

**COUNTY OF JEFFERSON  
STATE OF WASHINGTON**

<b>An Ordinance Amending</b>	}	
<b>Jefferson County Code 8.60</b>	}	<b>Ordinance No. _____</b>
<b>(Smoking and Vaping</b>	}	
<b>in Public Places, Places of Employment</b>	}	
<b>and Outdoor Places where</b>	}	
<b>Children Congregate</b>	}	

**Section 1. Recitals.**

- A. Washington Constitution Article XI, Section 11 provides that counties may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws;
- B. RCW 36.32.120(7) provides that county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law;
- C. RCW 70.05.060 grants to the county board of health specific powers and duties including: (1) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof; and, (2)
- D. The Washington Smoking in Public Places Act, Chapter 70.160 RCW regulates smoking in public places;
- E. Chapter 70.160 RCW, as amended by the voters' approval of Initiative 901, became effective on December 8, 2005;
- F. RCW 70.160.011 states: "The people of the state of Washington recognize that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces;"
- G. It is necessary to create this ordinance in order to comply with the enforcement and rebuttal requirements outlined in Chapter 70.160 RCW, as that statute was amended and revised by Initiative 901.
- H. RCW 70.345.150 prohibits the use of vapor products in certain indoor areas and outdoor areas;

- I. Pursuant to RCW 70.345.210(3) and subject to RCW 70.345.150, political subdivisions may regulate the use of vapor products in indoor public places;
- J. RCW [28A.210.310](#) requires a prohibition on the use of all tobacco products on public school property;
- K. Chapter [8.60](#) of the Jefferson County Code (JCC) was adopted by Ordinance 04-0216-06 to prohibit smoking in public places and places of employment, consistent with Chapter [70.160](#) RCW;
- L. Nicotine is a highly addictive and toxic chemical;
- M. Nicotine presents a substantial risk of nicotine or other substance addiction;
- N. Nicotine negatively impacts the developing brain;
- O. Extensive medical and scientific research confirms that secondhand smoke is harmful to smokers and nonsmokers alike causing eye, nose and throat irritation, aggravating lung and heart diseases including emphysema and is linked to various types of cancers;
- P. Additional scientific research concludes that carbon monoxide levels in rooms and vehicles where smoking occurs often exceeds maximum permissible safety levels and that other hazardous compounds are released into the environment by tobacco smoke including but not limited to: tar, nicotine, nitrogen dioxide, ammonia, benzene, formaldehyde, hydrogen sulfide, hydrogen cyanide, and arsenic.
- Q. Adverse health consequences may result from direct or passive exposure to the mixture of harmful chemicals in tobacco and vapor products, especially in vulnerable populations such as children, pregnant women, and individuals with compromised lung function or cardiovascular conditions;
- R. Nicotine is one of the main chemical components of most e-liquid solutions used in vaping;
- S. Although vaping or the use of e-cigarettes may pose less risk to the user than smoking combustible tobacco, a comprehensive review of the scientific literature by the National Academies of Sciences, Engineering and Medicine found conclusive evidence that e-cigarettes contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine;
- T. E-liquids consumed in vapor products can contain marijuana or THC concentrates and the use of vapor products in public places and places of employment complicates enforcement of laws prohibiting use of marijuana in public.
- U. E-cigarettes are not approved by the FDA as a smoking cessation aid;

- V. The U.S. Prevention Services Task Force has concluded that evidence is insufficient to recommend e-cigarettes for smoking cessation in adults;
- W. Scientific analysis, including studies conducted by the United States Food and Drug Administration, show vapor products release fine and ultrafine particles of solvents, flavoring, and chemical byproducts produced in the heating process that can include carcinogens, heavy metals and other hazardous chemicals;
- X. While the board of health agrees that consenting adults have the right to choose for themselves what legal activities to engage in, and what legal chemicals to ingest or inhale, the board of health also recognizes that its paramount responsibility is to protect the public health;
- Y. Vapor products have a high appeal to youth, and use of vapor products by youth is increasing rapidly;
- Z. Jefferson County, like the nation as a whole, has experienced a drastic increase in vaping among youth;
- AA. The use of vapor products by Jefferson County youth (i.e., 10th and 12th graders) has increased 157% between 2016 and 2018. Local Data shows 38% of youth (10<sup>th</sup> and 12<sup>th</sup> graders combined) reported Past 30 Day Use of e-cigarettes or vape pens; and in 2018, 8.7 % of Jefferson County tenth graders report using THC in their e-cigarettes.
- BB. Young adults and children are especially vulnerable to nicotine addiction and its toxic effects;
- CC. There is strong concern that the lack of regulations prohibiting the use of vapor products in public places sends a mixed message to youth, may renormalize the use of nicotine, and hence increase nicotine addiction in those most vulnerable;
- DD. Regardless of the source, the inhalation and ingestion of nicotine and other chemicals in vape liquids is not safe and causes ill health effects;
- EE. Since e-cigarette and vapor product use is not harmless, and since nicotine is a highly addictive and toxic chemical—especially for youth—the board of health is compelled to adopt regulations prohibiting the use of e-cigarettes and vapor products in public places to protect the health of those adults who choose not to expose themselves to vapor product emissions, and to protect the health of youth who may not have the choice to avoid exposure to vapor product emissions.
- FF. Eleven other local boards of health and other cities in Washington State have adopted ordinances to restrict vaping in public places and places of employment similarly to where smoking is prohibited.
- GG. This ordinance is proposed and enacted pursuant to the powers granted to Jefferson County and its Board of health by the Washington Constitution, statutes and regulations.

NOW, **THEREFORE**, be it ordained by the board of health as follows:

**Section 1. Repealing and Replacing Chapter 8.60 JCC**

Chapter 8.60 JCC is added as set forth in Appendix A. This amendment repeals and replaces the current Chapter 8.60 JCC.

**Section 2. Purpose**

The purpose of this Ordinance is to protect the public health and promote the safety and welfare of the citizens of Jefferson County through the prohibition of smoking and use of vapor products in public places, places of employment, and outdoor public places where children congregate.

It is expressly the purpose of this chapter to provide for and promote the health of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.

**Section 3. Applicability**

This chapter shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the Federal Government or federally recognized Indian Tribes.

**Section 4. Findings.** The county board of health hereby adopts the above recitals as its findings of fact in support of this Ordinance.

**Section 5. Severability.** The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstances is held invalid, then the remainder of this Ordinance or application of its provisions to other persons or circumstances shall remain valid and unaffected.

**Section 6. SEPA Compliance.** The Jefferson County Public Health Department prepared an environmental checklist detailing the proposed ordinance and its compliance with the State Environmental Policy Act (SEPA). After a review of the environmental checklist, proposal, available information, and applicable regulations Jefferson County's SEPA Responsible Official issued a Determination of Non-Significance (DNS) on **July \_\_\_\_, 2019** under WAC 197-11-340(1). Under WAC 197-11-340 this DNS does not require a public comment period.

**Section 7. Effective Date.** This amendment to Chapter 8.60 JCC shall take effect immediately upon its adoption.

**(SIGNATURES APPEAR ON THE FOLLOWING PAGE)**

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

JEFFERSON COUNTY BOARD OF HEALTH

\_\_\_\_\_  
Kees Kloff, Chair

\_\_\_\_\_  
Kate Dean, Vice Chair

\_\_\_\_\_  
Greg Brotherton, Member

\_\_\_\_\_  
David Sullivan, Member

\_\_\_\_\_  
Pamela Adams, Member

\_\_\_\_\_  
Sheila Westerman, Member

\_\_\_\_\_  
Denis Stearns, Member

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jenny Matter,                      Date  
Clerk of the Board

\_\_\_\_\_  
Philip C. Hunsucker,      Date  
Chief Civil Deputy Prosecuting Attorney

**APPENDIX A**

**Chapter 8.60  
Smoking and Vaping in Public Places, Places of Employment, and  
Outdoor Places where Children Congregate**

**8.60.010 Purpose.**

**8.60.020 Authority.**

**8.60.030 Applicability and Construction.**

**8.60.040 Definitions.**

**8.60.050 Smoking and Vaping Prohibited.**

**8.60.060 Required Signage.**

**8.60.070 Administration and Enforcement.**

**8.60.080 Rebuttal of 25-foot Presumption.**

**8.60.090 Administrative Remedy.**

**8.60.100 Administrative Appeal of Health Officer Decision to the Board of Health.**

**8.60.110 Judicial Review.**

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**8.60.130 Limitations.**

**8.60.140 Warning and Disclaimer of Liability.**

**8.60.010 Purpose.**

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- (1) These clean air smoking and vaping regulations are adopted for the purpose of protecting the health, safety and welfare of the public by reducing the potential for public exposure to nicotine and other harmful and potentially harmful chemicals by restricting the use of tobacco and vapor products, also known as electronic nicotine delivery systems (ENDS) and e-cigarettes, in public places, places of employment, and certain outdoor public places.
- (2) These rules are enacted to protect the public health and promote the safety and welfare of the citizens of Jefferson County through the prohibition of smoking and use of vapor products in public places, and places of employment and outdoor public places where children congregate.

**8.60.020 Authority.**

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- (1) Washington Constitution Article XI, Section 11 provides that counties may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.
- (2) RCW 36.32.120(7) provides that county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law.
- (3) RCW 70.05.060 grants to the county board of health specific powers and duties including: (a) Enact such local rules and regulations as are necessary in order to preserve, promote and

improve the public health and provide for the enforcement thereof; and, (b) Provide for the prevention, control and abatement of nuisances detrimental to the public health.

- (4) The Washington Smoking in Public Places Act, Chapter 70.160 RCW regulates smoking in public places, and in places of employment.
- (5) Chapter 70.160 RCW, as amended by the voters' approval of Initiative 901, became effective on December 8, 2005. RCW 70.160.011 states: "The people of the state of Washington recognize that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces."
- (6) It is necessary to create this ordinance in order to comply with the enforcement and rebuttal requirements outlined in Chapter 70.160 RCW, as that statute was amended and revised by Initiative 901.
- (7) RCW 70.345.150 prohibits the use of vapor products in certain indoor areas and outdoor areas and RCW 70.345.210 authorizes political subdivisions to further regulate the use of vapor products in indoor public places and outdoor public places where children congregate."
- (8) RCW 28A.210.310 requires a prohibition on the use of all tobacco products on public school property.

#### **8.60.030 Applicability and Construction.**

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- (1) This chapter shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the Federal Government or federally recognized Indian Tribes.
- (2) This chapter applies to all Jefferson County public places, places of employment and certain outdoor areas as defined in this chapter.
- (3) This chapter supplements but does not replace the regulations adopted by the United States Food and Drug Administration for tobacco products and electronic nicotine delivery systems (ENDS) or the regulations enacted by the state of Washington and enforced by the Liquor and Cannabis Board regarding the licensing and regulation of vapor product promotions and sales.
- (4) This chapter is to be liberally construed to protect public health, welfare and safety.

#### **8.60.040 Definitions.**

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- (1) Terms used in this chapter shall have the meaning provided in Chapter 70.160 RCW, hereby adopted by reference, and as supplemented in this chapter pursuant to the authority provided by RCW 70.160 and for sake of clarity in the application of Chapter 70.160 RCW.

- (2) Terms not specifically defined shall be construed according to their common dictionary definition. The following specific definitions shall apply to smoking and vaping in public places and in places of employment in Jefferson County.
- (3) “Abate” means to take steps to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a nuisance under this chapter by such means and in such a manner, as are deemed necessary by the health officer in the interest of the public health and safety.
- (4) “Aggrieved person” means a person subject to a decision by the director under this chapter and,
  - (a) The decision has prejudiced or is likely to prejudice that person;
  - (b) The person’s asserted interests are among those that the county was required to consider when the director made the decision; and,
  - (c) A judgment or final decision in favor of that person would substantially eliminate or redress the prejudice to that person or entity caused or likely to be caused by the final decision.
- (5) “Board of health” means the Jefferson County Board of Health.
- (6) “Complaint” means a report, either in writing, by telephone, or by other means made by any person describing a potential violation of this chapter, where accurate information about the potential violation can be verified by the department.
- (7) “Department” means the Jefferson County Department of Public Health.
- (8) “Director” means the director of environmental public health at the department.
- (9) “Health Officer” means the county health officer appointed in accordance with Chapter 70.05 RCW or the health officer’s designee.
- (10) “JCC” means the Jefferson County Code, as it now exists or is later amended.
- (11) “Mitigate” means to take measures, subject to county approval, to minimize the harmful effects of a violation where remediation is either impossible or unreasonably burdensome.
- (12) “Or” means both or and and/or.
- (13) “Outdoor places where children congregate” means any outdoor public place where children congregate, including, but not limited to: real property under the control of childcare facilities or schools, playgrounds, parks, beaches, athletic fields and stadiums.
- (14) “Person” means person as that term is defined in RCW 1.16.080.



- (15) “Person responsible” means one or more owner, or in the case of leased or rented space the lessee or other person in charge, of a public place or a place of employment.
- (16) “Place of employment” has the same meaning as in RCW 70.160.020(3). For purpose of this chapter, (1) Places of employment are not limited to places of businesses enclosed by walls; and, (2) Unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, does not include a private residence or home-based business.
- (17) “Presumptively reasonable minimum distance” means a distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means.
- (18) “Public place” has the same meaning as in RCW 70.160.020(2). For purposes of this chapter, “public place” includes all the public places where use of vapor products is prohibited by Chapter 70.345.150 but does not include a private residence: (2) this Chapter regulates vaping in public places
- (19) “Retail outlet” means each place of business licensed to sell vapor products where vapor products are sold to consumers. Retail outlet does not include any business licensed or endorsed for the sale of marijuana by the Washington State Liquor and Cannabis Board.
- (20) “RCW” means the Revised Code of Washington, as it now exists or is later amended.
- (21) “Smoke” or “smoking” has the same meaning as in RCW 70.160.020(1).
- (22) “Tasting” means trying or tasting a vapor product in a retail outlet where entry is restricted to persons eighteen years of age or older and after January 1, 2020 entry is restricted to persons twenty-one years of age or older, as specified by RCW 70.345.100.
- (23) “Vape” or “Vaping” means the use of vapor products, or the act of inhaling or exhaling the resultant vapor or aerosol from a vapor product.
- (24) “Vapor Products” has the same meaning as in RCW 70.345.010(19). In addition, vapor product includes any Electronic Nicotine Delivery System (ENDS) product regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug and Cosmetic Act. However, vapor product does not include any drug, device, or combination product that has been approved by the United States Food and Drug Administration for legal sales for use as a smoking cessation product or other medical purpose, and is marketed and sold for such approved purpose. For purposes of this chapter, vapor products also includes but not limited to, electronic cigarettes (or “e-cigarettes”), electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, electronic hookahs, vape pens, steam stones, electronic juice (or “e-juice”), batteries, chargers, cables, or similar products or devices, as well as any parts that can be used to build or use such devices.

(25) “Violation” means a violation of this chapter, after a complaint is received and that was witnessed by department staff.

(26) “WAC” means the Washington Administrative Code, as it now exists or is later amended.

#### **8.60.050 Smoking and Vaping Prohibited.**

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- (1) Smoking and vaping are prohibited in public places, places of employment, and outdoor places where children congregate, except where preempted under state law
- (2) Persons responsible for place regulated under this chapter shall prohibit smoking and prohibit the vaping in such places by:
  - (a) Prohibiting smoking and prohibiting vaping in the public place or place of employment and outdoor places where children congregate under their authority; and,
  - (b) Posting signs prohibiting smoking as required by Chapter 70.160 RCW and posting signs prohibiting vaping as required by this chapter.
- (3) No person may vape in any public place or in any place of employment, except for the purpose of tastings within the premises of a licensed vapor product retail outlet that restricts entry to its premises to persons eighteen years or older and after January 1, 2020 restricts entry to persons twenty-one years or older, pursuant to RCW 70.345.
- (4) No person may smoke or vape in any outdoor public place where children congregate, including, but not limited to: real property under the control of child care facilities or schools, playgrounds, parks, beaches, athletic fields and stadiums.
- (5) No person may smoke or vape within the presumptively reasonable distance of an indoor public place regulated under this chapter.
- (6) Owners, or in the case of leased or rented space the lessee or other person in charge, of an public place or a place of employment, shall prohibit smoking and vaping including within the presumptively reasonable distance, as required under this section.

#### **8.60.060 Required Signage.**

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- (1) Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall post signs prohibiting smoking and prohibiting the use of vapor products.
- (2) Signs prohibiting the use of vapor products may be combined with signs prohibiting smoking, such as “No Smoking. No Vaping” or “No Smoking or Vaping Allowed” or “No Smoking or Vaping Allowed within 25 Feet of Doorway or Entrance”. Signs shall be posted conspicuously at each building entrance.

- (3) The owner or other person in charge of an outdoor public place where smoking and vaping is prohibited under this chapter shall post signs in appropriate prominent locations stating that smoking and vaping is prohibited.

#### **8.60.070 Administration and enforcement.**

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The department shall enforce this chapter regarding the duties of owners or persons in control of public places and places of employment, through the following actions:

(1) Enforcement authority.

- (a) The health officer shall have the authority to enforce the provisions of this chapter equally on all persons.
- (b) The health officer also is authorized to adopt rules consistent with the provisions of this chapter for the purpose of enforcing and carrying out its provisions.
- (c) If a conflict exists in this chapter, or in the interpretation of Chapter 70.160 RCW, the more stringent regulation shall apply that better protects public health, welfare and safety.

(2) Right of Entry and Inspection.

- (a) Whenever necessary to make an inspection to enforce or determine compliance with the provisions of this chapter, and other relevant laws and regulations, or whenever the health officer has cause to believe that a violation of this chapter has or is being committed, the health officer or his/her duly authorized inspector may, in accordance with federal and state law, seek entry of any building, structure, property or portion thereof at reasonable times to inspect the same.
- (b) If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

(3) Violations.

- (a) Violations of this chapter may be addressed through the remedies and penalties provided in this section.
- (b) Each violation of this chapter shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be considered a separate and distinct violation.
- (c) The health officer may investigate alleged or apparent violations of this chapter. Upon request of the health officer, the person allegedly or apparently in violation of this chapter shall provide information identifying themselves.

- (4) Voluntary Correction. Whenever the health officer determines that violation of this chapter has occurred or is occurring for the first time, the health officer shall attempt to secure voluntary correction pursuant to the procedures in this section.
- (a) Warning letter. The health officer shall issue a warning letter. The warning letter shall be addressed to the last known owner and/or person in charge and will be educational in content, address the specific violations of this chapter that that may have occurred, and what the duties and responsibilities of the owner are to comply with this chapter.
  - (b) Voluntary correction agreement. The person responsible for the alleged violation may enter into a voluntary correction agreement with the department. The voluntary correction agreement is a contract between the department and the person responsible for the violation in which such person agrees to abate the alleged violation within a specified time and according to specified conditions. The voluntary correction agreement will be in lieu of the issuance of further citations. The voluntary correction agreement shall include the following:
    - (i) The name and address of the person responsible for the alleged violation;
    - (j) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the alleged violation has occurred or is occurring;
    - (k) A description of the alleged violation and a reference to the regulation, which has been violated;
    - (l) The necessary corrective action to be taken, and a date or time by which correction must be completed;
    - (m) An agreement by the person responsible for the alleged violation that the department may enter the place and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
    - (n) An agreement that by entering into the voluntary correction agreement, the person responsible for the alleged violation waives the right to a hearing before the health officer under this chapter or otherwise, regarding the matter of the alleged violation and/or the required corrective action.
- (5) Notice and Order to Correct Violation.
- (a) Issuance. Whenever the health officer determines that a violation of this chapter has occurred or is occurring for the second time, he/she will issue a written notice and order to correct violation to the owner or person in charge.
  - (b) Content. The notice and order to correct violation shall contain:

- (i) The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;
  - (ii) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
  - (iii) A description of the violation and a reference to that provision of the regulation, which has been violated;
  - (iv) A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;
  - (v) A statement that each violation of this chapter shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation; and,
  - (vi) A statement that the failure to obey this notice may result in the issuance of a notice of civil infraction (Class 1 civil infractions pursuant to RCW 7.80), and/or the assessment of an administrative remedy, and/or, if applicable, the imposition of criminal penalties.
- (c) Service of Order. The notice and order to correct violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violations by first class and/ or certified mail postage prepaid, return receipt requested, to such person at his/her last known address on file with Jefferson County for property tax purposes. Proof of service shall be made at the time of service by a written declaration under penalty of perjury executed by the persons affecting the service, declaring the time and date of service and the manner by which service was made.
- (6) Extension. Upon written request received prior to the correction date or time, the health officer may extend the date set for corrections for good cause. The health officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.
- (7) Supplemental Order to Correct Violation. The health officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in this chapter.
- (8) Enforcement of Order. If, after any order is duly issued by the health officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the health officer may:
- (a) Utilize any remedy or penalty under Section 04-0216-06.090 of this chapter;
  - (b) Abate the health violation using the procedures of this chapter; or,
  - (c) Pursue any other appropriate remedy at law or equity.

(9) Monetary penalties. Any person, company firm, corporation, or other legal entity who creates, maintains, or permits a nuisance, as defined under JCC 8.90.030(32) shall constitute a civil violation. Each violation shall constitute a separate civil violation for each day or portion thereto during which such violation is committed, continued, or permit. The Daily monetary penalties that may be assessed under this chapter are as follows:

- (a) First violation: \$100.
- (b) Second violation: \$250.
- (c) Subsequent violation: \$500.

(10) Notice of Civil Infraction (Ticket)

- (a) Whenever the health officer determines that a violation of this chapter has occurred or is occurring for the third time, he/she will issue a Notice of Civil Infraction (Ticket) to the owner and/or person in charge. Except as provided in Section 04-0216-06.070, the violation of any provision of this chapter is designated as a civil infraction pursuant to Chapters 70.160 and 7.80 RCW, Civil Infractions.
- (b) The health officer may issue a notice of civil infraction pursuant to Chapter 70.160 RCW and Chapter 7.80 RCW if the health officer has reasonable cause to believe that the person has violated any provision of this chapter or has not corrected the violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard and determined as described in Chapter 7.80 RCW, and any applicable court rules.

(11) Noncompliance Fees.

- (a) Pursuant to the most current fee schedule adopted by the board of health, the department may assess a noncompliance fee to an owner or person in charge for the following:
  - (i) The costs of the department's oversight and review required as a result of the health officer's determination that an owner or person in charge is not in compliance with this chapter and has not met the compliance dates specified in a notice and order to correct violation; or,
  - (ii) Second and subsequent re-inspections conducted by the department in response to the owner or person in charge not complying with the requirements outlined in a notice and order to correct violation.
- (b) Whenever the department assesses a noncompliance fee, the fee shall be due and payable thirty (30) days after receipt of the invoice by the person responsible.

(12) Other Legal or Equitable Relief. Notwithstanding the existence or use of any other remedy, the health officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of this ordinance, or rules and

regulations adopted under it, or any state health law or regulation, or that otherwise threatens public health.

#### **8.60.080 Rebuttal of 25-foot presumption.**

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- (1) Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the local health jurisdiction in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke, and vapor will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.
- (2) An application for rebutting the Presumptively Reasonable Distance requirement may be submitted to the director for consideration. The application must be accompanied by all of following:
  - (a) An application fee as established in the most recent fee schedule approved by the board of health;
  - (b) A written description of the proposed reduction in the separation distance requirement;
  - (c) A detailed map showing the specific area to be considered for a reduced separation distance along with the location of all entrances, exits, windows that open, and ventilation intakes within 25 feet of the proposed smoking area for smoking and vaping;
  - (d) A written explanation by the applicant describing why the presumptively reasonable distance of 25 feet cannot be met and why consideration for a reduced separation distance is necessary.
  - (e) A written justification from the applicant describing the clear and convincing evidence they have gathered that demonstrates that given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes or other factors, smoke and vapor will not infiltrate into the facility.
  - (f) A written explanation from the applicant describing how they will monitor the effectiveness of the reduced distance in keeping smoke and vapor from infiltrating into the facility, and what action they will take if smoke and vapor is determined to be entering the facility at a future time.
- (3) The application for reduction in the twenty-five foot requirement applies only to the area addressed in the application and not to the entire structure or any other area near or around the facility.

- (4) Any approval taken on the application submitted will need to endure a reasonable test of time and if future complaints are received against the facility because of second hand smoke, exposure to vapors or aerosols, further inspections may be warranted and possible modification or revocation of the approval may be required.
- (5) At the time of ownership change or if any structural changes to the building, have occurred an approved rebuttal is null and void and another rebuttal application must be submitted to the department for review.

#### **8.60.090 Administrative Remedy.**

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- (1) Any person aggrieved by the contents of a notice and order to correct violation issued under this chapter, or any enforcement action conducted by the department under this chapter, may request, in writing, a hearing before the health officer. The appellant shall submit specific statements in writing of the reason why the decision of the department was wrong.
- (2) A request for a hearing shall submitted in writing to the health officer within ten (10) business days of the action appealed within five (5) business days of the decision of the department.
- (3) Upon receipt of a request for a hearing, together with hearing fees, the health officer shall notify the person of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than five (5) business days, or more than thirty (30) business days from the date the request was received.
- (4) The health officer shall issue a written decision within thirty (30) business days, upholding or reversing the department's action. The health officer may require additional actions as part of the written decision.

#### **8.60.100 Administrative Appeal of Health Officer Decision to the Board of Health.**

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- (1) Any person aggrieved by the findings, conclusions of law or mandated actions that arise or result from hearing before the health officer shall have the right to appeal the matter by requesting a hearing before the board of health. Such notice of appeal shall be in writing and presented to the health officer within five (5) business days of health officer's written decision. The appellant shall submit specific statements in writing of the reason why the written decision of the health officer is wrong, accompanied by a fee as established in the current fee schedule approved by the board of health. The appellant and the health officer may submit additional information to the board of health for review.
- (2) The notice and order to correct violation shall remain in effect during the appeal. Any person affected by the notice and order to correct violation may make a written request for a stay of the decision to the health officer within five (5) business days of the health officer's decision. The health officer shall grant or deny the request within five (5) business days.



- (3) Upon receipt of a timely written notice of appeal together with the hearing fee, the health officer shall set a time, date, and place for the requested hearing before the board of health and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than five (5) business days or more than thirty (30) business days from the date the written appeal was received by the health officer.
- (4) Any decision of the board of health shall be final and may be reviewed by an action filed in superior court.
- (5) Any action to seek judicial review the board of health's decision must be filed within thirty (30) business days of the date of the decision.

#### **8.60.110 Judicial Review.**

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A person or entity aggrieved by a final decision of the board of health may seek judicial review of the final decision of the board of health in superior court as described within Chapter 34.05 RCW, the Administrative Procedure Act.

#### **8.60.120 Severability.**

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The provisions of this chapter are declared separate and severable. If any provision of this chapter or their application to any person or circumstances are held invalid, then the remainder of this chapter or application of this chapter to other persons or circumstances shall remain valid and unaffected.

#### **8.60.130 Limitations.**

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- (1) Nothing in this chapter is intended to abridge or alter the rights of action by the state, other entities, and the health officer or by persons, which exist in equity, common law or other statutes to abate non-compliance with this chapter.
- (2) Nothing in this chapter preclude or prohibit any property owner from implementing "no smoking" and/or "no vaping" policies that are more restrictive than this chapter, on, or within, any property or structures under their control.
- (3) Nothing in this chapter shall prevent the owner, lessee or person in charge, of a private place or area that is not a place of employment from prohibiting or allowing the use of vapor products within that place or area.
- (4) This chapter are not intended to restrict smoking or vaping in private facilities that are occasionally open to the public, except upon the occasions when a facility is open to the public.

#### **8.60.140 Warning and Disclaimer of Liability.**

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Compliance with the requirements of this chapter does not make smoking, second hand smoke or vaping safe. Nothing contained in this chapter is intended to be, nor shall be construed to create or form the basis for any liability on the part of Jefferson County, the department, the board of health, or their officers, employees, volunteers or agents, for any injury or damage resulting from the failure of any person subject to this chapter to comply with this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter.