosolize a solution, steam stones or substance to produce a vapor or aerosol intended for inhalation; including any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, hookah pipes, or similar products or devices.

b. The following additional language is added to RCW § 70.160.030:

(1) No person may smoke in a public place or place of employment.

(2) No person shall use a vaping device in any public place or place of employment.

c. The following additional language is added to RCW § 70.160.050:

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 and vaping in public places and places of employment 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 services establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place.

d. The following additional language is added to RCW § 70.160.070:

(2) When violations of this Resolution occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil penalty of up to one hundred dollars. A re-inspection fee will also be applied when an initial inspection results in the finding of a violation and the re-inspection also results in the finding of a violation. Each day a continuing violation exists shall be considered a separate violation.

4. This Resolution shall become effective on July 1, 2016.

Signed this 25th day of February, 2016 in Spokane, Washington.

SPOKANE REGIONAL HEALTH DISTRICT
BOARD OF HEALTH

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member

Board Member