

MARQUETTE COUNTY, MICHIGAN
TOBACCO AND ELECTRONIC NICOTINE DELIVERY SYSTEMS ORDINANCE
2016

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

1-1 Title - This ordinance shall be identified by the title "Marquette County, Michigan Tobacco and Electronic Nicotine Delivery Systems Ordinance 2016."

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

The purpose of this ordinance is to protect the public health and to encourage healthy behaviors of the citizens of Marquette County:

- (1) through the regulation of the retail sale of tobacco products, tobacco smoking devices, electronic nicotine delivery systems (ENDS) and associated products,
- (2) by prohibiting the sale of tobacco products, tobacco smoking devices, ENDS and associated products to individuals under the age of 18,
- (3) by restricting types of locations for retail sale of tobacco products, tobacco smoking devices, ENDS and associated products,
- (4) by restricting the use of tobacco products, the act of smoking, the use of ENDS and associated products, and the act of vaping in public places including the workplace.

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 federal or 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 supersede 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 Marquette County 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 – The Marquette County, Michigan Tobacco and Electronic Nicotine Delivery Systems Ordinance 2016 was approved by the Marquette County Board of Commissioners on August 3, 2016. The ordinance will go into effect on September 6, 2016.

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 Marquette County Board of Health.

ARTICLE II - GENERAL DEFINITIONS

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.

Bar - Shall mean any place licensed by the State of Michigan to sell, at retail, beer, wine, mixed spirit drinks, and spirits for consumption on the premises and may include a restaurant containing a bar.

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

Electronic Nicotine Delivery Systems (ENDS) – Shall mean a noncombustible product designed to contain a vapor cartridge or containing nicotine or other substance that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or other substance in a solution or other form. Electronic smoking devices include an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and also include a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Electronic smoking devices do not include tobacco products or products regulated as a drug by the Federal government.

Electronic Nicotine Delivery Systems Retailer – Shall mean any person or legal entity that operates a store, stand, booth, concession, or other place at which sales of ENDS devices are made to purchasers for consumption or use.

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

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, Health Educators employed by the Marquette County Health Department, and other staff or volunteers as authorized.

Kiosk – Shall mean a small open-fronted hut or cubicle from which tobacco or ENDS are sold or otherwise provided to the public, whether within a larger structure or standing alone.

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

Smoking – Shall mean the inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or related substance or product.

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, hookah, snuff, and cigarettes in any form.

Tobacco Retailer - Shall mean any person or legal 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 legal entity that operates a vending machine location.

Tobacco Specialty Shop – Shall mean a tobacco retailer primarily retailing only tobacco products and accessories.

Vaping - Shall mean the inhaling, exhaling, or generation of any vapor from an ENDS device.

Vaping Specialty Shop – Shall mean an ENDS retailer specializing primarily in the retail sale of electronic smoking/vaping devices, equipment, paraphernalia, and accessories.

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

ARTICLE III - LICENSING

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

3-2 License Limitations – The issuance of “tobacco and/or ENDS retail licenses” for the retail sale of the associated products shall be limited to convenience stores, grocery stores, bars, liquor stores, tobacco specialty shops, and vaping specialty shops. Tobacco and/or ENDS retail licenses shall not be granted to permit the retail sale of such items through vending machines or kiosks, or to any retail location that lies within 500 feet of an institution or business catering primarily to minors under the age of 18.

3-3 License Applicability – A “tobacco and/or ENDS retail license” shall apply to the retail sale of tobacco, ENDS, or both at one retail location.

3-4 Non-Transferability - Tobacco and ENDS retailer's licenses are non-transferable from person to person and/or between locations.

3-5 Licensing Period - The licensing year for tobacco and ENDS retailer's licenses shall extend from February 1 through January 31. All licenses, including those new licenses issued within the licensing year, shall have a renewal date of February 1.

3-6 License Application and Issuance - Application for a tobacco or ENDS retailer's license shall be submitted in the name of the person proposing to conduct retail sales of tobacco and/or ENDS 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, telephone number, and e-mail address if available, of the establishment where tobacco and/or ENDS are retailed.

3-7 License Fee - The fee for a tobacco or ENDS retailer's license shall be set by the Board of Health and approved by the Board of Commissioners. The licensing fee shall be set to cover the cost of administering the licensing, inspection, compliance check and enforcement activities required by this ordinance and shall include costs associated with tobacco and substance abuse prevention and cessation outreach.

3-8 License Display - A current and valid tobacco and/or ENDS retailer's license shall be displayed in a conspicuous location at the point of sale in each location where tobacco and/or ENDS sales are conducted.

ARTICLE IV - PROHIBITIONS

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

4-2 Prohibition of Sale Without Identification - As of the effective date of this ordinance, it shall be unlawful for a tobacco or ENDS retailer to sell or permit to be sold tobacco or ENDS to any individual without requesting and examining identification from the purchaser, positively establishing the purchaser's age as eighteen (18) years or greater. 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 Sale Without Approved Signage - Signs informing the public of the age restrictions provided for herein shall be posted by every retailer at or near every display of tobacco or ENDS and at the point of sale of tobacco or ENDS. Each such sign shall be plainly visible and shall mirror the requirements for tobacco products of the Michigan Youth Tobacco Act, 1915 P.A. 31, as amended or current and applicable legal requirements of the State of Michigan and the United States Food and Drug Administration.

4-4 Prohibition of Vending Machine and Kiosk Sales - As of the effective date of this ordinance, it shall be unlawful for a tobacco or ENDS retailer to offer for sale or to sell tobacco or ENDS through a vending machine or kiosk in Marquette County.

4-5 Prohibition of Smoking and Vaping in Smoke-Free Places –

- (1) As of the effective date of this ordinance, vaping and smoking shall be unlawful in any place within Marquette County where smoking of tobacco products is prohibited by law. No Person, Employer, or Nonprofit Entity shall knowingly permit the use of ENDS in an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which smoking is prohibited by law.
- (2) Smoking within a Tobacco Specialty Shop and vaping within a Vaping Specialty Shop are exempt from this prohibition.

4-6 Prohibitions of Free Distribution - No person shall deliver tobacco and/or ENDS, associated paraphernalia, or accessories to any other person at no cost or at nominal cost for product promotional purposes.

4-7 Prohibitions of mixing and manufacturing of vapor and e-cigarette liquids – No person shall mix, prepare or otherwise manufacture e-liquids or vaping liquids without being fully compliant with all United States Department of Health and Human Services, Food and Drug Administration (FDA) requirements of tobacco products manufacturing.

ARTICLE V – COMPLIANCE CHECKS

5-1 Access to Conduct Inspection and Compliance Checks - The health department shall have free access at all reasonable hours to any tobacco or ENDS retail location for the purpose of conducting an inspection or compliance check. Photographs may be taken as part of the inspection and compliance check process.

5-2 Compliance Checks – The health department may conduct tobacco and ENDS sale compliance checks by employing undercover purchasers under the age of 18 to attempt to make purchase of tobacco and/or ENDS.

5-3 Follow-up Inspections – The health department may conduct follow-up inspections to determine corrective measures and compliance to violations of this ordinance that have been cited during inspection or compliance check activities.

5-4 Fees – The health department reserves the right to levy fees or to adjust licensing fees, as approved by the Marquette County Board of Health and the Marquette County Board of Commissioners, to cover the health department costs associated with inspection, follow-up inspections, and other program activities.

ARTICLE VI – ENFORCEMENT

6-1 Schedule of Monetary Civil Penalties -

- (1) Any tobacco or ENDS retailer who violates any provision of this ordinance shall be assessed a monetary civil penalty of one hundred dollars (\$100.00) for the first violation, two hundred seventy dollars (\$270.00) for a second violation, five hundred forty dollars (\$540.00) for a third violation, and one thousand eighty dollars (\$1,080.00) for a fourth and subsequent violations.
 - (a) Any employee or agent of a tobacco or ENDS retailer who violates any provision of this ordinance shall be assessed a monetary civil penalty of fifty Dollars (\$50.00) for the first violation, one hundred dollars (\$100.00) for a second violation, and two hundred dollars (\$200.00) for a third and subsequent violations.

- (b) An employee or agent of a tobacco or ENDS retailer who violates any provision of this ordinance as a first violation may participate in a tobacco or ENDS control educational program provided by the Marquette County Health Department within ninety (90) days of the violation in lieu of the monetary civil penalty.
- (2) Any person who shall deliver tobacco or ENDS to any other person at no cost or at a nominal cost for product promotional purposes in violation of this Regulation shall be assessed a monetary civil penalty of two hundred dollars (\$200.00) for each day that a violation occurs.
- (3) Within twenty (20) days after receipt of a citation, the alleged violator may appeal the citation as provided in Section 2462 of the Michigan Public Health Code, 1978 P.A. 368. Further appeals, as provided by statute, may be to the Marquette County Board of Health, or a committee thereof.
- (4) Each day that a violation continues shall be deemed a separate violation.
- (5) Subsequent violations shall be calculated to the maximum monetary penalty based upon consecutive violations occurring within a five year period.

6-2 Violations, Misdemeanor –

- (1) When, at the discretion of the Health Officer, the penalty provided in section 6-1 of this regulation is not effective in enforcing this regulation, the Health Officer and his/her designees are hereby authorized to issue appearance tickets with respect to violations of a provision of this Regulation, if those individuals had reasonable cause to believe that the person has committed an offense in violation of this Regulation.
- (2) A person who violates this regulation is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, a fine of not more than two hundred dollars (\$200.00), or both.
- (3) Each day a violation continues shall be deemed a separate offense.

ARTICLE VII – INJUNCTIVE PROCEEDINGS

7-1 Injunctive Proceedings – Notwithstanding the existence and pursuit of any other remedy, the Health Officer or his/her designee, 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 regulation.