

# **MARSHALL COUNTY**

## **Tobacco Ordinance**

**COUNTY ORDINANCE #12**

**MARSHALL COUNTY ORDINANCE NO. 012**

**An ordinance relating to the sale, possession, and use of tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in the county to reduce the illegal sale, possession, and use of such items to and by minors.**

**The Marshall County Board of Commissioners Ordains:**

**Section 1. Authority. This Ordinance is adopted under the authority and pursuant to the mandate of Minnesota Statute, Section 461.12 pertaining to municipal tobacco licenses.**

**Section 2. Purpose and Intent. Because the county recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or nicotine delivery products such as sales, possession and use are violations of both state and federal laws; because studies have shown that most smokers begin smoking before they have reached the age of twenty-one (21) years and that those persons who reach the age of twenty-one (21) years without having started smoking are significantly less likely to begin smoking have been known to be the cause of several serious health problems which subsequently place financial burden on all levels of government, this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat..144.391.**

**Section 3. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and plural shall include the singular. The masculine shall include the feminine and neutral; and vice versa.**

**Subd. 1. Child-Resistant Packaging. "Child-Resistant Packaging" is defined as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015. is special packaging to reduce the risk of children ingesting dangerous items.**

**Subd. 2 Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, which**

is not a cigarette as defined in Minn. Stat. 297F.01, sub. 3, as it may be amended from time to time.

**Subd. 3. Compliance Checks.** “Compliance Checks” shall mean the system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products for education, research and training purposes as authorized by state and federal Laws.

**Subd. 4. Electronic Delivery Device.** “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic Delivery Device includes, but is not limited to, devices manufactured, marketed or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems or under any other product name or descriptor. 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.

**Subd. 5. Imitation Tobacco Product.** “Imitation Tobacco Product” shall mean either any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product, intended to be used by children as a toy. Examples of imitation tobacco products include but are not limited to candy or chocolate cigarettes or cigars, bubble gum cigars, shredded bubble gum resembling chew tobacco, and shredded beef jerky in containers resembling tobacco snuff tins.

**Subd. 6. Individually packaged.** “Individually packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff, chewing tobacco, electronic delivery devices, or nicotine or lobelia delivery devices. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

**Subd. 7. Indoor Area.** “Indoor Area” is all the space between the floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or physical barrier, whether temporary or permanent.

**Subd. 8. Loosies.** “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette or a cigar. The term “loosies” does not include individual cigars with a retail price, before any sales tax, of more than \$2.00 per cigar.

**Subd. 9. Minor.** “Minor” shall mean any natural person who has not yet reached the age of twenty-one (21) years.

**Subd. 10. Moveable Place of Business.** “Moveable Place of Business” shall refer to any form of business operated out of a truck, van, automobile, kiosk, or other type of vehicle or transportable shelter, and not a fixed address store front or other permanent type of structure authorized for sales transactions.

**Subd. 11. Nicotine or Lobelia Delivery Products.** “Nicotine or Lobelia Delivery Products” shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for such approved purpose.

**Subd. 12. Retail Establishment.** “Retail Establishment” shall mean any place of business where tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not limited to, grocery stores, convenience stores, restaurants and drug stores.

**Subd. 13. Sale.** A “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

**Subd. 14. Self-Service Merchandising.** “Self-Service Merchandising” shall mean open displays of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products and without the assistance or intervention of

the licensee or the licensee's employee, tobacco product, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

**Subd. 15. Smoke or Smoking.** Smoke or Smoking shall mean inhaling or exhaling smoke from any instrumentality, including but not limited to any cigar, cigarette, pipe, hookah pipe or operating an electronic cigarette, or having in possession any such instrumentality producing smoke or engaging in any act that generates smoke. Smoking shall include carrying a lighted or heated cigarette, cigar, or pipe or any other lighted or heated tobacco or plant product intended for inhalation or carrying an electronic delivery device that is turned on or otherwise activated.

**Subd. 16. Tobacco or Tobacco Products.** Tobacco or Tobacco products shall include cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

**Subd. 17. Tobacco Related Devices.** "Tobacco-Related Devices" shall mean any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products or the inhalation of vapor from an electronic delivery device. Tobacco-related devices include accessories or components of tobacco-related devices, which may be marketed or sold separately.

**Subd. 18. Vending Machines.** "Vending Machine" shall mean any mechanical, electric or electronic, or other device which dispenses tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery devices upon the insertion of money, token, other forms of payment directly in the machine by the person seeking to purchase the tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.

**Section 4. License. No person shall sell or offer to sell any tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products without first having obtained a license to do so from the county.**

**Subd. 1. Application. Any application for a license to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery devices shall be made on a form provided by the county. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business and telephone numbers, the name of the business for which the license is sought, and any additional information the county deems necessary. Upon receipt of a completed application, the Marshall County Auditor/Treasurer shall forward the application to the County Board for action at its next regularly scheduled board meeting. If the Marshall County Auditor/Treasurer shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.**

**Subd. 2. Action. The Marshall County Board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the County Board shall approve the license, the Marshall County Auditor/Treasurer shall issue the license to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.**

**Subd. 3. Term. All licenses issued under this ordinance shall be valid through December 31 of each calendar year from the date of issue.**

**Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.**

**Subd. 5. Transfers. All licenses issued under this ordinance shall be valid only for the person to whom the license was issued. No transfer of any license to another person shall be valid without the prior approval of the Marshall County Board of Commissioners.**

**Subd. 6. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location business shall be eligible to be licensed under this ordinance.**

**Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.**

**Subd. 8. Renewals.** The renewal of a license under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license.

**Subd. 9. Issuance as privilege and not a right.** The issuance of a license issued under this Chapter shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

**Subd. 10. Smoking/Sampling Restrictions in Retail Establishments.** Smoking shall not be permitted and no person shall smoke within the indoor area of any Retail Establishment with a tobacco license. Smoking for the purposes of sampling tobacco, tobacco products, or electronic delivery devices, or nicotine or lobelia delivery products.

**Section. 5. Training.** All Licensed Tobacco Retailers shall attend a training once a year to assist retailers in implementing training programs for employees to learn about and comply with the federal and state laws and regulations restricting:

- A. Sale and distribution of, including youth access to, tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- B. Advertising and promotion of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products.
- C. Retailers will be required to keep on file a record of employee training by the employer along with employee signature showing proof of training. If an employee is under eighteen (18), he or she will have a parent or guardian signature also.

**Section 6. Fees.** No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee for a license under this ordinance shall be set and subject to change by the Marshall County Board.

**Section 7. Basis for Denial of License.** The following shall be grounds for denying the issuance of renewal of a license under this ordinance, however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the County must deny the license. The grounds for denying the issuance or renewal of a license may include, but are not limited to the following list:

- A. The applicant is under the age of 18 years.
- B. The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco related

devices, electronic delivery devices, or nicotine or lobelia delivery products.

- C. The applicant has had a license to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products revoked with the preceding twelve months of the date of application.
- D. The applicant is prohibited by federal, state or other local law ordinance or other regulation, from holding such a license.
- E. The applicant fails to provide any information required on the application or provides false or misleading information.
- F. Discovery of Grounds after Issuance of License. If a tobacco retailer license is mistakenly issued or renewed to any person based on false or misleading information or other grounds defined in this section, the license shall be revoked upon the discovery.

**Section 8. Prohibited Sales.** It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, tobacco related device, electronic delivery device, or nicotine or lobelia delivery products.

- A. To any person under the age of twenty-one (21) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- C. By means of self-service method whereby the customer does not need to make a verbal or written request to an employee of the license premise in order to receive the individually packaged tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products between the licensee or the licensee's employer, and the customer.
- D. By means of loosies as defined in Section 3 of this ordinance.
- E. From a moveable place of business
- F. Imitation tobacco products as defined in Section 3 of this ordinance.
- G. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- H. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or local law, ordinance provisions, or other regulation.

**Section 9. Sale of Electronic Delivery Device; Packaging**

The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, as defined in Section 3 subd. 1, that is not contained in packaging that is child-resistant, is prohibited. All licensees under this chapter must ensure that any



liquid intended for human consumption and use in an electronic delivery device is sold in child-resistant packaging.

**Section 10. Vending Machines.** It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by means of a vending machine unless minors are at all times prohibited from entering the licensed establishment, and the ordinance would go into effect thirty (30) days after adoption.

**Section 11. Self-Service Sales.** It shall be unlawful for a licensee under this ordinance to allow the sale of individually packaged tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the individually packaged tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products between the licensee or his or her clerk and the customer. All individually packaged tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public at the time this ordinance is adopted shall comply with this Section within thirty (30) days.

**Section 12. Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the county from also subjecting the clerk of whatever penalties are appropriate under this ordinance, state or federal Law, or applicable law on regulation.

**Section 13. Compliance Checks and Inspections.** The Marshall County Sheriff's Office or other authorized county official designated by the Marshall County Sheriff during regular business hours, will conduct compliance checks at all licensed premises in Marshall County during regular business hours. From time to time, but at least once per year, the county shall conduct compliance checks by engaging with the written consent of their parents or guardians (if applicable), minors over the age of seventeen (17) years but less than twenty-one (21) years, to enter the license premises to attempt to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Minors used for the purpose of compliance checks shall be supervised by designated law

**enforcement officers or other designated county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possessions of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained or attempted to be 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 question about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.**

**Section 14. Other Prohibited Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.**

**Subd. 1. Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products to any person under the age of 21.**

**Subd. 2. Illegal possession. It shall be a violation of this ordinance for any person under the age of 21 to have in the person's possession any tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products. This shall not apply to persons lawfully involved in a compliance check.**

**Subd. 3. Illegal Use. It shall be a violation of this ordinance for any person under the age of 21 to smoke, chew, snuff or otherwise use tobacco, tobacco product, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.**

**Subd. 4. Illegal procurement. It shall be a violation of this ordinance for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products and it shall be a violation of this ordinance for any person to purchase or to otherwise obtain those items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products.**

**Subd. 5. Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise the minor's 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 15. Violations.**

**Subd. 1. Notice.** Upon discovery of a suspected violation, the alleged violator shall be issued within thirty (30) days, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to a hearing on the accusation.

**Subd. 2. Hearings.** Within fifteen (15) days of receiving a citation, a person accused of violating this ordinance may request a hearing by contacting the Marshall County Auditor. The hearing shall be scheduled with fifteen (15) days of the request, the time and place of which shall be published and provided to the accused violator.

**Subd. 3. Hearing Officer.** The County Board shall appoint a hearing officer to handle any requested hearings under this section.

**Subd. 4. Decision.** If the hearing officer determines that a violation of this ordinance did occur, that decision along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 14, shall be recorded in writing, a copy of which shall be provided to the accused violator, and to the Marshall County Auditor/Treasurer. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty; such findings shall be recorded in writing, a copy of which shall be provided to the acquitted accused violator, and to the Marshall County Auditor/Treasurer.

**Subd. 5. Appeals.** Appeals of the decision of the county board under this ordinance shall be filed in the District Court for the County of Marshall, State of Minnesota. The Appeal shall be filed within fifteen (15) days of receipt of the decision of the Hearing Officer.

**Subd. 6. Misdemeanor Prosecution.** Nothing in this Section shall prohibit the county or city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

**Subd. 7. Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

#### **Section 16. Penalties.**

**Subd. 1. Licensees.** Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an

**administrative fine of \$300.00 for a first violation of this ordinance; \$600.00 for a second offense at the same licensed premises within a thirty-six month (36) period; and \$1,000.00 for a third an subsequent offense at the same location within a thirty-six month (36) period. In addition, after the third offense, the license shall be suspended for not less than seven days, with the possibility of the license being revoked.**

**Subd. 2. Other Individuals. Other individuals employed by the licensee found to be in violation of this ordinance shall be charged an administrative fine of \$50.00 for the first violation of this section, \$100.00 fine for the second violation of this section within a thirty-six (36) month period, and a \$150.00 fine for a third violation of this chapter within a thirty-six (36) month period.**

**Subd. 3. Person under the age of 21. Persons under the age of 21 who use false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services or another non-monetary, civil penalty that the county determines to be appropriate. The County Board will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel and other interested parties to determine an appropriate remedy for persons under the age of 21 that is in the best interest of the underage person. The remedies for persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.**

**Subd. 4. Anyone found to be selling tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products on the licensed premises, and the sale of such an item without a license shall be subject to an administrative fine of \$500.00 for the first offense and \$1000.00 for a second offense.**

**Subd. 5. Misdemeanor. Nothing in this Section shall prohibit the county from seeking prosecution as a misdemeanor for any violation of this ordinance.**

**Section 17. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.**

**Section 18. Severability and Savings Clause. If any section or 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 invalidation or effect the validity and enforceability of any other section or provision of this ordinance.**

**Section 19. Effective Date. This ordinance shall take effect November 1<sup>st</sup>, 2014.**

**Addendum: On January 6, 2015, this ordinance was amended to include imitation tobacco products in the prohibited sales. Please refer to Section 8, Letter F of this ordinance for the change.**