

**TITLE 19
TOBACCO PRODUCTS, ELECTRONIC SMOKING DEVICES AND
UNAPPROVED NICOTINE DELIVERY PRODUCTS**

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19.03 REGULATION OF SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

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19.03.010 Purpose and policy declared.

A. This chapter is enacted as an exercise of the board of health powers of King County to protect and preserve the public peace, health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

B. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare 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 this chapter.

C. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the owner of each establishment within its scope, and no provision nor term used in this title is intended to impose any duty whatsoever upon King County or any of its officers or employees, for whom the implementation or enforcement of this title shall be discretionary and not mandatory.

D. 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 King County, or its officers, employees 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 on the part of King County by its officers, employees or agents. (R&R 07-03 § 4, 2007).

19.03.020 Citation. This chapter may be cited and referred to, and shall be known as, the "Smoking in Public Places Regulations." (R&R 07-03 § 5, 2007).

19.03.030 Findings - intent. The Board of Health recognizes that exposure to second-hand smoke is known to cause cancer in humans and is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to second-hand smoke, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. Due to the health hazard secondhand smoke poses to those exposed, the Board of Health adopts this regulation in order to protect the health and welfare of all citizens, including workers in their places of employment. (R&R 07-03 § 6, 2007).

19.03.040 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

A. "Director" means the director of the Seattle-King County department of public health or the director's authorized representative.

B. "Employee" means any individual who is employed by an employer in return for the payment of direct or indirect monetary wages 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 direction of an owner, lessee or other person in charge of a place that is subject to the provisions of this chapter.

C. "Employer" means any person, sole proprietorship, partnership, corporation, association, nonprofit organization or other entity that employs or retains the services of one or more employees.

D. "Large event venue" means any public place or place of employment in which more than one thousand persons are lawfully permitted to assemble.

E. "Open to the public" means explicitly or implicitly authorizing or inviting entry or use by the public. Factors relevant to the determination of whether a portion of a building other than a private residence is "open to the public" include, but are not limited to:

1. Whether the owner, lessee or person in charge of a portion of a building permits or invites entry to the portion of the building by individuals other than employees who perform work or persons who meet selective, restrictive and limited criteria for entry;

2. Whether the owner, lessee or person in charge of a portion of a building directs, authorizes or otherwise engages in advertising or promotion to the public to encourage occupancy or use of the portion of the building;

3. Whether the portion of the building, or any area adjacent thereto, features signage indicating that the portion of the building is open; or

4. Whether the owner, lessee or person in charge of a portion of a building also owns, operates or leases a retail business for the sale of tobacco products that is open to the public in an area adjacent to the portion of the building and the portion of the building is open to the customers of the retail business.

F. "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 of twenty-five 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 child care, foster care, adult care or other similar social service care on the premises, is not a "place of employment."

G. "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 70.160.020, 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 licensed 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. "Public place" does not include a private residence. This chapter is not intended to restrict smoking in private facilities that are occasionally open to the public except upon the occasions when the facility is open to the public.

H. "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment. (R&R 10-03 § 1, 2010: R&R 07-03 § 7, 2007).

19.03.050 Owners, lessees to post signs prohibiting smoking. 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 in public places and places of employment and shall post signs prohibiting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. (R&R 07-03 § 8, 2007).

19.03.060 Application to modify presumptively reasonable minimum distance. 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 Seattle-King County Department of Public Health. 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 will not infiltrate or reach the entrances, exits, open windows or ventilation intakes or enter into the public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance. (R&R 10-03 § 2, 2010: R&R 07-03 § 9, 2007).

19.03.070 Exceptions. This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such a workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance or regulation. (R&R 07-03 § 10, 2007).

19.03.080 Enforcement - regulations.

A. The director is authorized to enforce the restrictions and requirements of this chapter in accordance with the provisions of BOHC chapter 1.08, consistent with subsections B. and C. of this section.

B. When violations of this chapter 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, except as provided in subsection C. of this section. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

C. Civil penalties for violations of this chapter at any large event venue shall be assessed at a rate of one hundred dollars for every one thousand persons lawfully permitted to assemble at the venue, for each violation. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation. (R&R 10-03 § 2, 2010: R&R 07-03 § 11, 2007).

19.04 RESTRICTIONS ON SALE AND AVAILABILITY

Sections:

19.04.115* Giving away tobacco products prohibited.

19.04.115* Giving away tobacco products prohibited. Giving away tobacco and tobacco products is prohibited. No retailer shall give away tobacco or tobacco products to any person. No person shall give away or offer to give away tobacco products to any person. (R&R 68 §2, 6-25-91: R&R 64 §2, 12-18-90).

***Reviser's note:** R&R 07-03, Section 2: "The operation and effect of Code of King County Board of Health BOHC 19.04.115 is suspended as applied to cigarettes, pending further review by King County Board of Health."

19.08* RESTRICTIONS ON TOBACCO PRODUCT ADVERTISING AND PROMOTION

Sections:

19.08.005 Suspension.
19.08.010 Intent.
19.08.020 Definitions.
19.08.030 Restrictions on tobacco advertising in publicly visible locations.
19.08.040 Monitoring and enforcement.
19.08.050 Effective date.
19.08.060 Severability.

***Reviser's note:** BOHC chapter 19.08 has been suspended. See BOHC 19.08.005.

19.08.005* Suspension. Due to the decision of the Ninth Circuit Court of Appeals in Lindsey v. Tacoma Pierce County Health Department, No. 98-35416, the operation and effect of Chapter 19.08 is suspended pending further review by the King County Board of Health. (R&R No. 00-08 §1, 7-21-00).

19.08.010* Intent. The board of health makes the following findings: Tobacco use by minors is a major and worsening public health problem. Each day, three thousand (3,000) children in the United States begin smoking, creating over a million new underage, addicted smokers each year. Tobacco industry sales to minors each year exceed one billion dollars (\$1,000,000,000.00), as more than three (3) million American children under eighteen (18) years of age consume nine hundred forty-seven (947) million packs of cigarettes annually. The federal Centers for Disease Control and Prevention have reported that the rate of smoking among all high school students during the years 1991 through 1997 increased by over thirty-two percent (32%) and now stands at its highest rate since 1981. The CDC also reported that in 1997, forty-three percent (43%) of high school students used cigarettes, smokeless tobacco or cigars. In Washington State, students at every grade level were more likely to have tried cigarettes in 1995 compared to 1992. The greatest change was in the youngest students surveyed (6th graders), who reported having tried cigarettes at almost double the rate in 1995 compared to 1992. In 1995, twenty percent (20%) of Seattle 8th graders smoked cigarettes every day contrasted with thirteen percent (13%) in 1993; twenty-eight percent (28%) of 12th graders smoked daily in 1995 contrasted with eighteen percent (18%) in 1993. The rates of increase were comparable for Seattle students in grades 9, 10 and 11.

According to the CDC, children are beginning to use tobacco at increasingly younger ages. The average age at which boys and girls initiate smoking has declined over the past four (4) decades by 2.4 years overall for whites, 1.3 years overall for African Americans, and 5.4 and 4.6 years for white girls and African American girls, respectively. A 1996 survey of teen smokers in King County showed that the average age of onset is 12.8 years.

One (1) out of every three (3) young people who become regular smokers will die prematurely as a result of their smoking. If the number of children and adolescents who begin tobacco use can be diminished, tobacco-related illness can be correspondingly reduced. This is because data suggest that anyone who does not begin smoking in childhood or adolescence is unlikely to begin.

While it is illegal under state law, minors are still gaining access to tobacco products. When buying cigarettes through retail establishments is made difficult, youth obtain them through friends, parents and older family members.

Tobacco has been found to be a gateway to other drugs. Tobacco products are generally the first drug used by young people in a sequence that can include alcohol, marijuana, and lead to cocaine, heroin and hallucinogens.

The Surgeon General has designated nicotine a highly addictive substance, comparable to other addictive substances of abuse. Early addiction is the chief mechanism for renewing the pool of smokers. Most people who are going to smoke are hooked by the time they are twenty (20) years old. The younger one begins to smoke, the more likely one is to be a current smoker as an adult. One-fifth (1/5) of King County adults are current smokers, eighty-two percent (82%) of whom first tried smoking before their eighteenth birthday.

Tobacco use is the single most preventable cause of death in King County and the United States. More than four hundred thousand (400,000) Americans die of tobacco-related illness each year. Almost one (1) in five (5) of all deaths in King County residents is due to tobacco use. Smokers have higher levels of death rates for over twenty (20) major illnesses and injuries, including cancer, noncancer lung diseases such as chronic obstructive pulmonary disease, and heart disease and stroke.

***Reviser's note:** BOH chapter 19.08 has been suspended. See BOHC 19.08.005.

A significant body of literature has established that advertising influences minors to use tobacco products. Courts have taken judicial notice of the positive connection between advertising and consumption. Cigarettes are the second most heavily advertised product in the country after automobiles. Adolescents with high exposure to cigarette advertising are significantly more likely to be smokers, according to several measures of smoking behavior, than those with low exposure to cigarette advertising. Research suggests that tobacco marketing is a stronger current influence in encouraging adolescents to initiate smoking than exposure to peer or family smokers.

Studies have shown a positive correlation between youths' intention to smoke and their adeptness at identifying cigarette advertisements and appreciation of cigarette advertisements. In addition to the evidence linking smoking onset with advertising, a California study which was reported in 1998 provides longitudinal evidence that tobacco promotional activities are causally related to the onset of smoking.

The tobacco industry targets young people as a strategically important market. Lifetime brand loyalty is usually established with the first cigarette. Old Joe Camel cartoon advertisements are far more successful at marketing Camel cigarettes to children than to adults. Camel cigarettes' share of the under-eighteen (18) market has increased dramatically since the Joe Camel cartoon was introduced in 1988. Children between the ages of two (2) and eleven (11) are most vulnerable to this use of imagery and begin to make judgments about products they might use in the future. By age six (6), children recognize Old Joe Camel as well as they do Mickey Mouse, notwithstanding the fact that cigarette advertising no longer appears on television and very young children cannot read.

The Liggett Company has publicly stated not only that cigarettes are addictive and harmful but also that "the tobacco industry markets to 'youth,' which means those under eighteen (18) years of age, and not just those eighteen (18) to twenty-four (24) years of age." Additional evidence of a long-standing industry practice of targeting children, is evidenced in a 1973 R. J. Reynolds Tobacco Company Planning Memorandum:

For the pre-smoker and "learner" the physical effects of smoking are largely unknown, unneeded, or actually quite unpleasant or awkward. The expected derived psychological effects are largely responsible for influencing the pre-smoker to try smoking, and provide sufficient motivation during the "learning period" to keep the "learner" going, despite the physical unpleasantness and awkwardness of the period. Happily, then, it would be possible to aim a cigarette promotion at the beginning smoker, at the same time making it attractive to the confirmed smoker.

Tobacco industry records released as a result of lawsuits brought by state attorneys general provide substantial documentation of strategies for marketing to children and youth.

Data suggest an association between the brands identified as most highly advertised and market share for the same brands. The three (3) most commonly purchased brands among adolescent smokers were the three (3) most heavily advertised brands in 1993. Not only is the market share of brands similar to recall of the most advertised brands, but the brand that appears to be aimed the most at adolescents has demonstrated a differential increase in market share in the youngest adolescents over time.

Cigarette advertising works, not by providing information in a way that persuades the viewer through cognitive processing or rational reflection, but rather by using associative persuasion cues and influences such as attractive models, settings, activity, color and scenery. In information-based attempts at persuasion, the intent and message of the communication are explicit and overt and require consumer engagement. In the associative persuasion communications used in cigarette advertisements, the intent and message are implicit and covert and require low levels of cognitive and psychological engagement, i.e., "low involvement," from the consumers they seek to reach. They can be taken in at a glance, simply by viewing the imagery. These are the types of advertisements that appeal to children.

Children are susceptible to the associative persuasion cues of color and imagery. They have limited ability and motivation to process information and the persuasive assertions of information-based advertisements. They respond to advertisements, not through logical analysis, but through emotions that the advertisements that persuade through association can elicit. In markets such as the tobacco market, where most brands in a product category are similar and most advertising provides little new information, color and imagery have added significance.

Color significantly enhances the effectiveness of advertising. It makes advertisements more vivid. It commands more attention and increases recall. Color in advertising becomes more salient in "low involvement" consumer situations. The eye is attracted to the color and spends longer in exposure to an advertisement. Color provides emphasis and connotes feelings or a tonality in the advertisement.

Consumers associate products with color. Through exposure and repetition, specific colors can become "owned" by a brand so that persons viewing that particular hue and density of color in an advertisement will be reminded of and reinforced as to that brand. Young people respond to color in advertising, and owning brand colors is particularly important for companies pursuing a youth market. Owning a color is also important when the product manufacturer is sponsoring a sporting event.

Imagery, such as photographs, drawings, or cartoons, enhances the effectiveness of advertising, particularly on children. The art, as opposed to words and data, works by attracting attention and conveying attitudes and lifestyle associations. Pictures are better remembered than verbal information because the pictures organize the qualities of the product as depicted by an image. Pictorial information enhances an advertisement's ability to be taken in at a glance — to communicate more quickly in low involvement situations and in quick exposure contexts. It also enhances the subsequent recall of brand names.

Cigarette advertisements, as a class, contain little text or information because they work by association, not information, using imagery to influence those who view them. In contrast to verbal assertions, the visual experience of imagery tends to bypass logical analysis. Imagery in advertising is perceived without the same level of cognitive processing and counter-argumentation that verbal assertions trigger. Such advertisements are "experienced" rather than thought about. Images commonly used in cigarette ads are pictures of healthfulness, images of independence, adventuresomeness and risk taking, sophistication, glamour, sexual attractiveness, thinness, social approval, popularity, rebelliousness and being "cool." Studies have found a correlation between the ideal image of students and their image of smokers. Cigarette promotions often associate brands with popular music, sports events and their stars.

Image-based advertising is particularly effective with young people. Young people are three times more responsive to cigarette advertising than adults. "Starter brands" like Marlboro, Camel and Kool use images that appeal to dominant adolescent psychological needs for autonomy and self-reliance, breaking free of parental and other authority. Images used in advertising for these brands show independence, rebellion and being "cool."

Adolescents are highly alert to cues and clues about lifestyle options. Because adolescence is a time of identity formation, youth are especially attentive to symbols of adulthood and acceptance. The adult world depicted in cigarette advertising is a world to which the adolescent aspires. Children and youth want to emulate the adult models in the ads. Smoking can seem to be an important step toward maturity. Young people also want to be like each other; they want group acceptance. Their need to belong leads them to look to their peers and advertising for cues.

Tobacco advertising projects pictures of health and images of independence and uses other consistent themes, e.g., that tobacco use is a rite of passage, that appeal to teens' needs. Cigarette advertisements skillfully capitalize on the disparity between an ideal and an actual self-image and imply that smoking may close the gap. The images typically associated with advertising and promotion convey the message that tobacco use is a desirable, socially approved, safe and healthful, and widely practiced behavior among young adults, whom children and youths want to emulate. As a result, tobacco advertising

and promotion undoubtedly contribute to the multiple and convergent psychosocial influences that lead children and youths to begin using these products and become addicted to them.

Evidence from social psychology and marketing research shows image-based advertising such as that employed by the tobacco industry is particularly effective with young people and that the information conveyed by imagery is likely to be more significant to young people than information conveyed by other means in the advertisement.

Repeated advertising exposures in diverse multiple media provide the product and brand with an associated brand imagery that strengthens with repetition and time. The type of persuasion that tobacco companies use to influence consumers through affective devices, rather than information, requires repetition to work. The image, lifestyle and associative advertising used by tobacco companies does not work by causing the consumer to suddenly convert his intentions as a result of a single exposure to a highly persuasive advertisement. Rather, these advertisements work through repeated exposures over time.

It is the longevity and thoroughness of cigarette advertising campaigns that make them effective. Tobacco advertising creates an environment in which repetition, year after year, leads a generation of children to perceive cigarettes differently than they would have had they not been induced through repeated exhortations. Every advertising presentation contributes to and builds upon the imagery and appeal created for a product. Advertising that is repeated frequently in as many different media as possible is most likely to ensure that its message is received by the maximum number of consumers.

Outdoor advertising media viewed in publicly visible locations are intrusive and vivid, making them ideal for the image-based advertising which is most effective in reaching youth. Exposure to outdoor advertising is unavoidable and not a matter of choice. Outdoor tobacco ads are not designed only for people who are buying tobacco, but are reaching out into the street to be seen by everyone. People, including children, must use transportation arteries to commute to school or work and are inevitably exposed. Malls, sports arenas, stadiums and other places of public exposition are adapted from settings which were originally out-of-doors and which retain their character as outdoor, public places. Exposure by young people to tobacco advertisements in these locations is as involuntary and intrusive as exposure to such advertisements on the streets.

Outdoor advertising is a low involvement medium, which makes it ideal for image-based advertising campaigns used by tobacco companies. The vivid imagery of outdoor advertisements is designed to be taken in at a glance. It does not require the reading of text beyond recognition of a brand name, logo, slogan, package design or other brand signifier such as color. Young people have been shown to be unresponsive to text-only advertising.

The conspicuous and persistent presence of publicly visible advertising for tobacco products, particularly in and around neighborhoods and schools, at convenience stores frequently visited, on the tops of cabs seen in the community, inside malls and sports stadiums, gives children the impression that tobacco use is desirable, socially acceptable and prevalent. The pervasiveness of publicly visible tobacco advertising and the multiple exposures to it create a "friendly familiarity" that makes cigarettes culturally commonplace to children. (Friendly familiarity refers to the effect of massive marketing that uses a variety of media in stationary and mobile locations and saturates potential consumers with information and imagery.) Children and youth are given the impression that smoking is normative and more prevalent than it is. Highly repetitious advertisement exposure is likely to lead to judgmental biases in children, both in terms of their perception of the risk of tobacco use, and in their social perceptions of the actual prevalence of smoking and the social acceptance of smoking and of smokers. The harm that occurs to young people comes from overestimating the prevalence of smoking among adults and among their peers, from underestimating the addictiveness of nicotine and the number and seriousness of health risks, and from overestimating the amount of social approval they will receive as smokers. Overestimating smoking prevalence has been found to be one of the strongest predictors of smoking initiation. The kind of advertising that is "almost everywhere" makes cigarettes respectable and is reassuring. The ubiquitous display of messages promoting tobacco use clearly fosters an environment in which experimentation by youth is expected, if not implicitly encouraged. Even brief exposure to tobacco advertising can cause some young people to have more favorable beliefs about smokers.

Outdoor advertising, because of its permanence, has a low cost per exposure compared to newspapers or magazines. Stationary outdoor advertising produces high levels of repetition of exposure to individuals regularly traveling specific routes, such as school children and commuters. Mobile media, though not filed, becomes part of an environment of pervasive, multimedia outdoor advertising that communicates to children that smoking is normative.

Outdoor advertising accounts for a significant portion of cigarette advertising spending. According to an FTC report, the cigarette industry's 1996 spending for outdoor media was over two hundred ninety-two million dollars (\$292,000,000.00) — over thirty-five percent (35%) of cigarette spending in measured media, i.e., magazines, newspapers, transit and point of sale ads. Additionally, up to twenty-five percent (25%) of retail point of sale advertising is publicly visible from outside the store.

Tobacco companies are linking the brand imagery created by tobacco product advertising to

advertising for tobacco-company-sponsored events. According to a CEO for Philip Morris: [W]e've managed to take what was originally tunnel vision advertising and positioning...into every kind of avenue.... For example, our auto racing activities are just another way to express the Marlboro positioning. Some would say the Marlboro Cup is different from Marlboro Country, but it is absolutely consistent.

In Canada, where cigarette advertising has been severely restricted, instead of advertising cigarettes, a tobacco company will advertise a team or sporting event it is sponsoring in the cigarette brand name. Since the brand name is used exclusively on cigarettes, it has no other association than cigarette advertising. Studies show that brand name sports sponsorship produces for young people memorable associations between the event and the heroes of the event and the tobacco product and brand name.

Tobacco advertising has been shown to work. Smoking behaviors of adolescents are demonstrably related to previous and current cigarette advertising. The tobacco advertising campaigns targeting women launched in 1967 were associated with a major increase in adolescent girls starting to smoke. For example, the percentage increase in the initiation rate for twelve (12) year old girls, from 1967 to the peak rate in 1973, was one hundred ten percent (110%).

State statute, RCW Section 26.28.080, makes the sale and distribution of tobacco products to minors unlawful and RCW Section 70.155.080 prohibits their purchase or acquisition by minors. RCW Section 70.155.080 was amended by the 1998 Washington State Legislature to make possession of tobacco products by minors illegal. Tobacco advertising is designed to induce minors to engage in an activity which is illegal. The purpose of advertisement regulations is to ensure that restrictions on access are not undermined by the product appeal that advertising creates for young people.

Billboards are an advertising medium that carries the message twenty-four (24) hours a day, seven (7) days a week to everyone who is exposed to it. Billboard advertising's use of imagery allows advertisers to communicate quickly and efficiently. The pictorial information displayed on billboards is remembered much better than verbal information. Billboard advertising achieves high exposure frequency, but the amount of clutter is very low. The cost of outdoor advertisements is usually low compared to other media, yet the retention has shown to be comparable to other media.

Billboards are an effective medium for bringing tobacco advertising to children. In a study of one thousand one hundred seventeen (1,117) children ages ten (10) to seventeen (17), eighty-six percent (86%) recognized Joe Camel using aided and unaided recall. When asked where they had seen Joe Camel, fifty-one percent (51%) said on billboards.

Billboards are a unique and distinguishable medium because they subject children to involuntary and unavoidable forms of solicitation.

The young people as well as the adults have the message of the billboard thrust upon them by all the arts and devices that skill can produce. In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard. *Packer Corporation v. Utah*, 285 U.S. 105, 110 (1932).

Because they are more permanent than magazine advertising, and are seen over and over again by youths, billboard advertisements expose children repeatedly to pro-tobacco messages while giving the erroneous impression that smoking is pervasive and normative.

The public health risk to a child from exposure to tobacco product advertising increases when the child is attending school and engaging in recreational activities on playgrounds and is regularly exposed to billboard messages for lengthy periods of time. Billboards near schools or playgrounds expose children to unavoidable advertising messages for a more prolonged period of time than billboards they pass on the highway. To reduce the risk, it is necessary to protect children from the inescapable, involuntary intrusion of billboard tobacco advertising while they are in school and on public playgrounds.

Through repetition and use of multiple media, publicly visible tobacco advertising strengthens the associated brand imagery. Every presentation of tobacco advertising adds to and builds upon the imagery and appeal created for a product. Repeated advertising exposures provide the product and brand with an associated brand imagery that strengthens with repetition and time. Because of both size and design, advertisements in outdoor media can be readily apprehended at even a substantial distance.

The mission of the King County board of health is to improve the life and health of the people of King County. A regulation restricting advertisements for tobacco products in publicly visible locations is a reasonable and necessary measure for reducing the risk of tobacco use and addiction for children as well as reducing the illegal acquisition of tobacco products by minors.

In order to protect legitimate business activities, the portion of this regulation restricting the location of billboards and other forms of publicly visible tobacco advertising narrowly focuses on those publicly visible advertisements which most directly affect minors because they are located where children attend and travel to school and where they engage in and travel to recreational activities. The portion of this regulation

requiring a black text on white background or "tombstone" format does not prevent the communication of information about tobacco products to adults who may purchase them legally. The black and white, text-only advertising replaces the colorful, imaged-based advertising that appeals to youth, reducing the ability of the advertising to connote desirable images that youth find attractive, such as glamour, independence, sex appeal and maturity. This protects children from the appeal of color and imagery in tobacco advertisements to which they are involuntarily exposed. Empirical evidence shows a lack of appeal to adolescents of tobacco advertising with text only in a tombstone format. Advertisements on motor vehicles, including taxicabs, are subject to the "tombstone" format requirement but are excepted from the one thousand (1,000) foot setback in order to avoid unduly restricting their movement within the county. The restrictions imposed are drawn as narrowly as possible, consistent with the regulation's purpose of reducing young people's attraction to and use of tobacco. (R&R No. 98-03 §1, 9-18-98: R&R 97-04 §1, 7-18-97: R&R 97-03 §1, 5-30-97).

19.08.020* Definitions. "Billboard" means a sign, including both the supporting structural framework and attached billboard faces, used principally for advertising a business activity, use, product, or service unrelated to the primary use or activity of the property on which the billboard is located; excluding off-premises directional, or temporary real estate signs.

"Playground" means a designated outdoor play or recreational area with equipment for children such as swings, seesaws, jungle gyms, sandboxes, baseball diamonds, basketball courts or soccer fields.

"Publicly visible location" means:

- A. Any outdoor location visible from public streets and walkways including, but not limited to:
 1. Exteriors of structures and buildings, including the interior surfaces of exterior doors and windows where a tobacco advertisement mounted on such interior surface is visible from the outside;
 2. Billboards, free-standing signs, and sandwich/A frame and balance signs;
 3. Exterior fixtures and equipment including but not limited to public transit shelters, kiosks, fences, light standards, gasoline pumps, newspaper vending boxes, shopping cart racks, trash containers, and shopping carts used outside of the store;
 4. Bodies, roofs, windows and fixtures of and any device towed by or connected to, passenger cars, motor-driven cycles, public transit vehicles, and for hire vehicles;
 - a. "Passenger car" means every motor vehicle except motor-driven cycles designed for carrying one passenger or more and used for the transportation of persons.
 - b. "Public transit vehicle" means and includes every motor vehicle, bus, van, street car, train, trolley vehicle, and any other device, which (i) is capable of being moved within, upon, above, or below a public highway or right-of-way, (ii) is owned, or operated by or for a city, county, county transportation authority, public transportation benefit area, regional transit authority or metropolitan municipal corporation within the state, and (iii) is used for the purpose of carrying passengers together with incidental baggage and freight, whether on a scheduled or demand responsive basis.
 - c. "For hire vehicle" means any motor vehicle used for the transportation of persons for compensation, except auto stages as defined in RCW Section 46.04.050, but including taxicabs, limousines and shuttle vehicles.
 5. Mobile billboards and mobile signs; and
 6. Blimps, hot air or moored balloons, or banner messages pulled by aircraft.
 - B. Exterior and interior walls and surfaces of sports stadiums, arenas, amphitheaters and other enclosed or partially enclosed spaces used for public expositions or events;
 - C. Common areas of shopping malls and exterior windows and exterior wall surfaces of establishments located within shopping malls where the tobacco advertisement is visible from common areas of the shopping mall.

"Tobacco advertisement" means any words, pictures, posters, placards, signs, photographs, logos, symbols, devices, graphic displays or visual images of any kind, recognizable color or pattern of colors, or any combination thereof, promoting the use or sale of a tobacco product, including advertisements for any athletic, musical, artistic, or other social or cultural event which use a tobacco product brand name (alone or in conjunction with other words) or any other indicia commonly identified with the tobacco product.

"Tobacco product" means any product containing tobacco, the prepared leaves of plants of the Nicotianiana family, including but not limited to cigarettes, loose tobacco, cigars, snuff, chewing tobacco or any other preparation of tobacco. (R&R No. 98-03 § 2, 9-18-98: R&R 97-04 § 2, 7-18-97: R&R 97-03 § 2, 5-30-97).

***Reviser's note:** BOHC chapter 19.08 has been suspended. See BOHC 19.08.005.

19.08.030* Restrictions on tobacco advertising in publicly visible locations.

A. No person shall, for commercial advantage, place, cause to be placed, maintain or cause to be maintained, a tobacco advertisement at a publicly visible location unless such tobacco advertisement

consists solely of black text on a white background without adornment and unaccompanied by color, artwork, pictures, graphics or logos.

B. No person shall for commercial advantage, place, cause to be placed, maintain or cause to be maintained, a tobacco advertisement at any outdoor location visible to the public which is within one thousand (1,000) feet of the perimeter of a public or private elementary school, middle or junior high school, or secondary school, or public playground or public park containing a playground, except that this subsection shall not apply to advertisements on motor vehicles in transit on roadways within the one thousand (1,000) foot perimeter.

C. No billboard advertising tobacco products may be placed within two thousand (2,000) feet of the perimeter of any public or private elementary school, middle or junior high school, or secondary school or public playground or public park containing a playground. (R&R No. 98-03 §3, 9-18-98: R&R 97-04 §3, 7-18-97: R&R 97-03 §3, 5-30-97).

19.08.040* Monitoring and enforcement. Enforcement of this chapter shall be by the Director of Health in accordance with Chapter 1.08 of this Code. (R&R 97-04 §4, 7-18-97: R&R 97-03 § 4, 5-30-97).

19.08.050* Effective date. The effective date for this regulation shall be January 1, 1998. (R&R 97-04 §5, 7-18-97: R&R 97-03 § 5, 5-30-97).

19.08.060* Severability. If any provision of this regulation or its application to any person or circumstances is held invalid, the remainder of the regulation or the application of the provision to other persons or circumstances shall not be affected. (R&R No. 98-03 § 4, 9-18-98).

***Reviser's note:** BOHC chapter 19.08 has been suspended. See BOHC 19.08.005.

19.12 RESTRICTION ON SALE, USE AND AVAILABILITY OF ELECTRONIC SMOKING DEVICES AND UNAPPROVED NICOTINE DELIVERY PRODUCTS

Sections:

- 19.12.010 Adoption as exercise of powers - construction - purposes - intent.
- 19.12.020 Citation and reference to chapter.
- 19.12.030 Findings.
- 19.12.040 Definitions.
- 19.12.050 Age identification requirement.
- 19.12.060 Sale to minors prohibited.
- 19.12.070 Sampling prohibited.
- 19.12.080 Coupons.
- 19.12.090 Mechanical sales restricted.
- 19.12.100 Use of electronic smoking devices prohibited in public places and places of employment.
- 19.12.110 Enforcement - regulations.
- 19.12.110 Applicability.

19.12.010 Adoption as exercise of powers - construction - purposes - intent.

A. This chapter is adopted as an exercise of the board of health powers of King County to protect and preserve the public peace, health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

B. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare 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 this chapter.

C. It is the specific intent of this chapter to place the obligation of complying with its requirements upon the owner of each establishment within its scope, and no provision or term used in this title is intended to impose any duty whatsoever upon King County or any of its officers or employees, for whom the implementation or enforcement of this title is discretionary and not mandatory.

D. Nothing in this chapter is intended to be or shall be construed to create or form the basis for any liability on the part of King County, or its officers, employees 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 on the part of King County by its officers, employees or agents. (R&R 10-04 § 3, 2010).

19.12.020 Citation and reference to chapter. This chapter may be cited and referred to as the "Restriction on Sale, Use and Availability of Electronic Smoking Devices and Unapproved Nicotine Delivery Products." (R&R 10-04 § 4, 2010).

19.12.030 Findings. The Board of Health finds that the emergence of new, unregulated electronic smoking devices and unregulated nicotine delivery products presents a threat to the public health.

Electronic smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, are battery operated devices that closely resemble cigarettes, although they do not contain tobacco. People who use electronic smoking devices inhale vaporized liquid nicotine, or other liquids, created by heat through an electronic ignition system and exhale the vapor in a way that mimics smoking.

In addition to electronic smoking devices, other unregulated nicotine delivery products have recently emerged on the market. These include bottled water products containing nicotine, sometimes referred to as "nico-water," and nicotine lollipops that taste and look exactly like regular candy lollipops but contain nicotine.

The United States Food and Drug Administration has conducted laboratory tests on numerous brands of electronic smoking devices and found that they contained toxic chemicals and carcinogens in addition to nicotine. Although some electronic smoking devices claim not to contain nicotine, there is no regulatory program to monitor this assertion. The United States Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and is a highly toxic substance.

Electronic smoking devices and other unapproved nicotine delivery products have a high appeal to youth due to their high tech design and availability in child-friendly flavors like chocolate and strawberry. They also present a substantial risk of nicotine addiction and resultant harm to the public health and safety. In addition, the use of electronic smoking devices in public places and places of employment returns smoking to the public consciousness, and complicates enforcement of the state and county laws governing the smoking of tobacco products in public places. (R&R 10-04 § 5, 2010).

19.12.040 Definitions. As used in this chapter, the following terms shall be defined as follows:

A. "Electronic smoking device" means an electronic or battery-operated device, the use of which resembles smoking, that can be used to deliver nicotine or other substances to the person inhaling from the device. "Electronic smoking device" includes, but is not limited to, an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe and an electronic hookah. "Electronic smoking device" does not include a cigarette, as defined in RCW chapter 82.24 or tobacco products, as defined in RCW Chapter 82.26.

B. "Employer" shall have the meaning set forth in BOH 19.03.040.

C. "Minor" means any person younger than eighteen years old.

D. "Person" means any natural person, individual, corporation, unincorporated association, proprietorship, firm partnership, joint venture, joint stock association or other entity of business of any kind.

E. "Place of employment" shall have the meaning set forth in BOH 19.03.040.

F. "Public place" shall have the meaning set forth in BOH 19.03.040.

G. "Seller" means any person who sells, distributes with an economic or a business purpose, offers for sale or does or offers to exchange for any form of consideration, electronic smoking devices or unapproved nicotine delivery products.

F. "Unapproved nicotine delivery product" means a product containing or delivering nicotine intended or expected for human consumption, or any part of such a product, that is not a cigarette, as defined by RCW 82.24.010, or a tobacco product, as defined by RCW 82.26.010, and that has not been approved or otherwise certified for sale by the United States Food and Drug Administration as a tobacco use cessation product, or for other medical purposes. (R&R 10-04 § 6, 2010).

19.12.050 Age identification requirement. Each seller shall verify by means of photographic identification listed in RCW 70.155.090 that no person purchasing electronic smoking devices or unapproved nicotine delivery devices is younger than eighteen years old, except that no such verification is required for any purchaser over twenty-six years old. (R&R 10-04 § 7, 2010).

19.12.060 Sale to minors prohibited.

A. No person shall sell, give or furnish, or cause or allow to be sold, given or furnished, electronic smoking devices to a minor unless those products have been approved or otherwise certified for legal sale by the United States Food and Drug Administration and approved for use by minors, and the products are being sold, given or otherwise furnished pursuant to that approval and in full compliance with any related Food and Drug Administration rules, regulations or other requirements.

B. No person shall sell, give or furnish, or cause or allow to be sold, given or furnished, unapproved nicotine delivery devices product to a minor.

C. It is a defense to a prosecution for violation of this section that the person making the sale, gift or otherwise furnishing the product reasonably relied on any of the officially issued identifications listed in RCW 70.155.090 showing that the purchaser or recipient was at least eighteen years old. (R&R 10-04 § 8, 2010).

19.12.070 Sampling prohibited. No manufacturer, seller or distributor of electronic smoking devices or unapproved nicotine delivery products shall:

A. Give, or cause or allow to be given, an electronic smoking device or unapproved nicotine delivery product to any person at no cost or at nominal cost; or

B. Permit the use of an electronic smoking device or unapproved nicotine delivery product at no cost or at nominal cost in any public place or place of employment. (R&R 10-04 § 9, 2010).

19.12.080 Coupons. To help prevent minors from accessing electronic smoking devices or unapproved nicotine delivery products, no person shall give or distribute electronic smoking devices or unapproved nicotine delivery products to a person by a coupon if the coupon is redeemed in any manner that does not require an in-person transaction in a retail store. (R&R 10-04 § 10, 2010).

19.12.090 Mechanical sales restricted. No person shall sell or permit to be sold electronic smoking devices or unapproved nicotine delivery products through any device that mechanically dispenses such products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise. (R&R 10-04 § 11, 2010).

19.12.100 Use of electronic smoking devices prohibited in public places and places of employment. Owners, or in the case of a leased or rented space the lessee or other person in charge, shall prohibit the use of electronic smoking devices in public places and places of employment. (R&R 10-04 § 12, 2010).

19.12.110 Enforcement - regulations.

A. The director is authorized to enforce this chapter in accordance with BOH chapter 1.08 and consistent with subsections B. and C. of this section.

B. The civil penalties that may be imposed on sellers for violations of this chapter shall be assessed as follows:

1. For a violation of BOH 19.12.050, a penalty of fifty dollars for the first violation and one hundred dollars for each subsequent violation.

2. For a violation of BOH 19.12.060:

a. A penalty of one hundred dollars for the first violation within any two-year period;

b. A penalty of three hundred dollars for the second violation within any two-year period;

c. A penalty of one thousand dollars for the third violation within any two-year period; and

d. A penalty of one thousand five hundred dollars for a period of twelve months for the fourth violation within any two-year period;

3. For a violation of BOH 19.12.070, a penalty in the amount of three hundred dollars for each violation;

4. For a violation of BOH 19.12.080, a penalty in the amount of one thousand dollars for each violation;

5. For a violation of BOH 19.12.090, a penalty in the amount of one hundred dollars for each day upon which the violation occurred; and

6. When violations of BOH 19.12.100 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. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

C. The director may reduce or waive the penalties in this chapter if the elements of proof are inadequate or if there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a seller. Further, the director may exceed penalties in this chapter based on aggravating circumstances. (R&R 10-04 § 13, 2010).

19.12.120 Applicability. This chapter applies to the sale and distribution of all electronic smoking devices and unapproved nicotine delivery devices to the extent not preempted by federal law, including, but not limited to, the regulation of those products by the United States Food and Drug Administration. (R&R 10-04 § 14, 2010).

19.14 REGULATION OF SMOKELESS TOBACCO AT EVENT SITES FOR PROFESSIONAL SPORTING EVENTS

Sections:

- 19.14.010 Citation and reference to chapter.
- 19.14.020 Adoption as exercise of powers – purposes.
- 19.14.030 Findings.
- 19.14.040 Definitions.
- 19.14.050 Prohibition.
- 19.14.060 Signage.
- 19.14.070 Enforcement – penalties.

19.14.010 Citation and reference to chapter. This chapter may be cited and referred to as the "Regulation of Smokeless Tobacco at Event Sites for Professional Sporting Events." (R&R 18-02 § 2, 2018).

19.14.020 Adoption as exercise of powers - purposes.

A. This chapter is adopted as an exercise of the board of health powers of King County to protect and preserve the public peace, health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

B. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare 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 this chapter. (R&R 18-02 § 3, 2018).

19.14.030 Findings.

A. The King County Board of Health finds that evidence exists for the development of stronger smokeless tobacco control and prevention measures targeting children and youth and athletic activities with regards to the health risks associated with smokeless tobacco use. More specifically, such control and prevention measures should be focused on professional sporting events where children and youth frequently attend.

B. In 2016, according to the Centers for Disease Control and Prevention ("the CDC"), 5.8 percent of all high-school students used smokeless tobacco with a greater proportion of male students using smokeless tobacco at 8.3 percent. The CDC also reports that each day, more than one-thousand youths, from twelve through seventeen years of age, use smokeless tobacco for the first time.

C. The CDC's Morbidity and Mortality Weekly Report entitled "Combustible and Smokeless Tobacco Use Among High School Athletes - United States, 2001-2013" reported that use of tobacco, either combustible or smokeless, significantly declined from 33.9 percent in 2001 to 22.4 percent in 2013; however, smokeless tobacco use significantly increased from 10.0 percent to 11.1 percent among athletes. Furthermore, the report found that high school athletes used smokeless tobacco at nearly twice the rate of nonathletes, which is 11.1 percent versus 5.9 percent, in 2013, and among male high school athletes, smokeless tobacco use was particularly alarming at 17.4 percent. The report also found that higher level of sports team participation during high school was associated with higher rates of smokeless tobacco use. Lastly, the report found that smokeless tobacco use for high school athletes and non-athletes showed similar trends across White, Black and Hispanic races and ethnicities.

D. The Surgeon General and the National Cancer Institute, have found that smokeless tobacco use is hazardous to health and can lead to nicotine addiction.

E. The National Cancer Institute states that chewing tobacco and snuff contain twenty-eight cancer-causing agents and the U.S. National Toxicology Program has established smokeless tobacco as a "known human carcinogen." The National Cancer Institute and the International Agency for Research on Cancer report that use of smokeless tobacco causes oral, pancreatic and esophageal cancer.

F. The American Cancer Society associates smokeless tobacco with gum and tooth disease, and various National Institute of Health studies have found that smokeless tobacco is also associated with increased risk of peptic ulcers and coronary artery disease.

G. Smokeless tobacco products are heavily advertised and promoted where the top five smokeless tobacco companies in the United States more than quadrupled their total advertising and marketing expenditures from 1998 to 2015. Moreover, the Federal Trade Commission reports that in 2015, the top five smokeless tobacco companies spent \$684.9 million to advertise and promote their products.

H. In April 2010, Terry F. Pechacek, Ph.D., Associate Director for the Science Office on Smoking and Health for the CDC testified before the U.S House of Representatives Subcommittee on Energy and Commerce and stated that, "Athletes serve as role models for youth, and smokeless tobacco

manufacturers have used advertising, images, and testimonials featuring athletes and sports to make smokeless tobacco products appear attractive to youth," and also stated that "Children and teens closely observe athletes' actions, including their use of tobacco products, and are influenced by what they see. Adolescents tend to mimic the behaviors of those they look up to and identify with, including baseball players and other athletes."

I. In a letter to baseball commissioner Bud Selig on June 2014, following the death of Major League Baseball player Tony Gwynn, who died of salivary gland cancer from addiction to smokeless tobacco, nine leading health care organizations, including the American Medical Association and the American Dental Association, stated that "Use of smokeless tobacco endangers the health of major league ballplayers. It also sets a terrible example for the millions of young people who watch baseball at the ballpark or on TV and often see players and managers using tobacco."

J. The use of smokeless tobacco has become part of the culture of baseball, not only at the professional level, but at every level of the sport. The strong association of baseball and smokeless tobacco is reinforced by the use of smokeless tobacco by players, coaches and fans, both professional and amateur. However, progressive steps have been taken by Major League Baseball to change this culture. The 2016 collective bargaining agreement between players and owners prohibits new Major League Baseball players from using smokeless tobacco. The agreement also makes violations of local tobacco-free stadium laws also violations of the agreements. "

K. The use of smokeless tobacco has also become part of the culture of other professional sports including football, hockey, lacrosse and even wrestling. According to the 2014 National Collegiate Athletic Association Substance Use Report, approximately 49.4 percent of male hockey players, 47.2 percent of male baseball players, 40.0 percent of male lacrosse players, 36.9 percent of male wrestlers and 23.8 percent of male football players use smokeless tobacco. (R&R 18-02 § 4, 2018).

19.14.040 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Event site" means the entire physical area in which professional sporting events occur, including all open, semi-open and enclosed spaces and structures, playing fields, dugouts, bullpens, training rooms, locker rooms, team bench areas, spectator seating areas, pedestrian walkways, bathrooms, dining areas, vendor areas, offices, press boxes, television and radio broadcast booths, recreational areas and parking lots.

B. "Smokeless tobacco" means any product that contains cut, ground, powdered or leaf tobacco and is intended to be placed in the oral or nasal cavity, including, but not limited to, snuff, chewing tobacco, dipping tobacco, dissolvable tobacco products and snus. (R&R 18-02 § 5, 2018).

19.14.050 Prohibition. Notwithstanding any other provision of law, no person shall use smokeless tobacco at any event site. (R&R 18-02 § 6, 2018).

19.14.060 Signage. Notwithstanding any other provision of law, each event site shall have conspicuous signs clearly communicating that the use of smokeless tobacco is prohibited. (R&R 18-02 § 7, 2018).

19.14.070 Enforcement - penalties.

A. The director of Public Health - Seattle & King County is authorized to enforce BOH 19.14.060 in accordance with BOH chapter 1.08 and consistent with subsection B. and C. of this section.

B. When violations of BOH 19.14.060 occur, a warning shall first be given to the event site. Any subsequent violation is subject to a civil penalty of up to one hundred dollars, except as provided in subsection C. of this section. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

C. Civil penalties for violations of section 7 of this rule at any event site with more than one thousand persons lawfully permitted to assemble at the venue, shall be assessed at a rate of one hundred dollars for every one thousand persons lawfully permitted to assemble at the venue, for each violation. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation. (R&R 18-02 § 8, 2018).