**\*Last updated 4.3.20\***

**MODEL RESOLUTION TO APPROVE THE REGULATION TO PREVENT THE SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE, AND TO PROHIBIT THE USE OF TOBACCO PRODUCTS IN SMOKE-FREE PLACES**

**Resolution #**

WHEREAS, the [enter name of health department] Health Department (HD) desires to adopt a Health Regulation with regard to tobacco products, in order to protect the health and safety of the residents of [name] County; and

WHEREAS, [name] County recognizes the use of tobacco products has devastating health and economic consequences; and

WHEREAS, commercial tobacco use is the foremost preventable cause of death in America. It causes nearly half a million deaths annually and was responsible for 20.8 million premature deaths in the U.S. in the 50 years following the first Surgeon General’s report on smoking in 1964; and

WHEREAS, [name] County recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and youth who begin using tobacco products are particularly likely to become lifelong users; and

WHEREAS, national data show that about 95 percent of adults who smoke began smoking before age 21. The time between ages 18 to 20 is a critical period when many adults who smoke move from experimental smoking to regular, daily use; and

WHEREAS, the Michigan Legislature, effective September 2, 2019, adopted S.B. 106, “An act to prohibit the selling, giving, or furnishing of tobacco products, vapor products, and alternative nicotine products to minors; to prohibit the purchase, possession, or use of tobacco products, vapor products, and alternative nicotine products by minors; to regulate the retail sale of tobacco products, vapor products, alternative nicotine products, and liquid nicotine containers; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments”; and

WHEREAS, S.B. 106 prescribes that “’Vapor product’” means a noncombustible product 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 any other substance, and the use or inhalation of which simulates smoking. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and 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. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.”; and

WHEREAS, the United States Congress adopted H.R. 1865, ‘‘Further Consolidated Appropriations Act, 2020’’, effective December 20, 2019, containing Section 604 “Sale of Tobacco Products To Individuals Under The Age Of 21” which increases the minimum age of sale for tobacco products from 18 to 21 years of age (section 604; Public Law No: 116-94); and

WHEREAS, vapor products are commonly also referred to as “e-cigarettes”; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (CDC) has stated: “Most e-cigarettes contain nicotine, which causes addiction, may harm brain development, and could lead to continued tobacco product use among youth. Tobacco product advertising can entice youth to use tobacco, and spending to advertise e-cigarettes has increased rapidly since 2011. About 69% of middle and high school students were exposed to e-cigarette advertisements in retail stores, on the Internet, in magazines/newspapers, or on TV/movies. Exposure to e-cigarette advertisements may be contributing to increases in e-cigarette use among youth. Efforts by states, communities, and others could reduce this exposure.”; and

WHEREAS, existing studies on aerosol emissions from vapor products and cartridge contents have found that, while such devices are less harmful than combusted (burned) tobacco products, they are not safe and expose users and bystanders to harmful substances, including: chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium; as well as acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation; and

WHEREAS, Data from the National Youth Tobacco Survey demonstrates that youth use of e-cigarettes continues to increase. The overall use rate of e-cigarettes among youth continues to be higher than other forms of tobacco and has stymied previous progress in the reduction of the overall tobacco use rate for youth. Furthermore, the popularity among youth of attractive, flavored, high-nicotine delivery products is likely responsible for the significant increase of e-cigarette usage among high school students; and

WHEREAS, local governments have used their authority to enact tobacco control policies to protect communities from tobacco-related harms and youth tobacco initiation; and

WHEREAS, the Michigan Public Health Code (MCL 333.2441) authorizes the local governing entity of a local health department (name County Board of Commissioners for HD) to approve regulations adopted by the HD that are necessary or appropriate to protect the public health and safety; and

WHEREAS, the Health Officer has proposed the adoption of a regulation to prevent the sale of tobacco products to individuals under 21 years of age, and to prohibit the use of tobacco products in smoke-free places; and

WHEREAS, notice of a public hearing was given in accordance with Section 2442 of the Public Health Code (MCL 333.2442) not less than 10 days before the public hearing and not less than 20 days before the adoption of the Regulation; and

WHEREAS, notice of the [date] public hearing was published in the [newspaper] on [date], a public hearing was held before the Board of Commissioners on [date], and the proposed Regulation was approved by the Board of Commissioners on [date].

THEREFORE BE IT RESOLVED, that the [name] County Board of Commissioners, having considered the comments made at the public hearing on [date], hereby approves a Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age, and to Prohibit the Use of Tobacco Products in Smoke-Free Places as recommended, (copy attached and incorporated by reference).

BE IT FURTHER RESOLVED, that the Regulation shall become effective [date].

**[name] COUNTY**

**MODEL REGULATION TO PROHIBIT THE SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE, AND TO PROHIBIT THE USE OF TOBACCO PRODUCTS IN SMOKE-FREE PLACES**

**ARTICLE I – TITLE, AUTHORITY, JURISDICTION, PURPOSE AND ADMINISTRATION**

 **1-1 Title –** This regulation shall be identified by the title “Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age, and to Prohibit the Use of Tobacco Products in Smoke-Free Places”.

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

 **1-3 Jurisdiction and Administration**

 (1) This regulation shall have effect throughout [name] 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 regulation, including all amendments hereafter adopted unless otherwise specifically stated.

 **1-4 Purpose**

 (1) [name] County hereby finds and declares that:

 (a) Tobacco products contain components and chemicals that are dangerous to young children and may cause death and illness among children who come into contact with these products.

 (b) The use of tobacco products by minors may cause them to become addicted to nicotine and cause other harmful effects.

 (c) Many combusted and heated tobacco products emit secondhand smoke or aerosol (from vapor products) which contains dangerous substances which can be harmful to bystanders of all ages.

 **1-5 Right of Entry and Inspection**

 (1) The Health Officer, or any other person charged with enforcement of this regulation, 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, 1978 P.A. 368, as amended.

 (2) The Health Officer may apply for an inspection or investigation warrant pursuant to Section 2242 of the Michigan Public Health Code, 1978 P.A. 368, as amended, to assure compliance with this regulation 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 regulation during the routine performance of his or her duties.

 (4) The Health Officer may request the assistance of the [name] 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 regulation is for any reason declared unconstitutional or invalid, it is hereby provided that the remaining portions of this regulation shall not be affected.

 **1-7 Other Laws and Regulations**

 (1) This regulation is supplemental to the Michigan Public Health Code, 1978 P.A. 368, as amended, and to other statutes duly enacted by the State of Michigan relating to the 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 regulation shall be liberally construed for the protection of the health, safety, and welfare of the people of [name] County. This regulation shall control over a less stringent 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 regulation shall knowingly implement provisions of this regulation if in so doing a violation of any state statute, regulation or rule would exist.

 **1-8 Amendments –** [name] County may amend, supplement or change this regulation or portions thereof, subject to the approval of the Board of Commissioners for [name] County.

 **1-9 Approval and Effective Date –** This regulation shall become effective on [date].

 **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 regulation, 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 and approval by the [name] Committee of the [name] County Board of Commissioners.

 **1-11 Public Education –** The Health Officer shall conduct public education programs directed at informing tobacco product retailers and the general public about laws, rules and regulations related to tobacco product sales, health issues surrounding tobacco product use, and resources for tobacco product control programs. Retailer and public education will be based on the best and most recent science available from reputable public health organizations such as the Centers for Disease Control and Prevention, the American Cancer Society, the American Heart Association, and the American Lung Association. See https://www.cdc.gov/tobacco/basic\_information/e-cigarettes/index.htm and https://onlinelibrary.wiley.com/doi/full/10.3322/caac.21455.

 **1-12 Investigations –** The Health Officer shall conduct investigations and make recommendations to the County Board of Commissioners as to the effectiveness of this regulation in denying access of tobacco products to individuals under 21 years of age and provide periodic reports on the rate of tobacco product sales to individuals under 21 years of age in [name] County.

 **1-13 Complaints –** Complaints received by the Health Department may be made in writing or over the telephone. 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. Words, terms or expressions not defined herein shall be interpreted in the manner of their commonly accepted meaning.

 **2-2 Board of Health –** Shall mean the Board approved by the [name] County Board of Commissioners to sit as a “Board of Health.”

**2-3 Tobacco Product –** Shall mean any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or any other smokeless tobacco. The term also includes vapor products and alternative tobacco products. The term also includes tobacco product paraphernalia, whether or not they contain nicotine. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**2-4 Tobacco Product Paraphernalia** – Shall mean any product that is used to assist in chewing, smoking, absorbing, dissolving, inhaling, or any other consumption of tobacco to include, but not limited to pipes, rolling papers, and electronic smoking devices.

**2-5 Vapor Product** – Shall mean a noncombustible product 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 any other substance, and the use or inhalation of which simulates smoking. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and 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. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

**2-6 Alternative Nicotine Product** – Shall mean a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include a tobacco product, a vapor product, food, or a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

 **2-7 Tobacco Product Retailer –** Shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use. Tobacco product retailer shall not mean the employees of an owner or operator of any manufacturer, producer, distributor, supplier, vending machine company, wholesaler or retailer of tobacco products.

**2-8 Vending Machine –** Shall mean any mechanical, electrical or electronic device that, on insertion of money, tokens or any other form of payment, dispenses tobacco products.

**2-9 School Property –** Shall mean a building, facility, structure, grounds and other real estate owned, leased, or otherwise controlled by a school district.

 **2-10 Health Department –** Shall mean the [name] County Health Department, and may be referred to herein this regulation as the “Department”.

 **2-11 Health Officer –** Shall mean the Administrative Director of the [name] County Health Department, and/or his or her authorized representatives.

 **2-12 Person –** Shall mean an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

**ARTICLE III – PROHIBITION OF TOBACCO PRODUCT SALES TO INDIVIDUALS UNDER 21 YEARS OF AGE**

 **3-1 Prohibition of Tobacco Product Sales to Individuals Under 21 Years of Age –** As of the effective date of this regulation, and consistent with the terms of Michigan S.B. 106 and H.R. 1865 (section 604; Public Law No: 116-94), it shall be unlawful for a person to sell or attempt to sell or deliver a tobacco product to an individual under twenty-one (21) years of age through any agent, employee, representative, or vending machine.

 **3-2 Signs Required –** Signs informing the public of the age restrictions provided for herein shall be posted by every tobacco retailer at or near every display of tobacco products, at the point of sale which offers tobacco products for sale. All notices must be posted in a manner conspicuous to both employees and consumers, unobstructed from view in their entirety, and within six feet of each register where tobacco products are available for purchase. [name] County shall provide this notice, which shall state “NO PERSON UNDER THE AGE OF 21 MAY BE SOLD TOBACCO PRODUCTS, INCLUDING VAPOR PRODUCTS.” The notice must be at least 14” by 11” and the words on the notice must be legibly printed in a high contrast red color with capitalized letters at least one inch high.”

 **3-3 Identification Required –** As of the effective date of this regulation, it shall be unlawful for a tobacco product retailer to sell or permit to be sold tobacco products to any individual without requesting and examining identification from the purchaser positively establishing the purchaser’s age of twenty-one (21) years or greater by doing one of the following:

 (a) If the individual appears to be under 30 years of age, examining a government-issued photographic identification that establishes that the individual is at least 21 years of age. That a person appeared to be over the age of thirty shall not constitute a defense to a violation of this section.

(b) For sales made by the internet or other remote sales method, the tobacco products must be delivered to a licensed retailer that agrees, whether or not for compensation, to hold the products at the licensed retailer's retail location until the consumer picks up the products at the retail location. A person shall verify that the consumer is at least 21 years of age before furnishing the tobacco product.

**ARTICLE IV –CERTAIN FREE DISTRIBUTIONS PROHIBITED**

 **4-1 Certain Free Distributions Prohibited –** No person shall deliver tobacco products to any other person at no cost or at nominal cost for product promotional purposes.

### **ARTICLE V - PROHIBITION OF TOBACCO PRODUCT USE IN SMOKE-FREE PLACES**

1. It shall be a violation of this Regulation to use any tobacco product in any place within [name] County where smoking of tobacco products is prohibited by law.
2. No person, employer, or nonprofit entity shall knowingly permit the use of tobacco products 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. This includes, but is not limited to, school property or public property within 100 feet of school property.

**ARTICLE VI – ENFORCEMENT**

 **6-1 Schedule of Monetary Civil Penalties**

 (1) Any tobacco product retailer who violates any provision of this Regulation 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; and Five Hundred Forty Dollars ($540.00) for a third violation; and One Thousand Eighty Dollars ($1,080.00) for fourth and subsequent violations.

1. Any person found to have violated this ordinance while acting as a non-management agent or employee of a tobacco retailer shall be subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community services provided by the [name] County Health Department within ninety (90) days of the violation.

 (2) Any person over 21 years of age who shall deliver tobacco products 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) Nothing in this regulation prohibits an underage person from handling tobacco products in the course of lawful employment by a tobacco retailer.

 (4) 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 [name] County Board of Health, or a committee thereof.

 (5) Each day that a violation continues shall be deemed as a separate violation.

**6-2 Violations**

 (1) The tobacco retailer shall be subject to at least two unannounced compliance checks per year. [name] County or its authorized agent shall conduct compliance checks by engaging persons between the ages of 18 and 20 to enter the tobacco retailer to attempt to purchase tobacco products. Unannounced follow-up compliance checks of all non-compliant tobacco retailers are required within three months of any violation of this ordinance. The results of all compliance checks shall be published by [name] County or its authorized agent at least annually and made available to the public upon request.

 (2)When, in 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.

 (3) Any person over 21 years of age who violates Article V of this regulation 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.

 (4) Each day a violation continues shall be deemed as a separate offense.

 (5) A violation of any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products is also a violation of this ordinance. In addition to any other penalty, a tobacco retailer who violates any provision of this ordinance or any federal, state, or local law, ordinance provision, or other regulation relating to tobacco products, shall be subject to penalties stated in this ordinance, including fines and a prohibition of the sale of tobacco products.

**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.