

ALGER COUNTY

RESOLUTION APPROVING REGULATION TO PREVENT THE SALE OF  
ELECTRONIC SMOKING DEVICES TO MINORS, AND TO PROHIBIT THE USE OF  
ELECTRONIC SMOKING DEVICES IN SMOKE-FREE PLACES

At a regular meeting of the County Board of Commissioners of Alger County ("County"), Michigan, held at the county government building on the 15th day of August 2016.

PRESENT: Commissioners Mattson, Pullen, Rondeau, VanLandschoot, and Doucette

ABSENT: None

The following Resolution was offered by Commissioner VanLandschoot and seconded by Commissioner Pullen.

WHEREAS, the counties of Luce, Mackinac, Alger and Schoolcraft operate and are the local governing entities of the LMAS District Health Department (the "Health Department"); and

WHEREAS, the Health Department desires to adopt a health regulation pursuant to the Michigan Public Health Code (MCL 333.2441) with regard to Electronic Smoking Devices, in order to protect the health and safety of the residents of Luce, Mackinac, Alger and Schoolcraft Counties; and

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

WHEREAS, the Health Department has proposed the adoption of a regulation to prevent the sale of electronic smoking devices to minors, and to prohibit the use of electronic smoking devices in smoke-free places (the "Regulation" attached as **Exhibit A**); and

WHEREAS, on July 11, 2016, the Health Department held a public hearing on the Regulation with proper notice in accordance with Section 2442 of the Public Health Code; and

WHEREAS, following the public hearing, the Health Department determined that the Regulation was in the best interests of the health and safety of residents of Luce, Mackinac, Alger and Schoolcraft Counties and adopted the Regulation; and

WHEREAS, the Health Department submitted a copy of the Regulation to the Luce Mackinac, Alger and Schoolcraft County Boards of Commissioners for approval or disapproval pursuant to MCL 333.2441; and

WHEREAS, the Alger County Board of Commissioners has reviewed the Regulation and determined that it is in the best interests of the health and safety of residents of Alger County; and



**LMAS DISTRICT HEALTH DEPARTMENT**

**REGULATION TO PROHIBIT THE SALE OF ELECTRONIC SMOKING DEVICES TO MINORS, AND TO PROHIBIT THE USE OF ELECTRONIC SMOKING DEVICES 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 Electronic Smoking Devices to Minors, and to Prohibit the Use of Electronic Smoking Devices 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 Luce, Mackinac, Alger and Schoolcraft Counties 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) LMAS District Health Department hereby finds and declares that:

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

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

(c) Electronic smoking devices emit vapor/aerosol which contains dangerous substances which are harmful to persons 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 Luce, Mackinac, Alger and Schoolcraft County Sheriff's Departments, 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 Luce, Mackinac, Alger and Schoolcraft Counties. 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** – LMAS District Health Department may amend, supplement or change this regulation or portions thereof, subject to the approval of the Board of Commissioners for Luce, Mackinac, Alger and Schoolcraft Counties.

**1-9 Approval and Effective Date** – This regulation shall become effective 45 days after approval by the Luce, Mackinac, Alger and Schoolcraft County Boards of Commissioners or at a time specified by the County Boards of Commissioners.

**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 Luce, Mackinac, Alger and Schoolcraft County Boards of Commissioners.

**1-11 Public Education** – The Health Officer shall conduct public education programs directed at informing electronic smoking device retailers and the general public about laws, rules and regulations related to electronic smoking device sales, the health effects of electronic smoking device use, and resources for electronic smoking device control programs.

**1-12 Investigations** – The Health Officer shall conduct investigations and make recommendations to the Board of Health as to the effectiveness of this regulation in denying access of electronic smoking devices to minors and provide periodic reports on the rate of electronic smoking device sales to minors in Luce, Mackinac, Alger and Schoolcraft Counties.

**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 LMAS District Health Department “Board of Health.”

**2-3 Electronic Smoking Device** – 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.

**2-4 Electronic Smoking Device Retailer** – Shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of electronic smoking devices are made to purchasers for consumption or use.

**2-5 Health Department** – Shall mean the LMAS District Health Department, and may be referred to herein this regulation as the “Department”.

**2-6 Health Officer** – Shall mean the Administrative Director of the LMAS District Health Department, and/or his or her authorized representatives.

**2-7 Person** – Shall mean an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

### **ARTICLE III – PROHIBITION OF ELECTRONIC SMOKING DEVICE SALES**

**3-1 Prohibition of Electronic Smoking Device Sales to Minors** – As of the effective date of this regulation, it shall be unlawful for a person to sell or attempt to sell or deliver an electronic smoking device to an individual under eighteen (18) years of age, and it shall be unlawful for a person under eighteen (18) years of age to purchase or attempt to purchase any electronic smoking device.

**3-2 Signs Required** – Signs informing the public of the age restrictions provided for herein shall be posted by every retailer at or near every display of electronic smoking devices, at the point of sale which offers electronic smoking devices for sale. 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.

**3-3 Identification Required** – As of the effective date of this regulation, it shall be unlawful for an electronic smoking device retailer to sell or permit to be sold electronic smoking devices to any individual without requesting and examining identification from the purchaser positively establishing the purchaser’s age of 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.

### **ARTICLE IV – CERTAIN FREE DISTRIBUTIONS PROHIBITED**

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

**ARTICLE V - PROHIBITION OF ELECTRONIC SMOKING DEVICE USE IN SMOKE-FREE PLACES**

- (a) It shall be a violation of this Regulation to use an electronic smoking device in any place within Luce, Mackinac, Alger and Schoolcraft Counties where smoking of tobacco products is prohibited by law.
- (b) No Person, Employer, or Nonprofit Entity shall knowingly permit the use of electronic smoking devices 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.

**ARTICLE VI – ENFORCEMENT**

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

(1) Any electronic smoking device 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.

(a) Any employee or agent of an electronic smoking device retailer who violates any provision 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.

(b) An employee or agent of an electronic smoking device retailer who violates any provision of this regulation as a first violation may participate in an electronic smoking device control educational program provided by the LMAS District Health Department within ninety (90) days of the violation in lieu of the monetary civil penalty.

(2) Any person who shall deliver electronic smoking devices 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 LMAS District Board of Health, or a committee thereof.

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

**6-2 Violations, Misdemeanor**

(1) When, in the discretion of the Health Officer, the penalty provided in section 5-1 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, or a fine of not more than Two Hundred Dollars (\$200.00), or both.

(3) Each day a violation continues shall be deemed as 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.