

NO: R150

COUNCIL DATE: July 22, 2019

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **July 16, 2019**

FROM: **General Manager, Corporate Services** FILE: **3900-02**

SUBJECT: **Vaping and E-Cigarette Product Use and Sales and Proposed Amendments to Business License By-law, 1999, No. 13680**

RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Approve proposed amendments to *Business License By-law, 1999, No. 13680*, as documented in Appendix "I" of this report that includes the same restrictions on vaping and e-cigarette product sales as tobacco product sales and includes the BC Ministry of Health requirement that all retail vendors of these products display signage on their premise that advises customers they must be 19 years of age or older to purchase these products;
3. Authorize the City Clerk to give public notice, in the form of newspaper advertisement, of the proposed amendments to *Business License By-law, 1999, No. 13680*, as documented in Appendix "I", and to provide an opportunity to persons who consider they are affected by the proposed amendments to make representations to Council;
4. Direct staff to report back to Council on any representations received prior to Council considering final adoption of the proposed amendments to *Business License By-law, 1999, No. 13680*, as documented in Appendix "I"; and
5. Endorse the measures proposed by Health Canada and the BC Ministry of Health pertaining to the sale of vape products and their use, as contained in this report.

INTENT

The purpose of this report is to provide Council with background information on vaping and e-cigarette products and the current Federal, Provincial and Local Government regulations surrounding the sale and use of these products; and to seek Council's approval of the proposed bylaw amendments. The amendments would place the same restrictions on vaping and e-cigarette product sales as tobacco product sales and require all retail vendors of these products to display signage advising customers that they must be 19 years of age or older to purchase these products.

BACKGROUND

At the April 15, 2019 Council Meeting, Council passed a motion that “staff provide a report that includes options for increasing the restrictions on vape shops, with consideration for the possibility of banning them altogether.”

Overview of Vaping Products and Their Use Amongst Youth

Vaping products, also referred to as e-cigarettes, are battery-powered devices that heat a liquid solution to create an aerosol (vapour or cloud). These devices do not contain tobacco and do not involve burning. Vaping products come in many shapes, sizes, and styles. They can contain low to high amounts of nicotine, which are readily absorbed providing a greater nicotine “hit.”

The use of vaping products amongst youth is significantly increasing. New research released in June 2019 from the University of Waterloo suggests that vaping amongst young Canadians has skyrocketed by 74% in just one year. The study found the number of Canadians aged 16 to 19 who reported vaping in the previous month jumped from 8.4% in 2017 to 14.6% in 2018. Rates of weekly use climbed to 9.3% from 5.2% over the same time period. The study also reflects that conventional cigarette use increased from 10.7% in 2017 to 15.5% in 2018, deviating from decades of research suggesting youth smoking in Canada was on the decline.

Based on an earlier study that was conducted between October 2016 and June 2017 by the University of Waterloo’s “Canadian Student Tobacco, Alcohol, and Drugs Survey” (“CSTADS”), it was found that less than one quarter (22%) of the 52,103 students surveyed across Canada between grades 7 to 12 purchased vaping products through a retail source. Retail sources include purchases made in store or online. More than half of these students (53%) say it is “fairly easy” or “very easy” to access vaping products. CSTAD is supported and funded by Health Canada to carry out biennial surveys in this regard.

Health Impacts

While the long-term health effects of using vaping products are currently unknown and continue to be studied, Health Canada has stated that using vaping products can adversely impact health. The toxic chemicals in the aerosol lead to short-term respiratory and cardiovascular health effects and may cause cancer. Vaping products that contain nicotine can lead to nicotine addiction and physical dependence. The immediate response to nicotine includes increased heart rate and blood pressure. Youth are particularly susceptible to the negative effects of nicotine. It can alter brain development, affect memory, concentration, and mood.

Health Canada has also stated that for cigarette smokers, vaping products may be considered a less harmful alternative since aerosol contains fewer toxic chemicals compared to cigarettes. However, given the potential and unknown harms of vaping products, people who do not smoke should not vape.

In April 2019, the Canadian Council of Chief Medical Officers of Health, representing chief medical officers from across Canada, issued a warning about the dangers of youth vaping stating that vaping poses a serious health risk. The statement called on government to take greater action to reduce youth access, as a new generation of youth addicted to nicotine may lead to a resurgence in smoking or create new public health problems, reversing decades of progress.

DISCUSSION

Vaping products are legal in Canada. There are both Federal and Provincial laws that govern how vaping products are produced, labelled, promoted, sold and used. With the exception of Alberta and Saskatchewan, all provinces have e-cigarette legislation. Many local governments across Canada have their own bylaws that further restrict the use of vaping products. The subsequent sections of this report outline existing regulations for each level of government and highlight the latest developments pertaining to the evolution of these regulations.

Federal Government Regulation

In May 2018, the Federal Government enacted the *Tobacco and Vaping Products Act* (“TVPA”) to regulate the manufacture, sale, labelling and promotion of tobacco products and vaping products sold in Canada. The TVPA replaces the former *Tobacco Act* that was originally enacted in 1997 in response to the national public health problem posed by tobacco use. The *Tobacco Act* and its regulations have been a key component in advancing the government's strategy to protect the health of Canadians from tobacco related death and disease.

In light of the growing presence of vaping products on the Canadian market, the TVPA provides a new legal framework for regulating vaping products to protect young persons from nicotine addiction and tobacco use, while allowing adults access to vaping products as a less harmful alternative to smoking.

For vaping products, the purpose of the TVPA is to:

- Protect young persons and non-tobacco users from inducements to use vaping products;
- Protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;
- Protect the health of young persons by restricting access to vaping products;
- Prevent the public from being deceived or misled with respect to the health hazards of using vaping products; and
- Enhance public awareness of the health hazards of using vaping products.

The TVPA prohibits sales of vaping products to any person under the age of 18. Provincial governments across Canada have the authority to raise the minimum age restriction beyond the age of 18.

Federal Government - Proposed Changes

In early 2019, the Federal Government introduced a proposal to ban advertisements for vaping products from public places where young people could see them, including billboards and public transit. The ban would apply to retail stores where youth are allowed, as well as print publications, websites and social media. Vaping ads would be prohibited on TV and radio, but only immediately before, during and after youth programming. It also launched a multi-phase campaign to educate teens about the risks associated with vaping at a young age.

In April 2019, the Federal Government announced it was proposing additional measures to stop young people from using e-cigarettes, including:

- A crackdown on the availability of flavours;
- Limiting the concentration of nicotine in e-cigarettes; and
- Placing restrictions on online sales and regulating vaping products to make it harder for youth to conceal them in schools.

BC Government Regulation

In BC, the Ministry of Health has established the legal minimum age requirement to buy vaping product as 19 years of age, similar to the age requirement for smoking. The Ministry of Health is also responsible for regulating the display, sale and use of vaping products through the *Tobacco and Vapour Products Control Act and Regulation* which is enforced by the five regional health authorities.

The *Tobacco and Vapour Products Control Act and Regulation* controls the use, sale and display of tobacco products. Under this legislation, the following are banned:

- Sale and supply of vaping products to minors (under 19);
- Sales of vaping products wherever tobacco sales are banned;
- Vaping anywhere smoking is banned (inside public spaces and workplaces), with the exception of vape shops where minors are not allowed to enter; with a maximum of two people sampling a product at the same time;
- Vaping in cars with children under 16;
- Vaping within six metres of doors, air intakes and open windows;
- Any kind of promotion of vaping products in stores except point of sale showing availability and price, including duty free shops;
- All point of sale display of vaping products except where minors are prohibited, permits vending machines in adult only venues, including duty free shops; and
- Vaping on health authority property unless in designated areas.

In addition to the above, the *Tobacco and Vapour Products Control Act and Regulation* prohibits the use of vaping products at all kindergarten to grade 12 school sites across BC at all times and mandates that the school boards, superintendents, and principals throughout the province be accountable if there is a violation. In an effort to support school districts across the region, in May 2019, the BC Lung Association, in partnership with Fraser Health and Vancouver Coastal Health, released an information brochure on vaping with an intended audience of students and parents. A copy of the brochure is attached as Appendix “II”.

BC Government Enforcement of Vaping Regulations

Appendix “III” contains a document titled “Requirements under the Tobacco and Vapour Products Control Act and Tobacco and Vapour Products Control Regulation” that was prepared by the BC government just prior to the enactment of this legislation in September 2016.

This document provides an outline of the requirements of retailers and users of vape products, as well as an overview of penalties for violations of the legislation that would be enforced by a BC Health Authority Enforcement Office as follows:

- The issuance of a violation ticket ranging from \$345 to \$575 depending on the contravention; and
- Making a request for an administrative hearing for more serious violations that allows both the retailer and enforcement officer an opportunity to provide evidence in a hearing. If a contravention is found, adjudicators can set monetary penalties and/or suspend tobacco sales authorizations and prohibit the sale of vapour products. Monetary penalties range up to \$5,000, and suspensions of tobacco sales authorizations and prohibition of sale of vapour products range up to 180 days.

BC Government - New Developments

In late June 2019, the BC Minister of Health released a statement that the BC government, as part of a Federal Government consultation on vaping, has recommended Federal regulatory action in the following four areas:

1. Restricting the concentration and delivery of nicotine;
2. Restriction to the promotion and sale of flavoured vaping products;
3. Restrictions on advertising of vaping products; and
4. Measures aimed at reducing youth appeal of the vaping device itself.

The BC Health Minister also endorsed the implementation of six measures noted in a recent federal consultation paper:

1. Requiring that online retailers post information advising prospective customers that the sale of vaping and tobacco products are restricted to persons of legal age;
2. Requiring two-step age verification for online retailing, like the age verification system in place in B.C. for online cannabis ordering;
3. Requiring that packages containing vaping or tobacco products bear a prescribed label that reads 'Age verification required at delivery';
4. Requiring a signature upon delivery and prohibiting packages from being left on doorsteps;
5. Restricting delivery to prescribed carriers; and
6. Restricting online retailing to retailers that utilize third-party age-verification services.

The Health Minister further stated that while it is the BC government's preference to work with the Federal Government on joint action towards restricting the sale of vaping products to youth, it also stands ready to introduce its own initiatives should Federal action be delayed. A similar approach has already been taken by the province of Quebec.

In addition to the above, the BC Health Minister announced that the BC government will work with youth across the province to establish youth-led efforts to curb vaping among young people.

Recommendations Regarding Federal and Provincial Proposed Changes

Given that the overarching regulations on vaping sales and use stem from senior levels of government in Canada, it is recommended that the City endorse the measures proposed by Health Canada and the BC Ministry of Health regarding the sale of vaping products and their use, all as contained above.

Local Government Regulation

Staff's research into municipal vaping prohibitions reveals that no municipality in Canada has presently imposed an outright ban on vaping products and use.

A review of several local governments within the Metro Vancouver region and across Canada reveals that municipalities are allowing the sale and use of vaping products provided that the vendors and users are, at a minimum, following Federal and Provincial legislation. Beyond this, the zoning requirements in each municipality vary slightly and all require that the sale and use of vaping products follow the same requirements as their respective tobacco sales and use bylaws.

In the United States, the City of San Francisco announced in late June 2019 that it would ban vaping and e-cigarette sales, making it the first city in North America to do so. The City of San Francisco bylaw (referred to as an "ordinance" in US cities) states that "no person shall sell or distribute an electronic cigarette to a person in San Francisco unless that product has undergone premarket review by the US Food and Drug Administration". To date, no e-cigarette or vaping product sold in the United States has undergone a premarket review by the US Food and Drug Administration.

The San Francisco ban includes sales in retail stores, as well as online sales shipped to a San Francisco address. The ordinance also applies to flavored tobacco products in addition to e-cigarettes. The measure does not ban the use of vaping products among people 21 and older. Many cities across the United States that are considering taking the same approach are waiting to determine the effectiveness of the ban in San Francisco before they proceed in this regard.

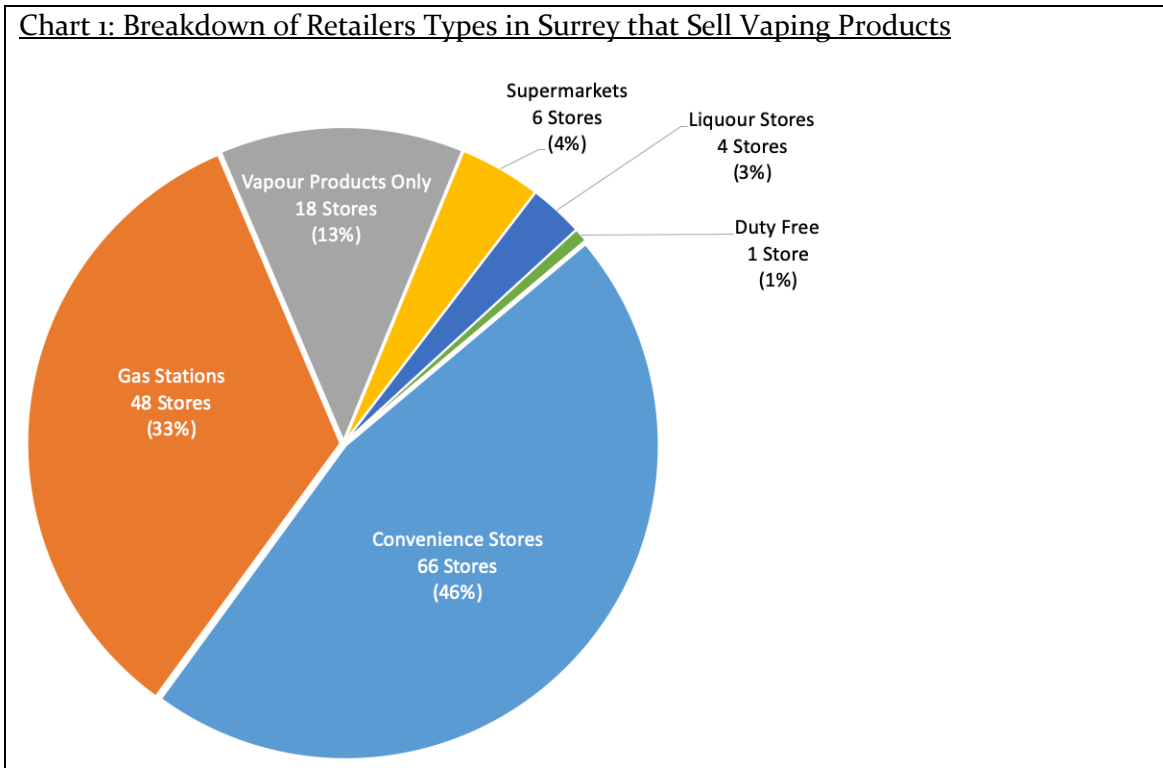
City of Surrey Regulations

At present, vaping products are sold at 143 retail locations throughout Surrey, including convenience stores, gas stations and retail stores that traditionally sell tobacco products.

Retail stores that specialize in vape-only products have become more common in recent years. The City's practice towards issuing business licenses for vape-only shops has been to conduct an inspection of the retail premise and to require the applicant to submit proof of a Fraser Health inspection prior to the issuance of the license. This is to ensure that the applicant is not selling cannabis and is adhering to the requirements of the *BC Tobacco and Vapour Products Control Act and Regulation*.

With the exception of retailers that sell vape-only products, all of the retailers that sell vape products also sell tobacco products.

A breakdown of the type of retail categories that sell vape products in Surrey is provided in the chart below:



The City of Surrey’s existing regulations related to vape products are reflected below along with discussion pertaining to proposed changes (if any) of these bylaws:

Surrey Public Health Smoking Protection By-law, 2008, No. 16694

This bylaw defines “e-cigarette” and regulates where they can be used with respect to:

- The distance one must maintain from a door or window when vaping (7.5 metres in Surrey versus the Provincial requirement of 6 metres);
- Surrey does not permit vaping to occur in a taxicab, on public transit, or any passenger bus;
- Vaping in Surrey must not occur within 7.5 metres of a bus shelter or bus bench;
- Any vehicle that has an occupant that is under 19 years of age must not vape (the Provincial minimum is 16 years of age); and
- Not allowing vaping to occur in a building, with exceptions.

An offence against this bylaw can result in a fine of not less than \$100 and not more than \$2,000. If the offence continues after the issuance of the fine, each day that the offense continues constitutes a separate and distinct offense.

Surrey Parks, Recreation and Cultural Facilities Regulation By-law, 1998, No. 13480

This bylaw prohibits the smoking of cigarettes and vaping products within a City of Surrey park except in an area designated and posted for such purpose by the General Manager. The bylaw defines a park as:

- Every public park, open space, playground, urban forest (including all driveways, roadways, paths and lanes within a public park, playground or urban forest), beach, boulevard, swimming pool (whether indoor or outdoor), water playground, wading pool, ice arena, community centre, art gallery, museum, arena, exhibition building, cemetery, marina, and all other community recreational or cultural facilities owned or controlled by the City; and
- Any real property acquired and held by the City and dedicated and reserved by it for the use, recreation or enjoyment of the public.

A violation of this bylaw can result in a penalty of not less than \$50 and not more than \$2,000 plus the cost of the prosecution, or to a term of imprisonment not exceeding 3 months, or both.

At this time, it is not recommended that the City amend the above noted bylaws pertaining to vaping use. These bylaws presently exceed the Provincial requirements pertaining to the use of vaping products. Providing greater restrictions beyond the existing regulations of these bylaws may not be practical from an enforcement perspective.

Notwithstanding the above, a growing and higher usage of vaping products has been observed in the past few years at City hosted special events that are held in Surrey parks, such as the Canada Day event. In this regard, Bylaw Services staff will work with Parks, Recreation & Culture Department staff to ensure a more coordinate approach towards gaining compliance from patrons that may be using vaping products at these special events.

Zoning By-law, 1993, No. 12000

Under the City's Zoning bylaw, vaping products are ordinarily sold by businesses on properties zoned for retail or convenience use. This includes retailers that solely sell vaping products.

While the City has authority to regulate businesses pursuant to the *Community Charter*, the City does not have the authority to outright prohibit the sale of vaping products.

The City has the ability to regulate the use of land, building and other structures pursuant to the *Local Government Act*. Using this authority, the City could conceivably control the location of shops primarily selling vaping products by amending *Surrey Zoning By-law, 1993, No. 12000* to create a new category in relation to retailers primarily selling vaping products. However, this will likely lead to legal non-conforming use claims from existing shops primarily selling vaping products, which could create challenges for any future rezoning attempts provided that the use is continued in the same manner.

In this regard, an amendment to the City's Zoning Bylaw is not recommended at this time.

Business License By-law, 1999, No. 13680

This bylaw contains sections specific to Tobacco Product Sales but has not been updated to reflect vaping products or e-cigarettes. Section 64(1) of the bylaw states that “no proprietor of a retail business which has for sale cigarettes and related tobacco products will permit a person to purchase cigarettes or related tobacco products unless the person presents picture identification showing that the person is 19 years of age or over”.

It is recommended that this bylaw be amended to include the same restrictions on vaping and e-cigarette product sales as tobacco product sales. It is also recommended that the bylaw be updated to reflect the BC Ministry of Health’s requirement that all retail vendors of vaping and e-cigarette products display signage on their premise that advises customers they must be 19 years of age or older to purchase these products and that an inspection be carried out periodically by the City’s bylaw staff to ensure business license holders are adhering to this requirement.

The *Community Charter*, S.B.C. 2003, c. 26, requires Council to provide notice of the proposed amendments to the *Business License By-law, 1999, No. 13680* and Council must provide persons who consider they are affected by the proposed amendments to make representations to Council. There are no similar requirements that apply to the proposed amendments of the other by-laws referred to in this report.

SUSTAINABILITY CONSIDERATIONS

The proposed bylaw amendments support the objectives of the City’s Sustainability Charter 2.0. In particular, this work relates to the Sustainability Charter 2.0 theme of Public Safety. Specifically, the proposed bylaw amendments support the following Desired Outcome (“DO”) and Strategic Direction (“SD”):

- Community Safety and Emergency Services D05: Surrey is recognized and perceived as a leader in establishing and maintain collaborative partnerships for community safety and well-being; and
- Community Safety and Emergency Services SD4: Enhance intergovernmental relations, and ensure broad partnerships and collaboration to address multi-jurisdictional social issues (e.g., homelessness, mental health, addictions, etc.).

CONCLUSION

This report provides Council with background information on vaping products, the increased use of vaping products amongst youth, health concerns associated with prolonged use of these products and an overview of the pertinent governing legislation by all three levels of government. The reports seeks Council approval of the proposed amendments to the *Business License By-law, 1999, No. 13680* that includes the same restrictions on vaping and e-cigarette product sales as tobacco product sales; and includes the requirement that all retail vendors display signage on their premise that advises customers they must be 19 years of age or older to purchase vaping products. This report also seeks Council to endorse the measures proposed by Health Canada and the BC Ministry of Health pertaining to the sale of vaping products as discussed above.

Rob Costanzo
General Manager, Corporate Services

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Appendix "I": Proposed amendments to Business License By-law, 1999, No. 13680

Appendix "II": Vaping Products Brochure Produced by the BC Lung Association, Fraser Health and Vancouver Coastal Health

Appendix "III": BC Ministry of Health's Requirements under the Tobacco and Vapour Products Control Act and Tobacco and Vapour Products Control Regulation

**Proposed Amendments to
Business License By-law, 1999 No. 13680
Tobacco and Vapour Products**

That the Business License By-Law, 1999, No. 13680, as amended (the "By-law"), be further amended as follows:

1. The following definitions of "E-Cigarette" and "E-Substance" be inserted immediately after the definition of "Drug Paraphernalia" in Section 2 of the By-law:

"E-Cigarette" means the following:

- (a) a product or device, whether or not it resembles a cigarette, containing an electronic or battery-powered heating element capable of vapourizing an e-substance for inhalation or release into the air;
- (b) any product or device prescribed as an e-cigarette by regulation under the Tobacco and Vapour Products Control Act, R.S.B.C. c. 451.

"E-Substance" means a solid, liquid or gas:

- (a) that, on being heated, produces a vapour for use in an e-cigarette, regardless of whether the solid, liquid or gas contains nicotine; and
- (b) that is not a controlled substance within the meaning of the *Controlled Drugs and Substances Act*.

2. The following definition of "Point of Sale System" be inserted immediately after "Pinball Machine" in Section 2 of the By-law:

"Point of Sale System" means a digital, electric, manual or mechanical system for calculating and recording sales transactions.

3. The following definitions of "Tobacco" and "Vapour Product" be inserted immediately after "Therapeutic Touch Technique" in Section 2 of the By-law:

"Tobacco" means tobacco leaves or products produced from tobacco in any form or for any use.

"Vapour Product" means the following:

- (a) an e-cigarette;
- (b) an e-substance;
- (c) a cartridge for or a component of an e-cigarette.

4. Section 64 be deleted in its entirety and replaced with the following new Section 64:

Tobacco and Vapour Product Sales

64. (1) No proprietor of a retail business which has for sale tobacco or vapour products will sell, offer for sale, provide or distribute tobacco or vapour products to a person unless the individual is 19 years of age or over and presents picture identification showing that the individual is 19 or over.
- (2) The proprietor of every retail business which has for sale tobacco or vapour products must not display tobacco or vapour products, or advertise or promote the use of tobacco or vapour products, in any manner by which the tobacco or vapour products or the advertisement or promotion:
- (a) may reasonably be seen or accessed by a person inside the retail premises who is not 19 years of age or over; or
 - (b) are clearly visible to a person outside the retail establishment.
- (3) For the purposes of Subsection (2), "advertise or promote the use of tobacco or vapour products" means to advertise or promote the use of tobacco or vapour products by any means, including by:
- (a) displaying on a sign, video, clothing or other tangible object the name of a brand or manufacturer of tobacco or vapour products, an abbreviation or other thing that would reasonably identify the name of a brand or manufacturer of tobacco or vapour products, or a graphic, design or symbol that is commonly associated with the name of a brand or manufacturer of tobacco or vapour products; or
 - (b) making available any sign, video, clothing or other tangible object that displays any of the things set out in paragraph (a).
- (4) Despite Subsection (3), the proprietor of a retail business which has for sale tobacco or vapour products may advertise within the premises the types of tobacco and vapour products for retail by means of a sign that meets all of the following criteria:
- (a) the sign must not be larger than 968 cm²;
 - (b) the background of the sign must be white only;
 - (c) the text of the sign must be black only;
 - (d) the letters in the text of the sign must not be higher than 5 cm;
 - (e) except for the "\$" symbol in front of a price, the sign must not contain any graphic or design, or any symbol that is not an alpha-numeric character;
 - (f) the sign must not include the name of a brand or manufacturer of tobacco or vapour products;

(g) the sign must not include any abbreviation, or other thing that would reasonably identify the name of a brand or manufacturer of tobacco or vapour products; and

(h) the sign may advertise only the types of tobacco and vapour products for sale and the prices of, or a price range for, those types of tobacco and vapour products,

and the proprietor must not have more than 3 signs on the premises, including not more than one sign at each point of sale system.

- (5) The proprietor of a retail business which has for sale tobacco or vapour products must ensure that warning signs as prescribed in Subsections (6), (7) or (8) are displayed in accordance with the following:
- (a) the decals for purchasers must be displayed in plain view to purchasers at the point and time of sale;
 - (b) the decals for employees must be displayed in plain view to the employee operating the point of sale system on or near the point of sale system at the time of sale; and
 - (c) the decals must not be obscured by any sign, notice or any other thing that could make the decal less than fully visible.
- (6) The proprietor of a retail business which has for sale tobacco, but not vapour products, must do both of the following:
- (a) display to purchasers the decal set out in Figure 1 of Schedule "C"; and
 - (b) display to employees the decal set out in Figure 2 of Schedule "C".
- (7) The proprietor of a retail business which has for sale vapour products, but not tobacco, must do both of the following:
- (a) display to purchasers the decal set out in Figure 3 of Schedule "C"; and
 - (b) display to employees the decal set out in Figure 4 of Schedule "C".
- (8) The proprietor of a retail business which has for sale both tobacco and vapour products must do both of the following:
- (a) display to purchasers the decal set out in Figure 5 of Schedule "C"; and
 - (b) display to employees the decal set out in Figure 6 of Schedule "C".
- (9) A proprietor who operates a vending machine that sells tobacco or vapour products must affix to the front of the vending machine the decal referred to in Figure 1, Figure 3 or Figure 5 of Schedule "C", as applicable.

- (10) The proprietor of a retail business which has for sale vapour products is exempt from the provisions of Subsections (1), (2) and (3) with respect to vapour products that are prescribed by regulation under the Tobacco and Vapour Products Control Act, R.S.B.C. c. 451 as products or devices intended to be used for medical purposes, including to reduce nicotine dependence.
5. A new Schedule "C" be added as set out in the attached Schedule "C".

SCHEDULE "C"

Figure 1

19

Government ID with a photo and birth date must be shown when requested.

You must be 19 or older to purchase TOBACCO.

 **BRITISH COLUMBIA**


Tobacco and Vapour Products Control Act

Figure 2

19

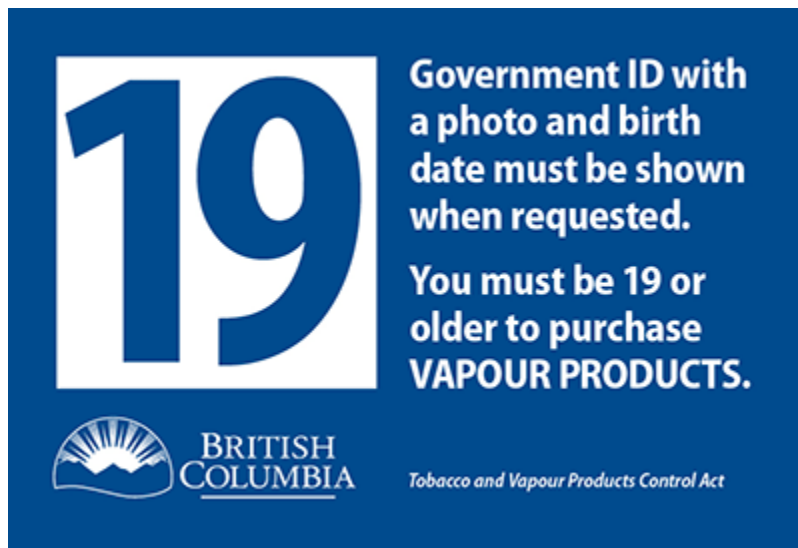
It is ILLEGAL to give or sell TOBACCO to anyone under 19 years of age.

Valid photo ID may be required.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act


Figure 3



19

Government ID with a photo and birth date must be shown when requested.

You must be 19 or older to purchase VAPOUR PRODUCTS.

 BRITISH COLUMBIA

Tobacco and Vapour Products Control Act

Figure 4



19

It is **ILLEGAL** to give or sell VAPOUR PRODUCTS to anyone under 19 years of age.

Valid photo ID may be required.

 BRITISH COLUMBIA

Tobacco and Vapour Products Control Act

Figure 5



19

Government ID with a photo and birth date must be shown when requested.

You must be 19 or older to purchase TOBACCO or VAPOUR PRODUCTS.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act

Figure 6



19

It is ILLEGAL to give or sell TOBACCO or VAPOUR PRODUCTS to anyone under 19 years of age.

Valid photo ID may be required.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act

VAPING PRODUCTS

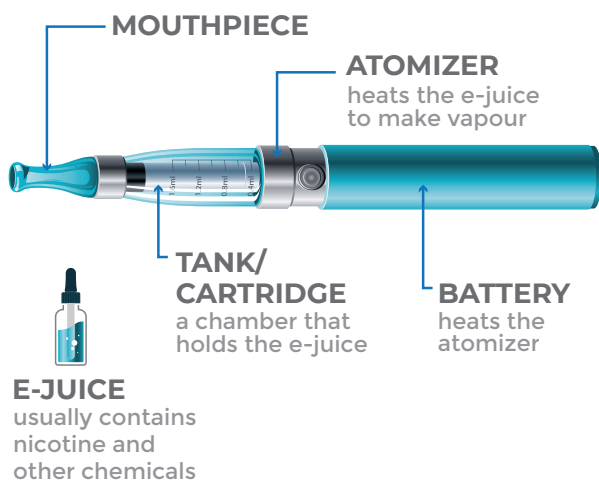
FREQUENTLY ASKED QUESTIONS



1 WHAT ARE VAPING PRODUCTS?

Vaping products are battery-powered devices that heat a liquid solution to create an aerosol (vapour or cloud).

Vaping products have many names such as: e-cigarettes, vapes, vape pens, mods (box or pod), tanks, e-hookahs and are also known by various brand names. These devices do not contain tobacco and do not involve burning. Most contain nicotine. They consist of the following:



- Atomizer is also known as cartomizer or clearomizer
- E-juice is also known as e-liquid or vaping liquid

2 WHAT VAPING DEVICES ARE MOST COMMONLY USED?

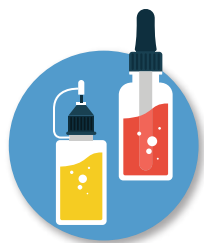
Original vaping devices were made to look like traditional cigarettes. However, newer generations of vaping products are more advanced and come in many shapes, sizes, and styles. "JUUL" and "Aspire Breeze" are examples of vaping products that are now becoming very popular. They contain high amounts of nicotine, which are readily absorbed; thus providing a greater nicotine "hit."



3 WHAT IS IN THE E-JUICE?

Most e-juice typically contain:

- Propylene glycol (PG)
- Vegetable glycerin (VG)
- Flavourings
- Nicotine (none to very high amounts)



4 WHAT IS IN THE AEROSOL?

A misconception among youth and adults is that the aerosol is only water vapour. However, once e-juice is heated, a number of chemicals are created, such as:

TOXIC CHEMICALS	ALSO FOUND IN
Heavy metals	Lead-based paint
Carbonyls	Embalming liquid
Tobacco-specific nitrosamines	Cigarettes
Volatile organic compounds (VOCs)	Gasoline
Polycyclic aromatic hydrocarbons (PAHs)	Vehicle exhaust
Tiny particles	Wildfire smoke

These toxic chemicals may cause cancer, lung disease, and heart disease.

5 CAN CANNABIS BE VAPED?

Cannabis can also be vaped as dried flower or in concentrate forms such as wax and hash oil.

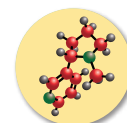


6 WHAT ARE THE HEALTH EFFECTS OF USING VAPING PRODUCTS?

Vaping products **DO HAVE** an impact on health. The toxic chemicals in the aerosol lead to short-term respiratory and cardiovascular health effects, and may cause cancer.

The long-term health effects of using vaping products are currently unknown and continue to be studied.

Vaping products that contain nicotine can lead to nicotine addiction and physical dependence. The immediate response to nicotine includes increased heart rate and blood pressure. Youth are particularly susceptible to the negative effects of nicotine. It can alter brain development, affect memory, concentration, and mood.



7 ARE VAPING PRODUCTS LESS HARMFUL THAN CIGARETTES?

For people who smoke, vaping products may be considered a less harmful alternative. This is because the aerosol contains fewer toxic chemicals compared to cigarettes.

However, given the potential and unknown harms of vaping products, people who do not smoke, should **NOT** vape.



8 IS IT HARMFUL TO BREATHE IN SECOND-HAND VAPOUR?

Nicotine, heavy metals, and tiny particles have been found in second-hand vapour. Bystanders, including children and infants, can breathe in the vapour. People who use vaping products should therefore avoid vaping around non-users.



9 WHAT ARE OTHER RISKS OF USING VAPING PRODUCTS?

Children and adults have been poisoned by swallowing the e-juice or absorbing it through skin.

Vaping products can explode and cause fires that may result in burns and injuries. The lithium-ion batteries in vaping devices can be dangerous especially if they are not properly used, stored, carried, or charged.



10 ARE VAPING PRODUCTS LEGAL IN CANADA?

Vaping products are legal in Canada. However, there are both federal and provincial laws that govern how they are produced, labelled, promoted, and sold.

11 WHAT IS THE LEGAL AGE TO BUY VAPING PRODUCTS?

In BC, you must be 19 years or older to purchase vaping products.



12 IS VAPING ALLOWED ON SCHOOL PROPERTY?

The BC Tobacco and Vapour Products Control Act bans vaping in all places where smoking is not allowed. This applies to inside schools and on school property. According to the Act, administrators (the board, superintendent, and principals) are accountable if there is a violation. They must do their best to ensure student compliance and provide a safe and healthy learning environment.

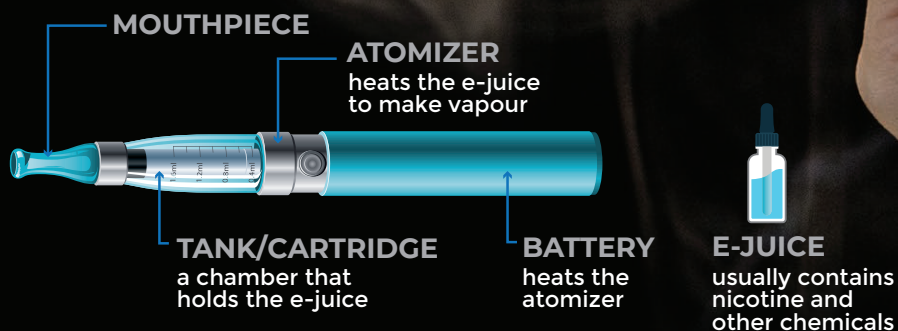
VAPING

AN OVERVIEW

VAPING PRODUCTS

E-cigarettes, vapes, vape pens, mods (box or pod), tanks, e-hookahs

PARTS OF A VAPING DEVICE



WHAT'S IN THE VAPOUR?

Flavours



E-juice

+

Nicotine

(none to very high amounts)



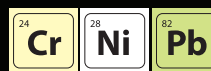
+

• Volatile Organic Compounds (VOCs)

- Carbonyls
- Tiny particles

+

Many toxic heavy metals



Chromium, Nickel, Lead

=



HEALTH EFFECTS OF NICOTINE

Alters brain development



Negatively affects memory, concentration, and mood



Increases anxiety and stress



Increases heart rate and blood pressure



Highly addictive



Requirements under the *Tobacco and Vapour Products Control Act* and Tobacco and Vapour Products Control Regulation

The new laws around the sale, display, promotion and use of tobacco and vapour products will **come into effect on Sept. 1, 2016**. On that day, all retailers and users of these products must adjust their practices to meet the requirements of the new *Tobacco and Vapour Products Control Act* and the Tobacco and Vapour Products Control Regulation. The information below is intended to give a general overview of the new requirements. A copy of the new *Tobacco and Vapour Products Control Act* and Vapour Products Control Regulation will be released in July 2016.

Most of the changes relate to the sale, display, promotion and use of vapour products/electronic cigarettes. There are some additional changes to the buffer zone and use on health authority sites for tobacco as well as vapour products/electronic cigarettes. All other requirements for tobacco display, sale and use remain as they were in the previous *Tobacco Control Act* and Tobacco Control Regulation, as well as the current *Tobacco Tax Act* and Tobacco Tax Regulation, and the federal *Tobacco Act*. Your local government may also have requirements.

The information provided gives a general overview of the legislative standards, including:

- ▶ the sale, display, promotion and use of vapour products in stores;
- ▶ the use of vapour products in public and work spaces;
- ▶ buffer zone and use on health authority sites for both tobacco and vapour products; and
- ▶ enforcement of the new laws, including penalties.

Requirements for the sale and promotion of vapour products in stores

What is a vapour product?

A vapour product or electronic cigarette is defined as a device that contains an electronic or battery-powered heating element that can vapourize an e-substance.

An e-substance is a solid, liquid or gas that when heated by the element in an e-cigarette, produces a vapour for use in an e-cigarette. All e-substances are covered by the new legislation and it does not matter if the e-substance contains nicotine or is nicotine-free.

Both the device and the e-substance are subject to restrictions on sale, display, promotion and use.

Who can buy vapour products?

Any adult over the age of 19 can purchase a vapour product.

Retailers must ensure that they sell vapour products only to people over 19 years of age. Only government-issued identification (e.g. a passport, driver's licence or identification card with a photograph) can be used to confirm a person's age.

It is important to note that it is illegal to give or provide any vapour products to someone under the age of 19. If you suspect someone is providing vapour products to minors, please contact enforcement staff at your local [regional health authority](#).

Can I display vapour products in my store?

A key goal in the new legislation is ensuring youth are not encouraged to use vapour products. As a result, vapour products cannot be advertised or displayed in stores where those under 19 years of age have access.

- ▶ **If your store allows all ages to enter the store**, then you must ensure that the vapour products and any advertisements for vapour products are not visible to minors in your store. This includes any objects like mugs or hats that promote brands or manufacturers of vapour products. Within your store, you can inform customers that you have vapour products for sale, using basic signs with general information such the price range of single use or refillable products. The information must be small black letters that on a white background and the page cannot be larger than a standard letter size page.
- ▶ **If your store only allows adults to enter the store**, then you may have vapour products and their promotions out on display. However, you must ensure that people looking into the store from outside cannot see the vapour products or their advertisements.

Any vending machines that sell vapour products must be in adult-only venues.

Can tobacco or vapour products be advertised outside of retail stores – for example, on a sandwich board, newspaper or billboard?

Our advertising regulations will apply to retail premises. If you wish to advertise outside of those premises, then you must review the requirements set by your local and federal governments.

What are the display requirements for tobacco and vapour products in duty free stores?

Duty free stores are treated the same as all other retail stores in British Columbia. Duty-free stores that sell tobacco or vapour products can either stop youth from entering their premises or place these products in age-restricted areas.

In the case of displays of these products in duty free stores, federal legislation does not take precedence over provincial legislation. These laws will continue to be enforced in duty free stores by enforcement officers from health authorities.

What signs must I post if I want to sell vapour products?

Under the new legislation, anyone selling vapour products must post two mandated warning signs at your cash till or point of sale:

1. One sign faces the customers and informs them they must be at least 19 years of age to buy vapour products.



2. A second sign faces the retailer/employee of retailer and reminds them that only those 19 or older with approved identification can buy vapour products.



You must use only the signs provided by the Ministry of Health. Please contact your local [regional health authority](#) to receive your copies of the new signs.

What signs must I post if I want to sell tobacco products?

It is important to note that the Ministry of Health has updated the signs required by tobacco retailers. There are now just two mandated signs that retailers must place at the point of sale:

1. One sign faces the customers and informs them they must be at least 19 years of age to buy tobacco products.



2. A second sign faces the retailer/employee of retailer and reminds them that only those 19 or older with approved identification can buy tobacco products.



You must use only the signs provided by the Ministry of Health. Please contact your local [regional health authority](#) to receive your copies of your signs.

Tobacco retailers are no longer required to post the 17cm by 35cm graphic warning sign. These signs may have had a picture of a fish-hook or a small girl with an oxygen mask on. These signs can be removed.

What if my store sells both tobacco and vapour products?

The Ministry of Health has created signs that retailers of both products should use:

1. One sign faces the customers and informs them they must be at least 19 years of age to buy tobacco and vapour products.
2. A second sign faces the retailer/employee of retailer and reminds them that only those 19 or older with approved identification can buy tobacco and vapour products.



Only the signs provided by the Ministry of Health can be used. Please contact your local [regional health authority](#) to receive your copies of your signs.

Are there any stores that cannot sell tobacco or vapour products?

There are a number of public places in B.C. that cannot sell tobacco or vapour products. Retail outlets in the following locations cannot sell tobacco or vapour products:

- ▶ Any publicly owned or leased hospital or health-care facility.
- ▶ Any publicly owned or leased post-secondary buildings that are used for education, research or student services.
- ▶ Any municipal or regional district buildings used for athletics, recreation or library services.
- ▶ Any building owned or leased by government or crown corporations or agencies.

Requirements for use of vapour products

What restrictions are there on the use of vapour products?

Vapour products cannot be used inside of substantially enclosed public or workplaces. This includes places such as offices, malls, cafés, stores and other places in which the public can enter and/or people work, along with the break rooms and bathrooms within these sites. The common areas of hotels, apartments and condominiums, such as the hallways, laundry room or party room are also considered public or workplaces.

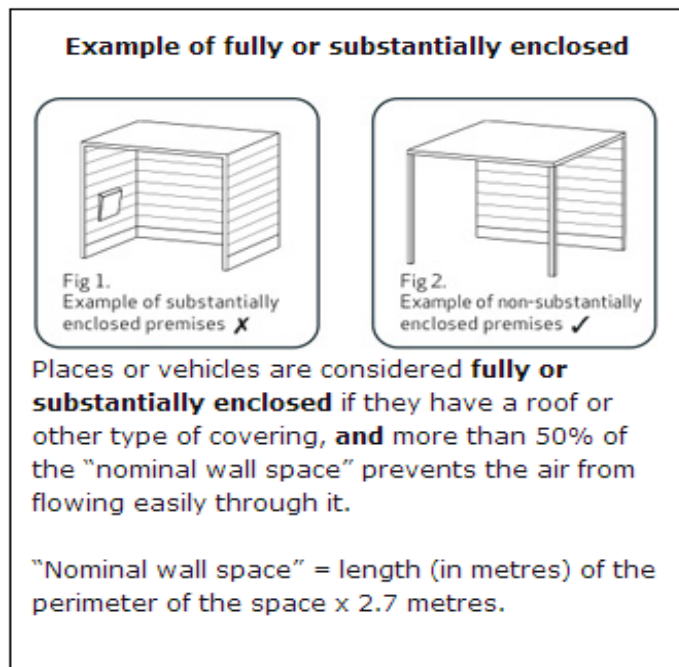
Business managers, owners or lessees have legal responsibilities to prevent people from using vapour products in most fully or substantially enclosed public places and workplaces.

Businesses and organizations should contact their [regional health authority](#) if they require further guidance on whether their premises are fully or substantially enclosed.

Can customers use vapour products in a vapour products store?

An exception was made in the Regulation to allow customers in adult-only vapour products stores to learn how to use vapour products or to test products that they wish to buy. The exception has the following conditions:

- ▶ Retailers/employees can hold and activate vapour products only for the purpose of showing customers how to use the product.
- ▶ Retailers/employees cannot inhale or use the vapour product.
- ▶ A customer can sample an e-substance in the store if:
 - They are testing or sampling products that they intend to purchase and consume off-site; and
 - Only two customers may sample vapour products at any time in a retail store.
- ▶ Retailers/employees cannot use vapour products on site.
- ▶ Retailers must take steps to ensure the second hand vapour does not escape to adjacent premises or public areas.



What are the restrictions on using tobacco or vapour products outdoors?

The Tobacco and Vapour Products Control Regulation sets a six-metre zone around all doorways, air intakes and open windows to any substantially enclosed public and work places in B.C. (previously, the buffer zone was three metres). This means there must be a six-metre area around any doorway, air intake or open window to any public or work place in which no one can stand and use tobacco or vapour products. This protects against emissions entering these places and protects people as they enter or exit.

Places that may be considered public or workplaces include stores, offices, and entrances to condominiums/apartment buildings, work vehicles (e.g., delivery vans), public transit, taxis, cafes, casinos and pubs/bars.

There is an exception to the buffer zone restriction:

- ▶ Tobacco and vapour products can be used on an outdoor hospitality patio (e.g., patio of a bar, casino, café) that is within a buffer zone if there are no open windows, doors or active air intakes between the patio and the hospitality venue. For example, patrons can use vapour products on a casino's patio as long as the doors are closed except for exiting/entering, the windows to the casino are closed and the air intake is not operating.

NOTE: You may live in a community/municipality that has greater restrictions on outdoor smoke/vape use. Some communities in B.C. ban use on hospitality patios, they may have buffer zones that are larger than six metres or they may ban use on outdoor spaces, such as beaches or playgrounds. If your community has such a bylaw, it takes precedence over the provincial requirement. Whichever requirement is more restrictive is the requirement you must follow. As an example, the provincial legislation allows vapour product use on a hospitality patio. However, your community/municipality bans it through a bylaw. Therefore, the community/municipality bylaw is the one that must be followed.

What is my responsibility as a manager or business owner to enforce the buffer zone?

Owners and managers are required to take reasonable steps to prevent people from smoking/vaping within the six metre buffer zone on their property. They are not required to enforce the law on public property such as sidewalks, unless the person is within the control of the owner (such as a customer or patron) or is their employee. For example, if you place a bench at the doorway to your store, you must make sure people do not use tobacco or vapour products while sitting there.

What are the restrictions for tobacco and vapour product use on health authority sites?

Tobacco and vapour products cannot be used on the grounds of a health authority site, unless in an area that the health authority has decided is a designated use area. Health authorities may designate an area for tobacco products only, for vapour products only or for both products. Health authorities are not required to have designated areas for either product.

Residents of a hospital or residential care facility can use tobacco or vapour products inside the hospital or residential care facility only if there is a designated, specially constructed room that meets the standards set by [WorkSafeBC's Occupational Health and Safety Guidelines, Part 4](#). Only residents can use the room – visitors and staff cannot. However, it is important to note that health authorities are not required to provide such rooms. If residents are concerned about how they will cope without tobacco or vapour products while they are on site, they should speak to facility staff. Nicotine medication can regulate nicotine levels and make the adjustment easier.

The new laws are aligned to health authority policy which has banned tobacco and vapour product use except in designated areas. Many health authorities are seeking to have smoke and vape free premises.

Can a health authority allow e-cigarette/vapour product use in a designated outdoor smoking area but ban smoking tobacco products on the entire health board property?

The legislation gives Health Authorities the discretion to implement designated outdoor smoking areas that allow tobacco **or** e-cigarette/vapour product use. It is up to health authorities to decide if they will designate an area for the use of one, both or neither of these products.

The legislation allows for an exception for prescribed medical products. Does that mean people can use vapour products inside public and work places if their doctor prescribes them?

No, it does not. In this section, 'prescribed' means prescribed by regulation and does not mean a doctor's prescription. In this context, 'prescribed' is a regulatory term and allows our regulation to create a schedule of medical devices approved by Health Canada.

Does this legislation discourage the use of vapour products as a harm reduction tool for tobacco users?

One of the goals in this legislation is to let adults make the choice to use vapour products while ensuring youth cannot buy them and are not encouraged to use them by retail advertisement and displays. If an adult wants to buy a vapour product to use instead of tobacco, they can do so. However, there are many people who do not want to be exposed to the emissions from vapour products in enclosed public or work places.

We do want to remind people that they can get regulated sources of nicotine through a number of approved nicotine replacement products that have been reviewed and approved by Health Canada. Our [BC Smoking Cessation Program](#) offers twelve weeks of nicotine replacement gum, patch, lozenge or inhaler.

Enforcement of the legislation, including penalties

Who enforces the legislation?

Enforcement officers in the [regional health authorities](#) are responsible for enforcing the *Tobacco and Vapour Products Control Act* and the Tobacco and Vapour Products Control Regulation.

Their work is guided by a progressive enforcement model that includes: education and awareness, verbal warning, letter warning, ticketing and administrative hearings. Their goal is to ensure everyone is meeting the requirements of the legislation through education and progressive enforcement options. Many times, an enforcement officer will work with retailers to educate them on the requirements and help parties comply with the new laws.

What are the penalties for violations of the legislation?

If an enforcement officer believes a retailer or their employee has contravened the *Tobacco and Vapour Products Control Act* or Regulation, the officer has two main options:

- **A ticket can be issued:** tickets vary from \$345 or \$575 depending on the contravention. Fine amounts for contraventions of the Tobacco and Vapour Products Control Act and Regulation are provided under the Violation Ticket Administration and Fines Regulation, B.C. Reg. 89/97.
- **A request can be made for an administrative hearing:** an administrative hearing is usually for more serious violations and allows both the retailer and enforcement officer an opportunity to provide evidence in a hearing. If a contravention is found, adjudicators can set monetary penalties and/or suspend tobacco sales authorizations and prohibit the sale of vapour products. Monetary penalties range up to \$5,000, and suspensions of tobacco sales authorizations and prohibition of sale of vapour products range up to 180 days.

If an enforcement officer believes an individual has contravened one of the *Tobacco and Vapour Products Control Act* or Regulation sections that deal with use in a prohibited place, the ticket is \$58 per violation.