

CITY OF WINLOCK, WASHINGTON
ORDINANCE NO. 1151

**AN ORDINANCE OF THE CITY OF WINLOCK, WASHINGTON,
ENACTING RULES AND REGULATIONS PROHIBITING SMOKING
AND VAPING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT;
CREATING A NEW CHAPTER 8.85 OF THE WINLOCK MUNICIPAL
CODE; AND PROVIDING FOR SEVERABILITY AND ESTABLISHING
AN EFFECTIVE DATE.**

RECITALS:

WHEREAS, the City of Winlock, Washington (the “City”) is a Code City under the laws of the State of Washington; and

WHEREAS, pursuant to RCW 35A.11.020, the City may adopt and enforce ordinances of all kinds relating to and regulating the City’s local or municipal affairs and appropriate to the good government of the City; and

WHEREAS, all references herein to “WMC” shall mean the “Winlock Municipal Code,” and

WHEREAS, e-cigarettes are battery-operated inhalers containing nicotine, where the battery heats liquid in a cartridge, turning into vapor that can be inhaled, and the process of inhaling e-cigarette liquid is often called vaping; and

WHEREAS, in 2016, the Washington State Legislature adopted comprehensive legislation relating to youth vapor product substance use prevention and vapor product regulation, creating RCW Chapter 70.345 Vapor Products and amending other chapters of RCW Title 70 Public Health and Safety, including Chapter 70.155 Tobacco-Access to Minors and Chapter 70.160 Smoking in Public Places; and

WHEREAS, the popularity of electronic cigarettes (e-cigarettes) has grown, especially in middle school and high school-aged individuals, to epidemic levels; and

WHEREAS, the Center for Disease Control and Prevention (CDC) and the Surgeon General have issued advisories on e-cigarette use among youth because the presence of nicotine in e-cigarettes can harm brain development in children, teens, and young adults impacting learning, memory, and

attention along with increasing the risk for future addiction to other drugs and injury from combustive battery failures; and

WHEREAS, the Surgeon General has also stated that e-cigarettes can potentially expose bystanders to harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled in the lungs; and

WHEREAS, RCW 70.345.210 grants the City authority to regulate the use of vapor products in outdoor public places where children congregate, such as playgrounds and parks; and may regulate the use of vapor products in indoor public places subject to RCW 70.345.150; and

WHEREAS, the Council desires to create a new Chapter 8.85 WMC as set forth herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WINLOCK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 8.85 of the Winlock Municipal Code is hereby created to state:

Chapter 8.85

Smoking and Vaping In Public Places

Sections:

- 8.85.010 Authority, applicability, and intent.
- 8.85.020 Adoption by Reference.
- 8.85.030 Definitions and local supplemental definitions relative to Chapter 70.160 RCW.
- 8.85.040 Smoking and vaping prohibited in public places and places of employment.
- 8.85.050 Vaping prohibited within 25 feet of public places or places of employment.
- 8.85.060 Smoking or vaping in public parks prohibited.
- 8.85.070 Required signage.
- 8.85.080 References to state law.
- 8.85.090 Mechanical sales of e-cigarettes restricted.
- 8.85.100 Penalties.

8.85.010 Authority, applicability, and intent.

- A. The statutory authority for the adoption of this chapter is provided in Chapter 70.160 RCW, Smoking in Public Places and Chapter 70.345 RCW.
- B. These regulations apply to the prohibition of smoking and the prohibition of use of vapor products in indoor public places and places of employment.
- C. These regulations supplement but do not replace the regulations adopted by the United States Food and Drug Administration and the regulations enacted by the state of Washington and enforced by the Liquor and Cannabis Board regarding the licensure and regulation of vapor product promotions and sales at retail.
- D. This regulation is not intended to restrict vaping in private facilities which are occasionally open to the public, except upon occasions when a facility is open to the public.

- E. This regulation does not preclude or prohibit any property owner from implementing “no smoking” and/or “no vaping” policies on, or within, any property or structures under their control.
- F. Nothing contained in this regulation is intended to be nor shall be construed to create or form the basis for, any liability on the part of the City or its officers, employees, or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of the health department.

8.85.020 Adoption by Reference.

The following state statutes, as presently constituted or as may be subsequently amended, are adopted by reference and are applicable within the city of Winlock:

A. Chapter 70.160 RCW

B. RCW 70.345.150

8.85.030 Definitions and local supplemental definitions relative to Chapter 70.160 RCW.

Pursuant to the authority provided by Chapter 70.160 RCW and for the sake of clarity in the application of Chapter 70.160 RCW, the following local supplemental definitions relative to certain terminology found in Chapter 70.160 RCW are adopted and the following specific definitions shall apply:

- A. “Chapter” means a chapter in City of Winlock Municipal Code.
- B. “City” means City of Winlock.
- C. “Electronic cigarette” or “e-cigarette” means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provide a gas derived from liquid nicotine and/or other substances, which is inhaled by the user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarettes, cigars, pipes, or other smoking devices.
- D. “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 of an owner, shareholder, member, lessee or other person in charge of a place that is subject to the provisions of this chapter.
- E. “Employer” means any person, sole proprietorship, partnership, corporation, association, nonprofit organization, or other entity of any kind that pays another person direct or indirect monetary wages, profit or provides any other benefit in consideration for such other person’s providing services on the premises of the employer. Employer shall also mean the owner(s),

shareholders, or member(s) respectively of a sole proprietorship, corporation or limited liability corporation, association, nonprofit organization, or other business entity.

- F. "Indoor 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 includes a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. Public places include, but are not limited to: schools, elevators, public conveyances or transportation facilities, taxis, buses, for hire conveyances, 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, clubs, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than 75 percent of the sleeping quarters within a hotel or motel that are rented to guests. Indoor public place also means any public or private place that is open to the general public regardless of whether 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. 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. An indoor public place does not include a private residence unless the private residence is used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises.
- G. "Minor" means any person under 18 years of age.
- H. "Person" means any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, limited liability company, limited partnerships or other entity or business of any kind.
- I. "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 place of employment, and including a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of 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 class rooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to promote licensed childcare, foster care, adult care, or other similar social service care on the premises, is not a place of employment.
- J. "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 City of Winlock, 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 70.160.075, of 25 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 licensed childcare, foster care, adult care, or other similar social service care on the premises. 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.

- K. "Smoke" or "smoking" means the carrying or smoking of any kind of:
- a. Lighted pipe, cigar, cigarette, or other lighted smoking equipment.
 - b. An electronic cigarette or e-cigarette, or other vaporized smoking devices.
- L. "Tasting" means to try or taste a vapor product in a retail outlet where entry is restricted to persons 18 years of age or older.
- M. "Vape" or "vaping" means the use of a vapor product, or the act of inhaling/exhaling the vapor or aerosol from a vapor product.
- N. "Vapor product" means any: (1) device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (2) cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or (3) solution or substance intended for use in such a device, including, but not limited to, concentrated nicotine. Vapor product includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, steam stones, or similar products or devices, as well as any parts that can be used to build such products or devices. 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 purposes and is marketed and sold for such approved purpose.

8.85.040 Smoking and vaping prohibited in public places and places of employment.

No person may smoke or use a vapor product in an indoor public place or in any place of employment except as provided for by applicable state law.

8.85.050 Vaping prohibited within 25 feet of public places or places of employment.

Use of vapor products is prohibited within a presumptively reasonable minimum distance of 25 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where use of vapor products is prohibited so as to ensure that vapor does not enter the area through entrances, exits, open windows, or other means.

8.85.060 Smoking or vaping in public parks prohibited.

Smoking, tobacco use of any kind, vaping, or use a vapor product in any public playground, park, beach, athletic field, trail, and/or other similar public facility owned by or under the control and jurisdiction of the City. The city council may designate temporary smoking areas in town parks for special events.

8.85.070 Required signage.

In addition to requirements for signs prohibiting smoking as adopted by reference from Chapter 70.160 RCW, owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under these regulations shall post signs prohibiting the use of vapor products. Signs shall be posted conspicuously at each building entrance. 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.”

8.85.080 References to state law.

Any and all references to state statutes are in effect as referenced above or as hereinafter amended by state authority.

8.85.090 Mechanical sales of e-cigarettes restricted.

No person shall sell or permit to be sold e-cigarettes, or their components, through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited, and in a location not less than 10 feet from all entrances or exit ways to and from the premises.

8.85.100 Penalties.

- A. Any person violating this chapter by smoking or vaping in a public place or place of employment, or any person removing, defacing, or destroying a sign required by this chapter, is subject to a civil fine of up to \$150.00.
- B. Violation of any provision of this chapter shall be a civil infraction.
- C. 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.

Section 2. Repealer. All other ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Section 3. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 4. Effective Date. This ordinance shall take effect five days after its publication, or publication of a summary thereof, in the City's official newspaper, or as otherwise provided by law.

Section 5. Corrections. Upon approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbers, section/subsection numbers, and any references thereto.

PASSED by the Council of the City of Winlock, Washington, and **APPROVED** by the Mayor of the City of Winlock at a regularly scheduled open public meeting thereof, this 22nd day of January, 2024.



Brandon Svenson, Mayor

Attest:

Approved as to form:



Penny Jo Haney, City Clerk



Marissa Y. Jay, WSBA # 55593
City Attorney



Approved Reading:

1/22/2024

Publication Date:

1/25/2024

Effective Date:

1/30/2024