

**TOBACCO LICENSING AND SALES REGULATION ORDINANCE
ORDINANCE NO. 29**

AN ORDINANCE regulating the licensing and sale of tobacco and electronic delivery device products in Beltrami County.

NOW BE IT ORDAINED AND ENACTED by the Beltrami County Board of Commissioners, State of Minnesota, that by this act become Beltrami County Ordinance No. 29.

Section I. Purpose. Beltrami County recognizes that more thorough regulation of all sales of tobacco, including electronic delivery devices commonly referred to as electronic cigarettes or e-cigarettes in the County will protect minors against the serious effects associated with the illegal use of tobacco and/or electronic delivery devices, and will further promote the health, safety and welfare of all residents of the County by making it more difficult for minors to obtain tobacco and electronic delivery devices.

The County further recognizes that electronic delivery devices or e-cigarettes closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine or other substances created by heat through an electronic ignition system. Moreover, the County recognizes that e-cigarette use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing state and local smoking prohibitions.

Section II. Definitions. As used in this Ordinance the following words and terms shall have the meanings given to them.

- A. "Electronic Delivery Device" shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product, including any device commonly referred to as an e-cigarette. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.
- B. "E-cigarette" means an electronic delivery device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.
- C. "Retail Establishment" means any place of business where tobacco,

tobacco products, tobacco-related devices, or electronic delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

- D. "Self-Service" means open display of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices, which are accessible to the public without the intervention of the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or electronic delivery device between the licensee or a licensee's employee and the customer. Included as self-service are any mechanical, electrical or electronic device, appliance or any other medium or object designed or used for vending purposes which, upon insertion of money, tokens or other form of payment, dispenses tobacco products or electronic delivery devices.
- E. "Smoking" means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.
- F. "Tobacco" means and includes tobacco in any form, including but not limited to, cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed, or other smoking tobacco; snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and any other chewing tobaccos; shorts, refuse scraps, clippings, cuttings, sweepings and other forms of tobacco leave prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper, or other tobacco or electronic delivery related devices. Tobacco shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sale for used in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

Section III. License Required. No person shall, directly or indirectly, keep for retail sale, sell at retail, or otherwise dispose of any tobacco or electronic delivery device in any form unless a license therefore shall first be obtained from the County.

Section IV. License Fees and Administrative Penalties. License fees and administrative penalties shall be determined and, if fee amounts are specifically stated in this Ordinance, amended from time to time by County Board resolution. The County Board may include the cost of compliance checks when establishing or amending the license fee or administrative penalties.

Section V. Prohibited Sales, Exceptions and Defenses. No person shall sell or offer to sell any tobacco, tobacco product, or electronic delivery device:

- A. To any person under the age of ~~eighteen (18) years~~twenty-one (21)

years.

B. By means of any type of vending machine.

C. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices in open displays which are accessible to the public without the intervention of the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or electronic delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, and electronic delivery devices shall be stored behind a counter in an area that is not accessible to consumers without the assistance of a store employee.

D. Nothing in this Ordinance shall prevent the providing of tobacco to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony, or under the exceptions under Minn. Stat. Sec. 609.685.

Section VI. Other Restrictions.

A. **Separate Licenses Required.** Separate licenses shall be issued for the sale of tobacco or electronic delivery device at each fixed place of business, and no license shall be issued for a moveable place of business.

B. **Identification Required.** It shall be an affirmative defense to a violation for a person to have reasonably relied on proof of age as described hereinafter. Any licensee or an employee of a licensee selling or offering to sell tobacco products or electronic delivery devices must require identification if they have any reason to believe that a customer is less than eighteen (18) years of age. Proof of age for purchase or use of tobacco may be established only by one of the following:

1. A valid driver's license or identification card issued by Minnesota, another state, a Minnesota Indian Tribe, or a province of Canada, and including the photograph and date of birth of the person.
2. A valid Military Identification Card issued by the United State Department of Defense; or
3. In the case of a foreign Nation other than Canada, by a valid passport.

C. **Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco or electronic delivery devices on licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder for the purpose of imposing administrative fines, suspensions or

revocations.

- D. **Compliance Checks.** All licensed premises shall be open to inspection by the Beltrami County Sheriff's Department or other authorized County Official during regular business hours. At least once each calendar year at each location licensed by the County to sell tobacco, and/or electronic delivery devices the County shall conduct compliance checks by engaging minors to enter a licensed premise to attempt to purchase tobacco or electronic delivery devices. Compliance checks shall utilize minors over the age of 15, but under the age of 18, with the prior written consent of a parent or guardian. Minors used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco or electronic delivery devices when such items are obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or the licensee's employee and shall produce any identification requested.

Section VII. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Ordinance.

- A. **Illegal Possession, Use, Purchase and Provision by Others.** It shall be a violation for any minor to possess, use, purchase, attempt to purchase or otherwise obtain any tobacco product or electronic delivery device, and it shall be a violation for any person to sell to, purchase or otherwise obtain or provide tobacco or an electronic delivery device to or on behalf of a minor. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the County.
- B. **Use of False Identification.** It shall be a violation of this Ordinance for any minor to attempt to disguise his/her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Section VIII. Violation and Penalties.

- A. Any violation of any provision of this Ordinance is a misdemeanor, subject to a maximum fine of \$1,000, and incarceration in the county jail for a maximum period of 90 days.
- B. In addition to any criminal penalties that may be imposed by a Court

of Law, any violation of this Ordinance shall also be cause for the imposition of an administrative fine, license suspension and/or license revocation. If the violation relates to the sale of tobacco or an electronic delivery device to minors by a licensee or their employee, the following administrative fines, suspensions or revocations shall be imposed:

1. The first violation shall subject the licensee to the payment of an administrative fine not to exceed \$100.
 2. A second violation at the same location within 24 months after the initial violation shall subject the licensee to the payment of an administrative fine not to exceed \$200.
 3. A third violation at the same location within 24 months after the initial violation shall subject the licensee to the payment of an administrative fine not to exceed \$400 and not less than a ten (10) business day suspension of the tobacco retailer license.
 4. The fourth violation at the same location shall subject the licensee to a license revocation as determined by the County Board but not to exceed one year.
 5. An individual who sells tobacco or an electronic delivery device to a person under the age of eighteen (18) years may be charged an administrative penalty of \$50.
- C. Administrative Hearing/Waiver. Upon receipt of information indicating that a violation has occurred, the County shall send a Violation Notice to the licensee and/or individual, served personally or by mail. The Violation Notice shall indicate the nature of the violation and whether such violation will result in an administrative fine, license suspension or license revocation. The notice shall also indicate that the licensee or individual has an opportunity of requesting a hearing before the County Board or other person or entity authorized by the County to conduct the hearing. A licensee or individual shall file a written request for hearing within 10 days of the date specified in the Violation Notice or the licensee or individual shall be deemed to have waived their right to a hearing. Upon receipt of a hearing request, the County shall schedule a hearing at the earliest opportunity and shall send a Hearing Notice to the licensee or individual by mail. The filing of an appeal stays the action of the County until a final decision. The final decision shall be in writing. Any appeal of the final decision may be made to District Court.

Section IX. Severability Clause. If any section or a portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a Court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this Ordinance.

Passed by the Beltrami County Board of Commissioners on the 4th day of May, 1999, and amended on the 3rd day of December, 2013.

By _____
Chair, Beltrami County Board of
Commissioners

ATTEST:

Kay Mack
Beltrami County Administrator

Proposed Revise: 12-2018