

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
ACTING AS THE BOARD OF HEALTH FOR MULTNOMAH COUNTY**

ORDER NO. 2015-011

Adopting a Policy Supporting Regulation to Reduce Minor Access and Exposure to Tobacco and Inhalant Delivery Systems and Directing the Local Public Health Authority to Promulgate Rules to Implement the Policy.

The Board of Health for Multnomah County Finds:

- a. The Multnomah County Board of County Commissioners constitutes the Board of Health for Multnomah County. ORS 431.410. The Board of Health is the policy making body for the entire County and adopts rules necessary to carry out its policies. ORS 431.415.
- b. Multnomah County also acts as the Local Public Health Authority, through the County Health Department. ORS 431.375(2). A core responsibility of the Local Public Health Authority is to assure activities necessary for the preservation of health or prevention of disease in the area under its jurisdiction. ORS 431.416(2).
- c. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors. ORS 163.575 (sales to minors), ORS 167.400 (possession by minors).
- d. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age. ORS 431.840.
- e. Multnomah County retailers continue to sell tobacco to underage consumers evidenced by 2014 Synar results finding 31% of tobacco retailers unlawfully selling to minors.
- f. The US Surgeon General has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority in ending the epidemic of tobacco use. The 2012 Surgeon General's Report on Preventing Tobacco Use Among Youth and Young Adults reports that:
 - (1) More than 80% of adult smokers begin smoking by 18 years of age, with 99% of first use by 26 years of age.
 - (2) Cigarette smoking by youth and young adults is proven to cause serious and potentially deadly health effects immediately and into adulthood.
 - (3) Research now documents strong causal associations between active cigarette smoking in young people and addiction to nicotine, reduced lung

function, reduced lung growth, asthma, and early abdominal aortic atherosclerosis.

- (4) The prevalence of cigarette smoking is highest among American Indians and Alaska Natives, followed by Whites and Hispanics, and then Asian and Blacks. The prevalence of cigarette smoking is also highest among lower socioeconomic status youth.
- (5) Young adults are a prime target for tobacco advertising and marketing activities. Tobacco products are among the most heavily marketed consumer goods in the U.S. with nearly \$10 billion spent on marketing cigarettes each year.

g. Tobacco is the leading cause of preventable and premature death, killing an estimated 443,000 Americans each year, or about 1 of every 5 deaths.

h. Cigarette smoking costs the nation \$133 billion in direct medical costs and \$156 billion in lost productivity annually. In Multnomah County, as a community, we spend \$223.2 million on medical care, and \$195.7 million in lost productivity due to tobacco related deaths.

i. The Board of Health finds that "inhalant delivery systems" are battery powered devices designed to deliver nicotine, flavor, and other substances through a vapor inhaled by the user and are commonly known as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," and "electronic nicotine delivery systems." For the purposes of this Order and regulation, "inhalant delivery system" is defined as follows:

Inhalant delivery system - A device that can be used to deliver nicotine in the form of a vapor or aerosol to a person inhaling from the device; or

A component of a device described above or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this section, whether the component or substance is sold separately or is not sold separately.

An inhalant delivery system does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

j. The use of inhalant delivery systems has increased significantly in recent years, as evidenced by the following:

- (1) Between 2011 and 2013, current use of e-cigarettes (i.e., in the last month) among Oregon eleventh graders has almost tripled, from 1.8% to 5.2%.

- (2) Nationally, 6.8% of all youth between 6th and 12th grade report trying inhalant delivery systems.
- (3) In Multnomah County, 10.1% of high school students have tried inhalant delivery systems.
- (4) Nationally, 9.3% of youth who have used inhalant delivery systems have never smoked conventional cigarettes.
- (5) Nationally, between 2010 and 2011, rates of both awareness and use of inhalant delivery systems by adults also increased significantly.

k. Existing studies on inhalant delivery systems' vapor emissions and cartridge contents have found a number of dangerous substances including the following:

- (1) Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium;
- (2) PM2.5, 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 to reproductive systems, and even premature death from heart attacks and stroke;
- (3) Inconsistent labeling of nicotine in inhalant delivery system products; and
- (4) In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans.

l. Some cartridges used by inhalant delivery systems can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine, and as a result:

- (1) Nationally, poisonings from inhalant delivery systems have increased dramatically in the last three and half years from one a month in September 2010 to 215 a month in February 2014, and
- (2) Analysis of reports of poisonings from inhalant delivery systems finds that calls reporting exposure to inhalant delivery systems are much more likely to involve adverse health effects when compared to calls reporting exposure to conventional cigarettes.

m. Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over 400 brands of inhalant delivery systems that are on the market and for this reason, consumers currently have no way of knowing:

- (1) Whether inhalant delivery systems are safe;
- (2) What types or concentrations of potentially harmful chemicals the products contain; and
- (3) What dose of nicotine the products deliver.

n. Research demonstrates that local tobacco retail licensing policies can dramatically reduce youth access to cigarettes, as evidenced by the following:

- (1) A review of thirteen California communities with strong tobacco retailer licensing policies shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of 68% in the youth sales rate;
- (2) A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998;
- (3) A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youths able to purchase tobacco.

o. Requiring tobacco and inhalant delivery system retailers in Multnomah County to be licensed will allow Multnomah County to assist local business in complying with and discourage violations of federal, state and local laws intended to regulate tobacco and inhalant delivery system sales and use, including the illegal sales of tobacco and inhalant delivery system products to minors and the illegal purchase of tobacco and inhalant delivery system products by minors.

p. Implementation of tobacco and inhalant delivery system retailer licensing is an evidence-based, cost-effective strategy that can be implemented now to improve the health, safety and welfare of our community.

q. The World Health Organization calls for strong regulation of inhalant delivery systems, including banning the use of these products in public places. An expanding number of local Oregon jurisdictions, including Multnomah County, prohibit use of e-cigarettes in their tobacco free campus policies. However, in Multnomah County, individuals may still use inhalant delivery systems in most places where smoking tobacco products is prohibited.

r. The World Medical Association has determined that inhalant delivery systems are not comparable to scientifically-proven methods of smoking cessation and that neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established.

s. Inhalant delivery systems often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

t. The use of inhalant delivery systems in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

u. Though 34 states prohibit the sale of e-cigarettes to minors, there is no Oregon state law prohibiting or restricting the sale of inhalant delivery systems to minors. Currently, retailers in Multnomah County may legally sell inhalant delivery systems to underage consumers.

v. Regulating retail sales and use of tobacco and inhalant delivery systems will allow Multnomah County to discourage minors' purchase and use of tobacco and inhalant delivery systems and to protect the public's health.

The Board of Health for Multnomah County Orders:

1. It is the Board of Health's policy to reduce preventable illness and disease and premature death in Multnomah County by supporting regulation of retail sales and use of tobacco and inhalant delivery systems in the County. This policy is intended to give guidance for regulations, including education for retailers about local, state and federal laws pertaining to the sales of tobacco and inhalant delivery systems, enforcement mechanisms, and penalties for violations.
2. It is the Board of Health's policy to reduce addiction, preventable disease, and premature death by supporting prohibitions on sales to and purchase and use by minors of tobacco and inhalant delivery systems. This policy is not intended to expand or reduce federal or state laws that regulate the sale or distribution of tobacco and inhalant delivery systems or to alter related penalties.
3. It is the Board of Health's policy to reduce addiction, preventable illness and disease, and premature death by supporting prohibitions on use of inhalant delivery systems in Multnomah County in any place where smoking and use of tobacco products is prohibited.

4. The Board of Health supports the Local Public Health Authority's intention to consider regulations for tobacco and inhalant delivery system retailers in Multnomah County, should the Oregon Legislature not pass legislation requiring tobacco and inhalant delivery system retail licensing.
5. The Board of Health directs the Local Public Health Authority to support or promulgate rules to implement and enforce prohibitions on use of inhalant delivery systems in Multnomah County in any place where smoking and use of tobacco products is prohibited, sales to minors, and purchase and use by minors.
6. When the Local Public Health Authority promulgates rules, the Board of Health will adopt the rules prior to their implementation.

ADOPTED this 12th day of February, 2015.



BOARD OF HEALTH
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By _____
Bernadette D. Nunley, Assistant County Attorney