

MARQUETTE COUNTY BOARD OF HEALTH

ORDINANCE TO REQUIRE LICENSE FOR RETAIL SALE OF TOBACCO, TO PROHIBIT SALE OF TOBACCO TO MINORS, AND TO RESTRICT LOCATION OF TOBACCO VENDING MACHINES

ARTICLE I - TITLE, AUTHORITY, JURISDICTION, PURPOSE AND ADMINISTRATION

1-1 Title - This ordinance shall be identified by the title

"Ordinance to Require License for Retail Sale of Tobacco, to Prohibit Sale of Tobacco to Minors, and to Restrict Location of Tobacco Vending Machines."

1-2 Authority - This ordinance is hereby adopted pursuant to authority conferred upon local health departments by Section 2441(1) of the Michigan Public Health Code, Act 368, P.A. of 1978 as amended.

1-3 Jurisdiction and Administration

(1) This ordinance shall have effect throughout Marquette County in all areas incorporated and unincorporated, which includes cities, villages, and townships.

(2) The Health Officer shall have responsibility for administering and enforcing this ordinance, including all amendments hereafter adopted unless otherwise specifically stated.

(3) Nothing herein this ordinance shall be construed to restrict or abrogate the authority of any municipality in Marquette County to adopt more restrictive regulations or ordinances.

1-4 Purpose

(1) The Marquette County Board of Health hereby finds and declares that:

(a) the U.S. Surgeon General has identified cigarette smoking as the single most important preventable cause of premature morbidity and mortality.

(b) the Director of the National Institute on Drug Abuse has concluded that the majority of the 434,000 Americans who die each year from cigarette smoking "became addicted to nicotine as adolescents before the age of legal consent."

(c) the selling, giving, or furnishing of tobacco products to a person under 18 years of age is prohibited in Michigan by Public Act 314 of 1988.

(d) studies have shown that a significant number of children under the legal age to purchase tobacco are still able to do so either directly or through vending machines.

(2) This ordinance is hereby adopted to safeguard the public health by requiring a license to engage in the retail sale of tobacco, by prohibiting sale of tobacco to minors, and by restricting the location of tobacco vending machines so as to limit access by minors.

1-5 Right of Entry and Inspection

(1) The Health Officer, or any other person charged with enforcement of this ordinance, after giving proper identification, may inspect any matter, thing, premise, place, person, record, vehicle, incident, or event as provided for by Section 2446 of the Michigan Public Health Code.

(2) The Health Officer may apply for an inspection or investigation warrant pursuant to Section 2242 of the Michigan Public Health Code to assure compliance with this ordinance and other laws that the Health Officer has the duty to enforce.

(3) It shall be unlawful for any person to molest, willfully oppose, verbally abuse or otherwise obstruct the Health Officer, or any other person charged with enforcement of this ordinance during the routine performance of his or her duties.

(4) The Health Officer may request the assistance of the Marquette County Sheriff's Department, or other police agency or peace officer when necessary to execute his or her official duty in a manner prescribed by law.

1-6 Severability - If any section, subsection, clause or phrase of this ordinance is for any reason declared unconstitutional or invalid, it is hereby provided that the remaining portions of this ordinance shall not be affected.

1-7 Other Laws and Regulations

(1) This ordinance is supplemental to the Michigan Public Health Code, as amended, Act 368, P.A. of 1978, and to other statutes duly enacted by the State of Michigan relating to public health and safety. Where the provisions of any other state law, local ordinance or regulation, or administrative rules apply, the more restrictive of any or all laws, ordinances, regulations or rules shall prevail.

(2) This ordinance shall be liberally construed for the protection of the health, safety, and welfare of the people of Marquette County. This ordinance shall control over a less stringent or inconsistent provision enacted by a local governmental entity for the protection of public health.

(3) Neither the Health Officer, nor any other person empowered to enforce the provisions of this ordinance shall knowingly implement provisions of this ordinance if in so doing a violation of any state or local statute, ordinance, regulation or rule would exist.

1-8 Amendments - The Board of Health may amend, supplement or change this ordinance or portions thereof, subject to the approval of the Board of Commissioners for Marquette County.

1-9 Approval and Effective Date - This ordinance was approved by action of the Marquette County Board of Health on April 2, 1990 and approved by action of the Marquette County Board of Commissioners on April 3, 1990. This ordinance shall become effective on October 1, 1990.

1-10 Power to Establish Policy and Guidelines

(1) The Health Officer is hereby granted the authority to establish policies and guidelines, not in conflict with the purpose and intent of this ordinance, for the purpose of carrying out the responsibilities herein delegated to the Health Officer by law.

(2) All such policies and guidelines shall be in writing and shall be kept in a policy file available for public inspection upon request. These policies and guidelines are subject to review by the Board of Health.

1-11 Complaints - All complaints received by the department shall be in writing and signed by the complainant. In all cases, a complainant shall identify themselves and provide his/her address and telephone number where he/she may be contacted. The department may develop forms on which a complainant may describe the nature of a complaint.

ARTICLE II - GENERAL DEFINITIONS

2-1 Interpretation - When not inconsistent with the context, words used in the present tense include the future, words used in the singular number include the plural number, and words used in the plural number include the singular. The word "shall" is always mandatory, and not merely directory. Words, terms or expressions not defined herein shall be interpreted in the manner of their commonly accepted meaning.

2-2 Bar - Shall mean any place licensed by the State of Michigan to sell at retail beer, wine, mixed spirit drink and spirits for consumption on the premises.

2-3 Board of Health - Shall mean the Board approved by the Marquette County Board of Commissioners to sit as a "Board of Health"; may generally refer to the Marquette County Health Department.

2-4 Health Department - Shall mean the Marquette County Health Department, and may be referred to herein this ordinance as the "Department".

2-5 Health Officer - Shall mean the Administrative Director of the Marquette County Health Department, and/or his or her authorized representatives. For the purpose of this ordinance authorized representatives of the Health Officer shall include; the Director of the Environmental Health Division, the Director of the Community Health Division, Environmental Sanitarians, and Health Educators employed by the Marquette County Health Department.

2-6 Person - Shall mean an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

2-7 Tavern - Shall mean any place licensed by the State of Michigan to sell at retail, beer and wine for consumption on the premises only.

2-8 Tobacco - Shall mean any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other personal use including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

2-9 Tobacco Retailer - Shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco are made to purchasers for consumption or use. Shall also mean a person or governmental entity that operates a vending machine location.

2-10 Vending Machine - Shall mean any automated, self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses cigarettes or other tobacco products.

2-11 Vending Machine Location - Shall mean the room, enclosure, space, or area where a tobacco vending machine is installed and operated.

ARTICLE III - LICENSE REQUIRED

3-1 License Required - As of the effective date of this ordinance, it shall be unlawful for any tobacco retailer in Marquette County to sell tobacco unless that retailer possesses a valid tobacco retailer's license from the Marquette County Health Department for each location where tobacco sales are conducted. The license shall be good for a three-year term if the licensee complies with the provisions of this ordinance.

3-2 License Application and Issuance - Application for a tobacco retailer's license shall be submitted in the name of the person proposing to conduct retail sales of tobacco and shall be signed by such person or his agent. All applications shall be submitted on a form supplied by the Marquette County Health Department and accompanied by the required license fee. The application form shall contain at least the following information:

- (1) The name, home address, home telephone number, date, place of birth, and social security number of the applicant if the applicant is an individual.
- (2) The names, addresses, telephone numbers, and social security numbers of any partners or corporate officers.
- (3) The business name, address, and telephone number of the establishment where tobacco is retailed.

3-3 License Fee - The fee for a three-year tobacco retailer's license shall be \$15.00 for each retail location.

3-4 Non-Transferability - A tobacco retailer's license is non-transferable, except, if a tobacco retailer changes location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The license will retain the same expiration date as that previously issued.

3-5 License Display - A current tobacco retailer's license shall be displayed in a conspicuous place in each location where tobacco sales are conducted. In the case of tobacco vending machines, a current tobacco retailer's license shall be conspicuously displayed on each vending machine.

ARTICLE IV - PROHIBITION OF TOBACCO SALES

4-1 Prohibition of Tobacco Sales to Minors - As of the effective date of this ordinance, it shall be unlawful for a person to sell tobacco to an individual under 18 years of age.

4-2 Identification Required - As of the effective date of this ordinance, it shall be unlawful for a tobacco retailer to sell or permit to be sold tobacco to any individual without requesting and examining identification from the purchaser positively establishing the purchaser's age as eighteen (18) years or greater unless the seller has some other conclusive basis for determining the buyer is over the age of eighteen (18) years. In the event the seller does not request and examine identification from the purchaser, the seller shall be deemed to have not had "a conclusive basis" under this section if the purchaser is in fact a minor. Identification shall be by means of an officially issued card accepted as proof of age in the State of Michigan.

4-3 Prohibition of Vending Machine Sales - As of the effective date of this ordinance, it shall be unlawful for a tobacco retailer to offer for sale or to sell tobacco through a vending machine in Marquette County; provided that this section shall not prohibit the installation and use of a tobacco vending machine by a tobacco retailer in:

- (1) Any premises or portion thereof to which access by minors is expressly prohibited by law or by policy of the owner of the premises, if, and only if, the tobacco vending machine is located fully within such premises from which minors are prohibited and not less than twenty (20) feet from all entrance and/or exit ways; or
- (2) Commercial buildings or industrial plants or portions thereof where the public is expressly prohibited and where such machines are strictly for the use of the employees therein; provided that the area must be signed as not open to the public and no minor employees are usually admitted; or
- (3) A tavern or bar, if, and only if, the tobacco vending machine is located fully within such premises and not less than twenty (20) feet from all entrance and/or exit ways, and if the tobacco vending machine is in a location that is under the direct visual supervision of the tobacco retailer or his/her adult employee during the hours the machine is accessible, and if the tobacco vending machine can only be

operated by a functioning remote control device which is inaccessible to the purchaser and must be operated for each sale by the tobacco retailer or his/her adult employee.

ARTICLE V - ENFORCEMENT

5-1 Schedule of Monetary Civil Penalties

- (1) In the case of a first and single violation of this ordinance, a licensed tobacco retailer shall be assessed a monetary civil penalty of fifty dollars (\$50.00) and given notification, in writing, of provisions for penalties to be levied in the event of further violations ; and
- (2) In the case of a second or two violations within a single three year license term, a licensed tobacco retailer shall be assessed a monetary civil penalty of one hundred dollars (\$100.00); and
- (3) In the case of a third or three violations within a single three year license term, a licensed tobacco retailer shall be assessed a monetary civil penalty of two hundred dollars (\$200.00); and
- (4) In the case of a fourth violation within a single three year license term, a licensed tobacco retailer shall be assessed a monetary civil penalty of two hundred dollars (\$200.00); and
- (5) A tobacco retailer who sells tobacco without a valid tobacco retailer's license shall be assessed a monetary civil penalty of two hundred dollars (\$200.00) for each violation or day that the violation continues.

5-2 License Suspension or Revocation - A tobacco retailer's license shall be suspended or revoked by the Marquette County Health Department if the licensee fails to comply with the provisions of this ordinance. These sanctions are in addition to the monetary civil penalties provided for in Section 5-1 of this Ordinance. A license shall be suspended or revoked as follows:

- (1) In the case of a first and single violation of this ordinance, the licensee shall be given notification, in writing, of provisions for license suspension or revocation in the event of additional or further violations; and
- (2) In the case of a second or two violations within a single three year license term, the license shall be suspended for ninety (90) days; and
- (3) In the case of a third or three violations within a single three year license term, the license shall be suspended for one hundred and eighty (180) days; and
- (4) In the case of a fourth or four violations within a single three year license term, the license shall be revoked for one year.
- (5) Each sale of tobacco to a minor shall constitute a separate violation.

5-3 Citation - Whenever the Health Officer believes that there exists a violation of this ordinance, he/she may issue a citation at that time or not later than 90 days after discovery of the alleged violation. The citation shall be written and shall state with particularity the nature of the violation, including reference to the article or section of this ordinance alleged to have been violated, the monetary civil penalty and/or license sanction established for the violation and the right to appeal the citation pursuant to the following section. The citation shall be delivered or sent by registered mail to the alleged violator.

5-4 Appeal of Citation

- (1) Not later than 20 days after receipt of the citation, the alleged violator may petition the Marquette County Health Department for an administrative hearing which shall be held within 30 days after receipt of the petition. After the administrative hearing, the Health Officer may affirm, dismiss, or modify the citation. The decision of the Health Officer shall be final, unless within 60 days of the decision the Marquette County Board of Commissioners or committee thereof grants review of the citation. After the review, the Board of Commissioners, or committee thereof may affirm, dismiss, or modify the citation.
- (2) A person aggrieved by a decision of the Health Officer or the Board of Commissioners may petition the Marquette County Circuit Court for review. The petition shall be filed not later than 60 days following receipt of the final decision.
- (3) A monetary civil penalty and/or license sanction becomes final if a petition for an administrative hearing or review is not received within the time specified in this section. A monetary civil penalty imposed under this section is payable to the Marquette County Health Department for deposit with the general funds of Marquette County. A monetary civil penalty may be recovered in a civil action brought in Marquette County or the county in which the defendant resides.

5-5 Misdemeanor Appearance Tickets

- (1) The following public servants of the Marquette County Health Department are hereby specifically authorized, by authority of Act 368, P.A. of 1978, Section 2463, pursuant to Sections 9A to 9G of Chapter 4 of Act No. 175, P.A. of 1927, as amended, being Section 764.9a to 764.9g of the Michigan Compiled Laws, to issue and serve misdemeanor appearance tickets with respect to violations of this ordinance adopted by the Marquette County Board of Health and approved by the Marquette County Board of Commissioners, to-wit:
 - a) Health Officer of the Marquette County Health Department;
 - b) Director of the Environmental Health Division.
 - c) Director of the Community Health Division.

- (2) No misdemeanor appearance tickets shall be issued for a violation of this ordinance without first having served the person in violation of these regulations with a written citation as provided in Section 5-3.

5-6 Criminal Penalty - Any person who shall fail to comply with any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding the sum of two hundred dollars (\$200.00) or by imprisonment in the County jail not exceeding ninety (90) days, or by both such fine and imprisonment at the discretion of the court. Each day a violation of this ordinance exists shall constitute a separate and distinct violation and may be cited as such.

5-7 Injunctive Proceedings - Notwithstanding the existence and pursuit of any other remedy, the Health Officer without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent a violation of this ordinance.