

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	CBS	10/14		10/19/99	BOARD OF HEALTH
Division Head:	C			11/9/99	HEARING
Dept. Head:	CBS	10/14			
Prosecutor					
Purchasing/Budget:					
Executive:					

SUBJECT:

Tobacco Advertising Ordinance

ATTACHMENTS:

Proposed ordinance restricting tobacco advertising

Related County Contract #:

Should Clerk schedule a hearing: NO / / YES / / Requested Date: 11/9/99

SUMMARY STATEMENT:

An ordinance to restrict tobacco advertising around schools, and publicly visible locations is being proposed in order to help reduce teenage smoking and initiation of smoking. Similar ordinances have been passed in Spokane, King and Pierce counties.

Distribution Request

Indicate those who should receive a copy after Council action. List specific names to the right.

ADS Facilities Management	
ADS Finance	
ADS Human Resources	
ADS Info Services	
Assessor	
Auditor	
Cooperative Extension	
District Court	
Executive	
Health	Chuck Benjamin Greg Stern, John Hooper
Hearing Examiner	
Jail	
Juvenile	
Parks	
Planning	
Prosecutor	
Public Works	
Sheriff	
Superior Court	
Treasurer	
Other	

HEALTH BOARD ACTION TAKEN:

1999 - 379 10/19/99: Introduced (at Board of Health meeting)
11/9/99: Adopted 4-3, Imhof, Brown, Sutter opposed, Ord.
#99-065

R

Ordinance or Resolution Number

(this item): **ORD # 99-065**

1 SPONSORED BY: Hoag/Nelson

2 PROPOSED BY: HHS

3 INTRODUCTION DATE 10-19-99

4
5 ORDINANCE NO. 99-065

6 RESTRICTING TOBACCO ADVERTISING

7
8 WHEREAS, each year, more than 400,000 Americans die from tobacco-related
9 disease, including over 8000 Washingtonians;

10
11 WHEREAS, tobacco use has increased among Washington youth and the prevalence of
12 smoking has increased from 1990 to 1998 for 6th graders (from 2.4% to 4.7%), 10th graders
13 (15.5% to 21.8%), and high school seniors (20.7% to 28.6%);

14
15 WHEREAS, advertising influences minors to use tobacco and children are more
16 susceptible to non-informational components of advertising (attractive models, settings,
17 activity, color and scenery);


18
19 WHEREAS, reducing the exposure of children to these advertisements is part of a
20 comprehensive approach to preventing initiation of youth smoking and promoting cessation by
21 youthful tobacco users.

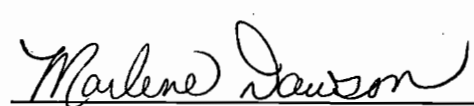
22
23 NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Health Board that
24 an ordinance to restrict tobacco advertising around schools, and publicly visible locations is
25 being proposed in order to help reduce teenage smoking and initiation of smoking.

26
27 ADOPTED this 9 day of November, 1999:

28
29
30 ATTEST:

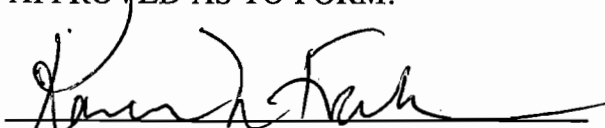
WHATCOM COUNTY HEALTH BOARD
WHATCOM COUNTY, WASHINGTON

31
32 
33 _____
34 Dana Brown-Davis, Clerk of the Council

31
32 
33 _____
34 Marlene Dawson, Health Board Chair

35
36 APPROVED AS TO FORM:

Approved () Denied

37
38 
39 _____
40 Civil Deputy Prosecutor

37
38 
39 _____
40 Pete Kremen, County Executive

1 Before the Whatcom County Health Board, State of Washington

2
3
4 RULES AND REGULATIONS

5
6 A regulation for the protection of the public health against the health dangers of tobacco
7 use; restricting tobacco advertisements in publicly visible locations; amending the
8 Whatcom County Code; and enacted pursuant to RCW 70.05.060 including the latest
9 amendments or revisions thereto.

10
11 BE IT ADOPTED BY THE WHATCOM COUNTY HEALTH BOARD:

12
13 The Whatcom County Code is hereby amended to read as follows:

14
15 **A. Findings.** The Whatcom County Public Health Advisory Board makes the following
16 findings:

17
18 Despite laws prohibiting persons under the age of eighteen years from purchasing, acquiring, or
19 possessing tobacco products, youth in Whatcom County and the United States continue to use
20 tobacco products.¹ Nationally, three thousand children begin smoking each day, creating over
21 one million new, underage smokers each year.² Therefore, additional steps need to be taken to
22 prevent youth from smoking.

23
24 Tobacco industry sales to minors each year exceed \$1 billion, as more than 3 million American
25 children under 18 years of age consume 947 million packs of cigarettes annually.³ The federal
26 Centers for Disease Control and Prevention ["CDC"] have reported that the rate of smoking
27 among all high school students during the years 1991 through 1997 increased by over 32% and
28 now stands at its highest rate since 1981. The CDC also reported that in 1997, 43% of high
29 school students used cigarettes, smokeless tobacco or cigars.⁴ In Washington State, students at
30 every grade level were more likely to have tried cigarettes in 1995 compared to 1992. The
31 greatest change was in the youngest students surveyed (6th graders), who reported having tried
32 cigarettes at almost double the rate in 1995 compared to 1992.⁵ The average age of the onset of
33 smoking in Whatcom County is 12.5 years.⁶

34
35 According to the CDC, children are beginning to use tobacco at increasingly younger ages. The
36 average age at which boys and girls initiate smoking has declined over the past 4 decades by 2.4
37 years overall for whites, 1.3 years overall for African Americans, and 5.4 and 4.6 years for white
38 girls and African American girls respectively.⁷ Tobacco use by minors is a major and worsening
39 public health problem, having increased 38% (from 20.7 to 28.6%) among Washington high
40 school seniors, including Whatcom County, from 1990 to 1998.⁶ In Washington State, one in
41 four sixth graders have experimented with cigarettes. By the end of high school, two of every
42 three Washington students have tried smoking, and 42% are regular smokers.⁶

1 One out of every three young people who become regular smokers will die prematurely as a
2 result of their smoking.⁸ If the number of children and adolescents who begin tobacco use can
3 be diminished, tobacco-related illness can be correspondingly reduced. This is because data
4 suggest that anyone who does not begin smoking in childhood or adolescence is unlikely to
5 begin.⁹ Tobacco use by adolescents has increased 73% in the last ten years.

6
7 While it is illegal under state law, minors are still gaining access to tobacco products. When
8 buying cigarettes through retail establishments is made difficult, youth obtain them through
9 friends, parents and older family members.¹⁰

10
11 Tobacco has been found to be a gateway to other drugs. Tobacco products are generally the first
12 drugs used by young people in a sequence that can include alcohol, marijuana, and lead to
13 cocaine, heroin and hallucinogens.¹¹

14
15 The Surgeon General has designated nicotine a highly addictive substance, comparable to other
16 addictive substances of abuse.¹² Early addiction is the chief mechanism for renewing the pool of
17 smokers. Most people who are going to smoke are hooked by the time they are 20 years old.
18 The younger one begins to smoke, the more likely one is to be a current smoker as an adult.¹³
19 One-fifth of Whatcom County adults are current smokers.⁶ Nationally, 82% of adult smokers
20 report starting smoking before the age of 18.¹⁴

21
22 Tobacco use is the single most preventable cause of death in Whatcom County and the United
23 States.¹⁵ More than 400,000 Americans die of tobacco-related illness each year.¹⁶ Almost one in
24 five of all deaths in Whatcom County residents are due to tobacco use.¹⁷ Smokers have higher
25 levels of death rates for over 20 major illnesses and injuries, including cancer, non-cancer lung
26 diseases such as chronic obstructive pulmonary disease, and heart disease and stroke.¹⁸

27
28 A significant body of literature has established that advertising influences minors to use tobacco
29 products.¹⁹ Courts have taken judicial notice of the positive connection between advertising and
30 consumption. Cigarettes are the second most heavily advertised product in the country after
31 automobiles.²⁰ Adolescents with high exposure to cigarette advertising are significantly more
32 likely to be smokers, according to several measures of smoking behavior, than those with low
33 exposure to cigarette advertising.²¹ Research suggests that tobacco marketing is a stronger
34 current influence in encouraging adolescents to initiate smoking than exposure to peer or family
35 smokers.²²

36
37 Studies have shown a positive correlation between youths' intention to smoke and their adeptness
38 at identifying cigarette advertisements and appreciation of cigarette advertisements.²³ In addition
39 to the evidence linking smoking onset with advertising, a California study, which was reported in
40 1998, provides longitudinal evidence that tobacco promotional activities are causally related to
41 the onset of smoking.²⁴

42
43 The tobacco industry targets young people as a strategically important market.²⁵ Lifetime brand
44 loyalty is usually established with the first cigarette.²⁶ Old Joe Camel cartoon advertisements are
45 far more successful at marketing Camel cigarettes to children than to adults.²⁷ Camel cigarettes'
46 share of the under 18 market has increased dramatically since the Joe Camel cartoon was

1 introduced in 1988.²⁸ Children between the ages of 2 and 11 are most vulnerable to this use of
2 imagery and begin to make judgments about products they might use in the future.²⁹ By age 6,
3 children recognize Old Joe Camel as well as they do Mickey Mouse, notwithstanding the fact
4 that cigarette advertising no longer appears on television and very young children cannot read.³⁰
5

6 The Liggett Company has publicly stated not only that cigarettes are addictive and harmful but
7 also that "the tobacco industry markets to 'youth,' which means those under 18 years of age, and
8 not just those 18-24 years of age."³¹ Additional evidence of a long-standing industry practice of
9 targeting children, is evidenced in a 1973 R.J. Reynolds Tobacco Company Planning
10 Memorandum:

11
12 For the pre-smoker and "learner" the physical effects of smoking are largely unknown,
13 unneeded, or actually quite unpleasant or awkward. The expected derived psychological
14 effects are largely responsible for influencing the pre-smoker to try smoking, and provide
15 sufficient motivation during the "learning period" to keep the "learner" going, despite the
16 physical unpleasantness and awkwardness of the period...Happily, then, it would be
17 possible to aim a cigarette promotion at the beginning smoker, at the same time making it
18 attractive to the confirmed smoker.³²
19

20 Tobacco industry records released as a result of lawsuits brought by state attorneys general
21 provide substantial documentation of strategies for marketing to children and youth.³³
22

23 Data suggest an association between the brands identified as most highly advertised and market
24 share for the same brands. The three most commonly purchased brands among adolescent
25 smokers were the three most heavily advertised brands in 1993.³⁴ Not only is the market share of
26 brands similar to recall of the most advertised brands, but the brand that appears to be aimed the
27 most at adolescents has demonstrated a differential increase in market share in the youngest
28 adolescents over time.³⁵
29

30 Cigarette advertising works not by providing information in a way that persuades the viewer
31 through cognitive processing or rational reflection but rather by using associative persuasion cues
32 and influences such as attractive models, settings, activity, color and scenery. In information-
33 based attempts at persuasion the intent and message of the communication are explicit and overt
34 and require consumer engagement. In the associative persuasion communications used in
35 cigarette advertisements the intent and message are implicit and covert and require low levels of
36 cognitive and psychological engagement, i.e., "low involvement" from the consumers they seek
37 to reach. They can be taken in at a glance simply by viewing the imagery. These are the types of
38 advertisements that appeal to children.³⁶
39

40 Children are susceptible to the associative persuasion cues of color and imagery. They have
41 limited ability and motivation to process information and the persuasive assertions of
42 information-based advertisements. They respond to advertisements not through logical analysis,

1 but through emotions that the advertisements persuade through association.³⁷ In markets such as
2 the tobacco market, where most brands in a product category are similar and most advertising
3 provides little new information, color and imagery have added significance.³⁸
4

5 Color significantly enhances the effectiveness of advertising. It makes advertisements more
6 vivid. It commands more attention and increases recall. Color in advertising becomes more
7 salient in "low involvement" consumer situations. The eye is attracted to the color and spends
8 longer in exposure to an advertisement. Color provides emphasis and connotes feelings or
9 tonality in the advertisement.³⁹
10

11 Consumers associate products with color. Through exposure and repetition, specific colors can
12 become "owned" by a brand so that persons viewing that particular hue and density of color in an
13 advertisement will be reminded or reinforced as to that brand.⁴⁰ Young people respond to
14 color in advertising, and owning brand colors is particularly important for companies pursuing a
15 youth market.⁴¹ Owning a color is also important when the product manufacturer is sponsoring a
16 sporting event.⁴²
17

18 Imagery, such as photographs, drawings, or cartoons, enhances the effectiveness of advertising,
19 particularly on children. The art, as opposed to words and data, works by attracting attention and
20 conveying attitudes and lifestyle associations.⁴³ Pictures are better remembered than verbal
21 information because the pictures organize the qualities of the product as depicted by an image.
22 Pictorial information enhances an advertisement's ability to be taken in at a glance - to
23 communicate more quickly in low involvement situations and in quick exposure contexts. It also
24 enhances the subsequent recall of brand names.⁴⁴ Marlboro presents a good example of both
25 brand color marketing and image advertising.
26

27 Cigarette advertisements, as a class, contain little text or information because they work by
28 association, not information, using imagery to influence those who view them. In contrast to
29 verbal assertions, the visual experience of imagery tends to bypass logical analysis. Imagery in
30 advertising is perceived without the same level of cognitive processing and counter-
31 argumentation that verbal assertions trigger. Such advertisements are "experienced" rather than
32 thought about.⁴⁵ Images commonly used in cigarette ads are pictures of healthfulness, images of
33 independence, adventure and risk taking, sophistication, glamour, sexual attractiveness, thinness,
34 social approval, popularity, rebelliousness and being "cool". Studies have found a correlation
35 between the ideal image of students and their image of smokers. Cigarette promotions often
36 associate brands with popular music, sports events, and their stars.⁴⁶
37
38

1 Image-based advertising is particularly effective with young people. Young people are three
2 times more responsive to cigarette advertising than adults.⁴⁷ "Starter brands" like Marlboro,
3 Camel and Kool use images that appeal to dominant adolescent psychological needs for
4 autonomy and self-reliance, breaking free of parental and other authority. Images used in
5 advertising for these brands show independence, rebellion and being "cool."⁴⁸

6
7 Adolescents are highly alert to cues and clues about lifestyle options. Because adolescence is a
8 time of identity formation youths are especially attentive to symbols of adulthood and
9 acceptance. The adult world depicted in cigarette advertising is a world to which the adolescent
10 aspires. Children and youth want to emulate the adult models in the ads. Smoking can seem to be
11 an important step toward maturity. Young people also want to be like each other; they want
12 group acceptance. Their need to belong leads them to look to their peers and advertising for
13 cues.⁵⁰

14
15 Tobacco advertising projects pictures of health and images of independence and uses other
16 consistent themes, e.g., that tobacco use is a rite of passage to appeal to teens' needs. Cigarette
17 advertisements skillfully capitalize on the disparity between an ideal and an actual self-image
18 and imply that smoking may close the gap. The images typically associated with advertising and
19 promotion convey the message that tobacco use is a desirable, socially approved, safe and
20 healthful, and widely practiced behavior among young adults, whom children and youths want to
21 emulate. As a result, tobacco advertising and promotion undoubtedly contribute to the multiple
22 and convergent psychosocial influences that lead children and youths to begin using these
23 products and become addicted to them.⁵¹

24
25 Evidence from social psychology and marketing research shows image-based advertising such as
26 that employed by the tobacco industry is particularly effective with young people and that the
27 information conveyed by imagery is likely to be more significant to young people than
28 information conveyed by other means in the advertisement.⁵²

29
30 Repeated advertising exposures in diverse multiple media provide the product and brand with an
31 associated brand imagery that strengthens with repetition and time. The type of persuasion that
32 tobacco companies use to influence consumers through affective devices, rather than
33 information, requires repetition to work. The image, lifestyle and associative advertising used by
34 tobacco companies does not work by causing the consumer to suddenly convert his intentions as
35 a result of a single exposure to a highly persuasive advertisement. Rather, these advertisements
36 work through repeated exposures over time.⁵³

37
38 It is the longevity and thoroughness of cigarette advertising campaigns that make them
39 effective.⁵⁴ Tobacco advertising creates an environment in which repetition, year after year,
40 leads a generation of children to perceive cigarettes differently than they would have had they not

1 been induced through repeated exhortations.⁵⁵ Every advertising presentation contributes to and
2 builds upon the imagery and appeal created for a product. Advertising that is repeated frequently
3 in as many different media as possible is most likely to ensure that its message is received by the
4 maximum number of consumers.⁵⁶

5
6 Outdoor advertising media viewed in publicly visible locations are intrusive and vivid, making
7 them ideal for the image-based advertising, which is most effective in reaching youth. Exposure
8 to outdoor advertising is unavoidable and not a matter of choice. Outdoor tobacco ads are not
9 designed only for people who are buying tobacco, but are reaching out into the street to be seen
10 by everyone. People, including children, must use transportation arteries to commute to school
11 or work and are inevitably exposed.⁵⁷ Malls, sports arenas, stadiums and other places of public
12 exposition are adapted form settings which were originally out-of-doors and which retain their
13 character as outdoor, public places. Exposure by young people to tobacco advertisements in
14 these locations is as involuntary and intrusive as exposure to such advertisements on the streets.

15
16 Outdoor advertising is a low involvement medium, which makes it ideal for image-based
17 advertising campaigns, used by tobacco companies.⁵⁸ The vivid imagery of outdoor
18 advertisements is designed to be taken in at a glance. It does not require the reading of text
19 beyond recognition of a brand name, logo, slogan, package design or other brand signifier such
20 as color.⁵⁹ Young people have been shown to be unresponsive to text-only advertising.⁶⁰

21
22 The conspicuous and persistent presence of publicly visible advertising for tobacco products
23 particularly in and around neighborhoods and schools, at convenience stores, on the tops of cabs
24 seen in the community, inside malls and sports stadiums gives children the impression that
25 tobacco use is desirable, socially acceptable, and prevalent. The pervasiveness of publicly visible
26 tobacco advertising and the multiple exposures to it create a "friendly familiarity" that makes
27 cigarettes culturally commonplace to children. (Friendly familiarity refers to the effect of
28 massive marketing that uses a variety of media in stationary and mobile locations and saturates
29 potential consumers with information and imagery.) Children and youth are given the
30 impression that smoking is normative and more prevalent than it is. Highly repetitious
31 advertisement exposure is likely to lead to judgment biases in children, both in terms of their
32 perception of the risk of tobacco use, and in their social perceptions of the actual prevalence of
33 smoking and the social acceptance of smoking and of smokers. The harm that occurs to young
34 people comes from over estimating the prevalence of smoking among adults and among their
35 peers, from underestimating the addictiveness of nicotine and the number and seriousness of
36 health risks, and from overestimating the amount of social approval they will receive as
37 smokers.⁶¹ Overestimating smoking prevalence has been found to be one of the strongest
38 predictors of smoking initiation.⁶² The kind of advertising that is "almost everywhere" makes
39 cigarettes respectable and is reassuring. The ubiquitous display of messages promoting tobacco
40 use clearly fosters an environment in which experimentation by youth is expected, if not

1 implicitly encouraged.⁶³ Even brief exposure to tobacco advertising can cause some young
2 people to have more favorable beliefs about smokers.⁶⁴

3
4 Outdoor advertising, because of its permanence, has a low cost per exposure compared to
5 newspapers or magazines. Stationary outdoor advertising produces high levels of repetition of
6 exposure to individuals regularly traveling specific routes such as school children and
7 commuters. Mobile media, though not fixed, becomes part of an environment of pervasive,
8 multimedia outdoor advertising that communicates to children that smoking is normative.⁶⁵
9 Outdoor advertising accounts for a significant portion of cigarette advertising spending.
10 According to an FTC report, the cigarette industry's 1996 spending for outdoor media was over
11 \$292 million - over 35 percent of cigarette spending in measured media, i.e., magazines,
12 newspapers, transit and point of sale ads. Additionally, up to 25 percent of retail point of sale
13 advertising is publicly visible from outside the store.⁶⁶

14
15 Tobacco companies are linking the brand imagery created by tobacco product advertising to
16 advertising for tobacco-company sponsored events. According to a CEO for Philip Morris:

17
18 [W]e've managed to take what was originally tunnel vision advertising and positioning...
19 into every kind of avenue... For example, our auto racing activities are just another way to
20 express the Marlboro positioning. Some would say the Marlboro Cup is different form
21 Marlboro Country, but it is absolutely consistent.⁶⁷

22
23 In Canada, where cigarette advertising has been severely restricted, instead of advertising
24 cigarettes, a tobacco company will advertise a team or sporting event it is sponsoring in the
25 cigarette brand name. Since the brand name is used exclusively on cigarettes, it has no other
26 association than cigarette advertising. Studies show that brand name sports sponsorship
27 produces for young people memorable associations between the event and the heroes of the event
28 and the tobacco product and brand name.⁶⁸

29
30 Tobacco advertising has been shown to work.⁶⁹ Smoking behaviors of adolescents are
31 demonstrably related to previous and current cigarette advertising.⁷⁰ The tobacco advertising
32 campaigns targeting women launched in 1967 were associated with a major increase in
33 adolescent girls starting to smoke. For example, the percentage increase in the initiation rate for
34 twelve (12) year old girls, from 1967 to the peak rate in 1973, was one hundred ten percent
35 (110%).⁷¹ In the late 1980's lung cancer became the primary cause of cancer death among
36 women in Washington State.

1 RCW 26.28.080 makes the sale and distribution of tobacco products to minors unlawful and
2 RCW 70.155.080 prohibits their purchase or acquisition by minors. RCW 70.155.080 was
3 amended by the 1998 Washington State Legislature to make possession of tobacco products by
4 minors illegal. Tobacco advertising is designed to induce minors to engage in an activity, which
5 is illegal.⁷² The purpose of advertisement regulations is to ensure that restrictions on access are
6 not undermined by the product appeal that advertising creates for young people.

7
8 Billboards are an advertising medium that carries the message 24 hours a day, seven days a week
9 to everyone who is exposed to it. Billboard advertising's use of imagery allows advertisers to
10 communicate quickly and efficiently.⁷³ The pictorial information displayed on billboards is
11 remembered much better than verbal information.⁷⁴ Billboard advertising achieves high
12 exposure frequency, but the amount of clutter is very low. The cost of outdoor advertisements is
13 usually low compared to other media, yet the retention has shown to be comparable to other
14 media.⁷⁵

15
16 Billboards are an effective medium for bringing tobacco advertising to children. In a study of
17 1,117 children ages 10 to 17, 86% recognized Joe Camel using aided and unaided recall. When
18 asked where they had seen Joe Camel, 51 percent said on billboards.⁷⁶

19
20 Billboards are a unique and distinguishable medium because they subject children involuntary
21 and unavoidable forms of solicitation.

22
23 The young people as well as the adults have the message of the billboard thrust upon
24 them by all the arts and devices that skill can produce. In the case of newspapers and
25 magazines, there must be some seeking by the one who is to see and read the
26 advertisement. The radio can be turned off, but not so the billboard.

27
28 Packer Corporation v. Utah, 285 U.S. 105, 110 (1932).

29
30 Because they are more permanent than magazine advertising, and are seen over and over again
31 by youths, the imagery in billboard advertisements exposes children repeatedly to pro-tobacco
32 messages while giving the erroneous impression that smoking is pervasive, normative and even
33 healthy.⁷⁷

34
35 The public health risk to a child from exposure to tobacco product advertising increases when the
36 child is attending school, is engaging in recreational activities on playgrounds or is at public
37 sports activities and is regularly exposed to billboard messages for lengthy periods of time.
38 Billboards near schools or playgrounds expose children to unavoidable advertising messages for
39 a more prolonged period of time than billboards they pass on the highway. To reduce the risk, it
40 is necessary to protect children from the inescapable, involuntary intrusion of billboard tobacco
41 advertising while they are in school and on public playgrounds.

1 Through repetition and use of multiple media, publicly visible tobacco advertising strengthens
2 the associated brand imagery. Every presentation of tobacco advertising adds to and builds upon
3 the imagery and appeal created for a product.⁷⁸ Repeated advertising exposures provide the
4 product and brand with an associated brand imagery that strengthens with repetition and time.⁷⁹
5 Because of both size and design, advertisements in outdoor media can be readily apprehended at
6 even a substantial distance.

7
8 We commend local retailers for their efforts and cooperation in following state law and refusing
9 to sell tobacco products to minors. Although early statistics indicated that retailers had fairly
10 high rates for compliance with the law against selling tobacco products to minors, more recent
11 statistics reflect a declining compliance rate. Spot checks in Whatcom County during June 1999
12 reflected only an 77% compliance rate.⁸⁰ Further, as noted earlier, youth who have difficulty
13 purchasing from retail establishments find other sources from which to obtain tobacco.
14 Restricting the ability of youth to purchase tobacco is only part of the solution; we also need to
15 take the further step of restricting their inclination to start smoking in the first place. Restricting
16 youth's inclination to start smoking means curbing the appeal of smoking that is promulgated
17 through tobacco advertising.

18
19 The Board is also cognizant of the national tobacco settlement. The national tobacco settlement
20 is not sufficient, in and of itself, to protect the health of the citizens of Whatcom County with
21 regard to the issue of smoking. For example, there are tobacco companies that are not signatories
22 to the national tobacco settlement, and there are advertising strategies that directly impact youth
23 smoking which are not addressed in the national tobacco settlement. For example, the recently
24 released children's movie entitled "Small Soldiers" had 64 incidents of tobacco and cigarette use.
25 In fact, one animated character smoked a cigar throughout the entire movie. That these
26 alternative advertising strategies are being used in King County is evident from the information
27 developed by Operation Storefront. In King County, 76% of tobacco promotional materials,
28 products and advertising were placed near candy. Sixty three percent of such ads were placed
29 below three feet. All stores with display advertisements surveyed were less than one half mile
30 from a school. On average in this same geographical area, each store has 6.3 exterior and 21
31 interior advertisements for tobacco products.

32
33 It also appears that restrictions on tobacco advertising have the desired effect of reducing the
34 incidence of tobacco use by youth. Early statistics from California indicate that since tobacco
35 advertising has been restricted, there has been a 12% reduction in tobacco use related to these
36 restrictions. Massachusetts has experienced a 30% reduction in tobacco use since the imposition
37 of restrictions on tobacco advertising. Statistics from other countries with restricted tobacco
38 advertising, such as Canada and New Zealand, report similar trends.⁸¹

39
40 The mission of the Whatcom County Health Board is to improve the life and health of the people
41 of Whatcom County. A regulation restricting advertisements for tobacco products in publicly
42 visible locations is a reasonable and necessary measure for reducing the risk of tobacco use and
43 addiction for children as well as reducing the illegal acquisition of tobacco products by minors.

1 In order to protect legitimate business activities, the portion of this regulation restricting the
2 location of billboards and other forms of publicly visible tobacco advertising narrowly focuses
3 on those publicly visible advertisements which most directly affect minors because they are
4 located where children attend and travel to school and where they engage in and travel to
5 recreational activities. The portion of this regulation requiring a black text on white background
6 or "tombstone" format does not prevent the communication of information about tobacco
7 products to adults who may purchase them legally. The black and white, text-only advertising
8 replaces the colorful, imaged-based advertising that appeals to youth, reducing the ability of the
9 advertising to connote desirable images that youth find attractive, such as glamour,
10 independence, sex appeal and maturity, and address concerns voiced by representatives of the
11 Neighborhood Stores Association concerning availability of price and product information. The
12 focus of this regulation is to protect children from the appeal of color and imagery in tobacco
13 advertisements to which they are involuntarily exposed. Empirical evidence shows a lack of
14 appeal to adolescents of tobacco advertising with text only in a "tombstone"
15 format.⁸² Advertisements on motor vehicles, including taxicabs, are subject to the "tombstone"
16 format requirement but are excepted for the 1,000 foot setback in order to avoid unduly
17 restricting their movement within the county. The restrictions imposed are drawn as narrowly as
18 possible, consistent with the regulation's purpose of reducing young people's attraction to and use
19 of tobacco.

Endnotes

- 1
- 2
- 3 1 CDC, "Projected Smoking-Related Deaths Among Youth – United States," MMWR 1996; 45:971
- 4 2 Institute of Medicine, Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and
- 5 Youths, 1994, page 107; US Department of Health and Human Services, Preventing Tobacco Use
- 6 Among Young People: A Report of the Surgeon General, 1994, page 8.
- 7 3 Institute of Medicine, Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and
- 8 Youths, 1994, page 107; US Department of Health and Human Services, Preventing Tobacco Use
- 9 Among Young People: A Report of the Surgeon General, 1994, page 106.
- 10 4 CDC, "Tobacco Use and Usual Source of Cigarettes Among High School Students – United States,"
- 11 1995, MMWR 1996; 45:413, 417.
- 12 5 Seattle School District, 1995 Teen Health Risk Survey Final Report, April 1996; Seattle School
- 13 District, 1993 Teen Health Survey Report on Findings, March 1994.
- 14 6 Washington State Department of Health, "Tobacco and Health in Washington State", March 23,
- 15 1999, page 11.
- 16 7 Institute of Medicine, Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and
- 17 Youths, 1994, page 107; US Department of Health and Human Services, Preventing Tobacco Use
- 18 Among Young People: A Report of the Surgeon General, 1994, page 106.
- 19 8 Food and Drug Administration, "Regulations Restricting the Sale and Distribution of Cigarettes and
- 20 Smokeless Tobacco to Protect Children and Adolescents; Final Rule," Federal Register, August 28,
- 21 1996, Vol. 61, No. 168: 44395, 44399.
- 22 9 US Department of Health and Human Services, Preventing Tobacco Use Among Young People: A
- 23 Report of the Surgeon General, , 1994, pages 5-6.
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40
41 **B. Terms of the Regulation.**

42
43 Based on the foregoing findings of the Whatcom County Health Board, the following Regulation
44 is hereby adopted:

- 45
46 1. No person shall, for commercial advantage, place, cause to be placed, maintain or
47 cause to be maintained, a tobacco advertisement at a publicly visible location
48 unless such tobacco advertisement consists solely of black text on a white
49 background without adornment and unaccompanied by color, artwork, pictures,
50 graphics or logos.

51

- 1 2. No person shall, for commercial advantage, place, cause to be placed, maintain or
2 cause to be maintained, a tobacco advertisement at any outdoor location visible to
3 the public which is within 1,000 feet of the perimeter of any school educating
4 students a majority of whom are under the age of eighteen, a public playground or
5 public park containing a playground, except that this paragraph shall not apply to
6 advertisements on motor vehicles in transit on roadways within the perimeter.
7
- 8 3. No billboard advertising tobacco products may be placed within 2,000 feet of the
9 perimeter of any school educating students a majority of whom are under the age
10 of eighteen, public playground or public park containing a playground.
11
- 12 4. No tobacco advertisement shall be visible from a school, school bus stop, bus
13 stop, or sidewalk regularly used by minors to get to school.
14

15 **C. Definitions.**

- 16
- 17 1. “Billboard” means a sign, including both the attached structural framework and
18 attached billboard faces, used principally for advertising a business activity, use,
19 product or service unrelated to the primary use of activity of the property on
20 which the billboard is located; excluding off-premise directional, or temporary
21 real estate signs.
22
- 23 2. “Playground” means an outdoor play or recreational area with or without
24 equipment for children including, but not limited to, swings, seesaws, jungle
25 gyms, slides, sandboxes, baseball diamonds, basketball courts, football, or soccer
26 fields.
27
- 28 3. “Publicly visible location” means:
29 a. Any outdoor location visible from public streets and walkways
30 including, but not limited to:
31 1. Exteriors of structures and buildings, including the interior surfaces
32 where a tobacco advertisement is viewable from the outside;
33 2. Billboards, freestanding signs, and sandwich/A-frame and balance
34 signs;
35 3. Exterior fixtures and equipment including, but not limited to,
36 public transit shelters, kiosks, fences, light standards, gasoline
37 pumps, newspaper vending boxes, shopping carts and/or racks, and
38 trash containers;
39 4. Any motorized vehicle, including attachments to such vehicle,
40 including passenger vehicles, motor-driven cycles, public transit
41 vehicles, and for hire vehicles.
42 5. Mobile billboards and mobile signs;
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- 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 wall surfaces of establishments located within shopping malls where the tobacco advertisement is visible from the common areas of the shopping mall.
4. "Responsible Party" means:
- a. The owner and/or operator of a structure or building, including, but not limited to, sports stadiums, arenas, amphitheaters, other enclosed or partially enclosed spaces used for public expositions and events, and shopping malls.
 - b. The owner and/or lessee of a billboard, whether the billboard is fixed or mobile.
 - c. The owner and/or operator of the premises on which a freestanding sign, sandwich/A-frame sign or balance sign is present, or which is the subject of advertising thereon if the sign is off the premises.
 - d. Any individual wearing a sandwich/A-frame sign.
 - e. The owner and/or lessee of any exterior fixture or equipment.
 - f. The operator and/or registered owner of any mobile vehicle.
 - g. The owner and/or operator of any blimp, hot air or moored balloon, or aircraft pulling a banner message.
 - h. For any surface or device not mentioned herein, the owner and/or operator.
5. "Tobacco Advertisement" means any words, pictures, posters, placards, signs, photographs, logos, symbols, devices, graphic displays or visual images of any kind, recognizable color 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 a tobacco product.
6. "Tobacco product" means any product containing tobacco, the prepared leaves of plants of the genus *Nicotina*, including cigarettes (individually, by pack or carton), loose tobacco, cigars, snuff, chewing tobacco, or any other preparation of

1 tobacco.

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4 7. "Within 1000 (or 2000) feet" is determined by a straight line from the perimeter
5 of the school to the advertisement (as the crow flies).
6

7 **D. Enforcement and Penalties.**
8

- 9 1. Violation of this regulation shall be penalized as follows:

10
11 a. Upon discovery of a tobacco advertisement that is in violation of any
12 provision of this regulation, the responsible party will be issued a Warning
13 Notice bearing the date and time of the Warning Notice. The responsible
14 party shall have 48 hours from the date and time of the Warning Notice to
15 comply with this regulation. This 48 hours is designated the Compliance
16 Period.
17

18 b. If the offending advertisement has not been removed by the end of the
19 Compliance Period, a Penalty Notice will be issued by the Health Officer.
20 Penalties shall be as follows:

21
22 1. First Penalty Notice in Six Months - \$1000.00 per illegal
23 advertisement.

24
25 2. Second Penalty Notice in Six Months - \$2000.00 per illegal
26 advertisement.

27
28 3. Third Penalty Notice in Six Months - \$3000.00 per illegal
29 advertisement.

30
31 4. Fourth or More Penalty Notice in Six Months - \$5000.00 per
32 illegal advertisement
33

34 c. Responsible parties who receive five or more Warnings or Penalty Notices
35 in one year shall be deemed "Repeat Offenders" and will be penalized the
36 sum of \$5000.00 per day until the offending advertisement is removed, in
37 addition to other penalties imposed under this section.
38

39 d. If the owner of the outdoor advertising facility chooses to dispute the
40 Health Officer's determination, then the owner shall file within two (2)
41 weeks of receipt of the Health Officer's notice, a notice of dispute to the
42 Whatcom County Hearing Examiner for prompt review of the Health
43 Officer's determination. The owner may maintain the advertisement until
44 the Hearing Examiner orders otherwise.
45

46 The owner may appeal an order of the Hearing Examiner by writ of
47 certiorari in the Superior Court for Whatcom County. The owner's
48 petition for writ of certiorari shall not stay the Hearing Examiner's order.

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If the Hearing Examiner does not sustain the Health Officer's determination, then the Health Officer may seek review in the Superior Court for Whatcom County by petition for a writ of certiorari. The Health Officer's petition shall not stay the Hearing Examiner's decision.

Under this regulation, an order by the Health Officer becomes final if the owner fails to file a timely appeal at any stage or upon the final decision of a court with jurisdiction over the controversy.

E. Severability Clause

If any provision of this regulation or its application to any person or circumstances is held to be invalid, the remainder of the regulation or the application of the provision to other persons or circumstances shall not be affected.

F. Effective Date.

This regulation shall become effective ninety (90) days after the date of adoption.

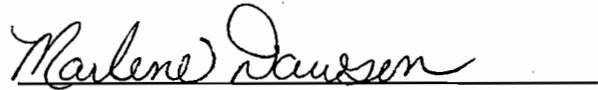
Adopted this 9 day of NOVEMBER, 1999.

ATTEST:



Dana Brown-Davis, Clerk of the Council

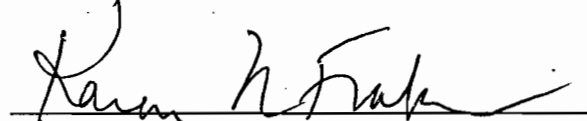
WHATCOM COUNTY HEALTH BOARD
WHATCOM COUNTY, WASHINGTON



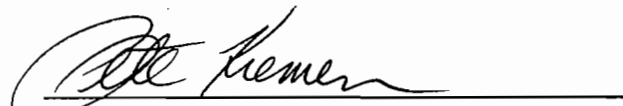
Marlene Dawson, Health Board Chair

APPROVED AS TO FORM:

Approved () Denied



Civil Deputy Prosecutor



Pete Kremen, County Executive