

**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 persons under age twenty-one (21) 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 persons under age twenty-one (21) to obtain tobacco and electronic delivery devices.

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, whether natural or synthetic, 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 aerosol or 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 an aerosol or 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. "Licensed Products" collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- D. "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.

- E. "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.
- F. "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 aerosol or 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, or using an activated electronic delivery device.
- G. "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.
- H. "Tobacco-Related Device" means and include any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco.
- I. "Vending Machine" means any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

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 licensed products:

- A. To any person under the age of 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 licensed products 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 licensed products between the licensee or his or her clerk and the customer. All licensed products 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 prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

Section VI. Other Restrictions.

- A. **Separate Licenses Required.** Separate licenses shall be issued for the sale of licensed products at each fixed place of business, and no license shall be issued for a moveable place of business.
- B. **Age verification.** Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- C. **Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products 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. A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance with sections 609.685 and 609.6855.

Compliance checks must involve minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority.

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

- A. **Illegal Provision by Others.** It shall be a violation for any person, age 21 or over, to sell to, purchase or otherwise obtain or provide licensed products to or on behalf of a person under age twenty-one (21).

Section VIII. Violation and Penalties.

- A. Criminal penalties for violation of this ordinance shall be consistent with Minnesota State Statute 609.685 Sale of Tobacco to Children
- B. Any violation of this Ordinance by a licensee or their employee, shall be cause for the imposition of an administrative fine, license suspension and/or license revocation as listed below.
 - 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 licensed products to a person under the age of twenty-one (21) 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, **amended XXXXXXXXXXXX.**

By _____
Chair, Beltrami County Board of
Commissioners

ATTEST:

Kay Mack
Beltrami County Administrator

Proposed Revise: Early 2019