

# ADVISORY COMMUNICATION



**Date:** March 7, 2017

**To:** City of Edina Mayor and City Council

**From:** Caleb Schulz, MD, MPH  
Edina Community Health Commission

**Subject:** Community Health Commission Recommendations on the City of Edina Tobacco Regulations

**Attachments:**

1. Draft Ordinance Changes to Edina City Code Chapter 12, Article VI
2. Raising the Minimum Legal Sale Age for Tobacco to 21. Raymond Boyle, PhD, John Kingsbury, PhD, Michael Parks, PhD. Minnesota Medicine. January/February 2017
3. Minnesotans for a Smoke-Free Generation Tobacco 21 Fact Sheet

**Action Requested:**

The Edina Community Health Commission requests that the City Council consider revising Edina City Code Chapter 12, Article VI, to reduce youth tobacco use in the city by raising the minimum legal age to purchase tobacco to 21.

**Situation:**

Tobacco use is still the leading cause of preventable death and disease in Minnesota. If used as intended, cigarettes will kill more than half their users.<sup>i</sup> <sup>ii</sup> More than 6,000 Minnesotans die each year from tobacco use and smoking costs Minnesota more than \$3 billion annually in excess health care costs.<sup>iii</sup> The U.S. Surgeon General has identified the tobacco industry as the root cause of the smoking epidemic through its promotion of tobacco products to youth.<sup>iv</sup>

Raising the tobacco age to 21 will prevent youth tobacco use and save lives. The tobacco industry heavily targets young adults ages 16-21 in order to recruit new tobacco users and guarantee profits. Approximately 95 percent of current adult smokers started before they were 21.<sup>v</sup> Increasing the age gap between young people and those who can legally buy tobacco will reduce youth access to tobacco. Keeping tobacco out of high schools will reduce the number of youth under 18 who become addicted to smoking. Many youth get tobacco from other 18-19-year olds. In fact, 59 percent of 18-19-year-olds have been asked to buy cigarettes for someone younger.<sup>vi</sup> High school students are less likely to be around a 21-year-old than they would be an 18-20-year-old in a setting where they would ask for tobacco.<sup>vii</sup>

Tobacco executives are fully aware of the importance of young smokers to tobacco company profits. For example, one Phillip Morris executive said in 1986, "*Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20)*..."<sup>viii</sup>

The industry is constantly looking to replace smokers who die from diseases related to tobacco use. An RJ Reynolds executive stated in 1982, "*If a man has never smoked by age 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one.*"<sup>ix</sup>

# ADVISORY COMMUNICATION



Ages 18-21 are a critical time when young people move from intermittent smoking to daily use. Four out of five experimental smokers becomes daily smokers by age 21.<sup>x</sup>

The tobacco industry markets to youth in a variety of ways. For example, they sell cheap, colorful and flavored tobacco products. In July and August of 2016, an assessment of all sixteen tobacco vendors in the city of Edina found flavored cigars and electronic cigarette juice for sale in flavors such as strawberry, chocolate and fruit punch. These products are cheap and appealing to youth. For example, flavored cigars can be purchased in Edina for as little as \$1.69 for a two-pack, and seven stores sell flavored electronic cigarette liquid.<sup>xi</sup>

Despite overall tobacco rates declining, tobacco use is still a problem among Edina youth. In 2013, 12.8 percent of Edina 11<sup>th</sup> graders reported using tobacco in the last 30 days.

## **Tobacco Use in the Past 30 Days Among Edina High School Students – 2013\* MN Student Survey**

|  | <b>11<sup>th</sup> Grade Male</b> | <b>11<sup>th</sup> Grade Female</b> |
|--|-----------------------------------|-------------------------------------|
| <b>Smoke a cigarette</b>                         | 8%                                | 6%                                  |
| <b>Smoke cigars, cigarillos or little cigars</b> | 13%                               | 3%                                  |
| <b>Use chewing tobacco, snuff or dip</b>         | 9%                                | 0%                                  |

\*Edina 11<sup>th</sup> graders did not take the Minnesota Student Survey in 2016; therefore 2013 is the most recent data available for 11th graders.

## **Background:**

Nicotine is particularly harmful to the development of the adolescent brain. The addictive properties of nicotine can lead adolescents to heavier daily tobacco use and a difficult time quitting later in life.<sup>xii</sup> Evidence suggests that nicotine interferes with brain maturation and can have a long-term effect on cognitive development and mental health.<sup>xiii</sup> The lasting effect of nicotine on the adolescent brain is a serious public health concern.<sup>xiv</sup>

In 2015, the Institute of Medicine (now known as the National Academy of Medicine) published a report that found increasing the tobacco age to 21 would decrease smoking initiation among 15-17 year olds by 25 percent.<sup>xv</sup> A survey in the City of Needham, Mass., a city that raised the tobacco age to 21 in 2005, found that within five years, tobacco use among high school students decreased by nearly half.<sup>xvi</sup>

A national consensus is growing to protect young people from a lifetime of addiction and health problems caused by tobacco by raising the tobacco age. A 2014 national survey shows that 75 percent of adults favor increasing the tobacco age to 21. In addition, 70 percent of current smokers and 65 percent of young adults ages 18-24 support raising the minimum legal age.<sup>xvii</sup>

California, Hawaii and a growing list of more than 210 cities in the United States including Chicago, Kansas City and Cleveland have raised the minimum legal sale age for tobacco products to 21. With full support from the Community Health Commission, the City of Edina is well positioned to be the first city in the state of Minnesota to pass this kind of policy.

# ADVISORY COMMUNICATION



## Assessment:

A recent study published in *Minnesota Medicine* predicted the long-term impact of raising the tobacco age to 21. The study found that raising the tobacco age to 21 in Minnesota would result in 25 percent fewer 15-year-olds starting smoking by the time they turn 18; and 15 percent fewer 18-year-olds starting smoking by the time they turn 21. This translates to 30,000 Minnesota young people not becoming smokers over the next 15 years.<sup>xviii</sup>

## Recommendation:

A revision to the Edina City Code Chapter 12, Article VI, to reduce youth tobacco use in the city by raising the tobacco age to 21. There is national momentum around this issue and numerous community health benefits. The Community Health Commission recommends that a review of the ordinance and public hearing occur as soon as possible.

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<sup>i</sup> Prabhat Jha, M.D., Chinthanie Ramasundarathettige, M.Sc., Victoria Landsman, Ph.D., et al 21st-Century Hazards of Smoking and Benefits of Cessation in the United States. *N Engl J Med* 2013;368:341-50.

<sup>ii</sup> Banks E, Joshy G, Weber MF, et al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence. *BMC Medicine*. 2015; 13:38. doi:10.1186/s12916-015-0281-z.

<sup>iii</sup> Blue Cross and Blue Shield of Minnesota. Health Care Costs and Smoking in Minnesota. January 2017.

<sup>iv</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014.

<sup>v</sup> U.S. Department of Health and Human Services. Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings. Substance Abuse and Mental Health Services Administration - Center for Behavioral Health Statistics and Quality; September 2014. <https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs2014/NSDUH-DetTabs2014.pdf>.

<sup>vi</sup> Ribisl, K. M., Norman, G. J., Howard-Pitney, B., & Howard, K. A. (1999). Which adults do underaged youth ask for cigarettes? *Am J Public Health*, 89(10), 1561-1564.

<sup>vii</sup> Ahmad, S. (2005). Closing the youth access gap: the projected health benefits and cost savings of a national policy to raise the legal smoking age to 21 in the United States. *Health Policy*, 75(1), 74-84.

<sup>viii</sup> Philip Morris Discussion Draft of Sociopolitical Strategy. <http://legacy.library.ucsf.edu/tid/aba84e00/pdf>.

<sup>ix</sup> RJ Reynolds Estimated Change in Industry Trend Following Federal Excise Tax Increase. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=nnnw0084>.

<sup>x</sup> Campaign for Tobacco-Free Kids. Increasing the Sale Age for Tobacco Products to 21. [https://www.tobaccofreekids.org/what\\_we\\_do/state\\_local/sales\\_21](https://www.tobaccofreekids.org/what_we_do/state_local/sales_21).

<sup>xi</sup> Survey conducted by Association for Nonsmokers-Minnesota in July and August 2016.

<sup>xii</sup> Nelson, D. et al. Long-term trends in adolescent and young adult smoking in the United States: metapatterns and implications. *Am J Public Health*. 2008.

<sup>xiii</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014.

<sup>xiv</sup> Abreu-Villaca, Y et al. Short-term adolescent nicotine exposure has immediate and persistent effects on cholinergic systems: critical periods, patterns of exposure, dose thresholds. *Neuropsychopharmacology*. 2003.

<sup>xv</sup> National Academy of Medicine (formerly Institute of Medicine). Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products. National Academy Press. 2015.

# ADVISORY COMMUNICATION



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<sup>xvi</sup> Kessed Schneider S et al. Community reductions in youth smoking after raising the minimum tobacco sales age to 21. *Tob Control*. 2015.

<sup>xvii</sup> King BA et al. Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults. *Am J Prev Med*. 2015

<sup>xviii</sup> Boyle, R., Kingsbury, J. & Parks, M. Raising the Minimum Legal Sales Age for Tobacco to 21. *Minnesota Medicine*. 2017.

# EDINA CODE OF ORDINANCES

## ARTICLE VI. - SALE OF TOBACCO; LICENSING

### DIVISION 1. - GENERALLY

#### Sec. 12-189. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Child-resistant packaging** means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

**Compliance checks** means the system the city uses to investigate and ensure that those authorized to sell tobacco or tobacco-related products, and tobacco-related devices are following and complying with the requirements of this article. The term "compliance checks" also means the use of **persons under 21 years of age** who attempt to purchase tobacco or tobacco-related products, or tobacco-related devices, for education, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco or tobacco-related products, and tobacco-related devices.

**Electronic delivery device** and **e-cigarette** mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified 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 marketed and sold for such an approved purpose.

**Minor** means any natural person who has not yet reached the age of 18 years.

**Movable place of business** means any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

**Nicotine or lobelia delivery product** means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product,

**Comment [PHLC1]:** At some point, age-related findings may be needed. They can be incorporated into the adopted ordinance, or separately submitted onto the record.

We can help with that assistance when needed as well.

**Comment [PHLC2]:**  
**Why would this be added?**

Beginning January 1, 2015, liquids ("e-liquids" or "e-juice") that are sold for use in electronic delivery devices (more commonly referred to as "electronic cigarettes" or "e-cigarettes") must be in child-resistant packaging.

The child-resistant packaging requirement is – like most of our state tobacco licensing laws – enforced locally by the cities and counties.

It is practically difficult – if not impossible – for a local official to know whether any bottle (vial, etc.) of e-liquid was 1) designed and 2) tested to be child-resistant.

With a little ordinance language, cities and counties can make their enforcement responsibilities a little less burdensome. They can require their licensees to provide written documentation of their compliance. That language could or would be added to "Division III – Rules and Regulations."

The term "child-resistant packaging" has a critical – and specific – meaning in the regulations that follow. Defining all critical terms is considered a better or best practice.

**Comment [PHLC3]:**  
**Why would this be changed?**

Under current law – state and/or local – minors (18 and under) cannot purchase tobacco and related devices and products.

Minnesota law requires at least one "youth access" compliance check per year to monitor retailer compliance with the age restrictions. Minors – under law enforcement supervision – attempt to buy tobacco (and related devices and products).

When the minimum sales age is raised to 21, the city will want monitor whether retailers are selling to anyone under 21. To do so, 18, 19, and 20 year olds should also be used in some compliance checks.

or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

**Retail sale** means any transfer of goods for money, trade, barter or other consideration.

**Self-service merchandising** means the open displays of tobacco or tobacco-related products, or tobacco-related devices in any manner where any person shall have access to the tobacco or tobacco-related products, or tobacco-related devices, without the assistance or intervention of the licensee or the licensee's employee.

**Smoking lounge** means a location licensed to sell tobacco products where:

- (1) Except for a bona fide sale of a smoking device, provided or otherwise made available for use by a customer, potential customer, or any other person a smoking device for the purpose of smoking any tobacco product;
- (2) It is provided in exchange for a fee or any other consideration seating within or access to the indoor area of a tobacco products shop; or
- (3) It is permitted within the indoor area the sampling of any tobacco product which was not furnished by the tobacco products shop on the date and at the time the sampling occurs.

**Tobacco or tobacco-related product** means 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. The term "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.

**Tobacco-related device** means any tobacco product as well as a pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, ~~or smoking,~~ or the inhalation of vapors of tobacco or tobacco-related products. The term "tobacco-related device" includes electronic delivery devices and nicotine or lobelia delivery products.

**Vapor lounge** means a location that sells electronic delivery devices where:

- (1) Except for a bona fide sale of electronic delivery devices, provided or otherwise made available for use by a customer, potential customer, or any other person a device or product for the purpose of using an electronic delivery device product;
- (2) It is provided in exchange for a fee or any other consideration seating within or access to the indoor area of a shop that sells electronic delivery devices; or

**Comment [PHLC4]:**

**Why would this be added?**

Minnesota law requires a local license – city or county – to sell four types of products.

- **Tobacco** (cigarettes, cigars and other products made, containing, or derived from tobacco).
- **Tobacco-related devices** (pipes, rolling papers and the like).
- **Electronic delivery devices** (e-cigarettes and other devices that simulate smoking).

And

- Nicotine or lobelia delivery products (a product that contains/delivers nicotine or lobelia that isn't 1) tobacco or 2) an electronic delivery device).

The first three are specifically covered by the current ordinance (or code section), the fourth isn't.

Nicotine and lobelia delivery products aren't a big concern today. But the term would cover synthetics and other derivate – something that could become a bigger issue in the future.

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**Comment [PHLC5]:**

**Why would this be added/changed?**

Consistency and/or uniformity with state law.

Inhalation of vapors was added to the "tobacco-related device" definition we find in state law.

**Comment [PHLC6]:**

**Why would this be added?**

Most efficient way to add "nicotine or lobelia delivery products." Wherever "tobacco-related device" is found all throughout the regulations, nicotine or lobelia delivery products will be covered as well.

Note: While the most efficient way to add a new term, it's not necessarily the most ideal way to do it. If there is broader interest in

- (3) It is permitted within the indoor area of a shop that sells electronic delivery devices the sampling of any electronic delivery device product which was not furnished by the shop on the date and time the sampling occurs

**Vending machine** means any mechanical, electric or electronic, or other type of device which dispenses tobacco or tobacco-related products or tobacco-related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related product or tobacco-related devices.

**Secs. 12-190—12-216. - Reserved.**

## **DIVISION 2. - LICENSE**

**Sec. 12-217. - Required.**

No person shall keep tobacco, tobacco-related products or tobacco-related devices for retail sale or sell tobacco, tobacco-related products or tobacco-related devices at retail in the city without first obtaining a license from the city. No license shall be issued for the sale of tobacco, tobacco-related products or tobacco-related devices at a movable place of business or from a vending machine.

**Sec. 12-218. - License procedure.**

The provisions of article II of this chapter shall apply to all licenses required by this article and to the holders of such licenses, except that licenses shall be issued or denied by the sanitarian. The applications for a license shall be on forms provided by the sanitarian and shall be accompanied by the fee set forth in section 2-724.

**Sec. 12-219. - Term of license.**

Each license issued pursuant to this article shall expire on March 31 of each calendar year.

**Secs. 12-220—12-246. - Reserved.**



## DIVISION 3. - RULES AND REGULATIONS

### Sec. 12-247. - Legal age.

No person shall sell any tobacco, tobacco-related product or tobacco-related device to any person under the age of 21 and no person shall purchase or otherwise obtain such items on behalf of a person under the age of 21 ~~minor~~.

(1) **Age Verification.** Licensees shall verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older shall not constitute a defense to a violation of this subsection.

(2) **Signage.** Notice of the legal sales age and the age verification requirement shall be posted at each location where tobacco, tobacco-related products or tobacco-related devices are offered for sale. The required signage, which will be provided to the licensee by the city, shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase.

### Sec. 12-248. - Controlled substances.

No person shall sell or keep for sale any tobacco containing any controlled substance as defined in article VI of chapter 22, except nicotine or tobacco.

### Sec. 12-249. - Vending machine and movable place of business.

No person shall sell any tobacco, tobacco-related product or tobacco-related device from a vending machine or from a movable place of business.

### Sec. 12-250. - Self-service merchandising.

No person shall sell any tobacco, tobacco-related product or tobacco-related device by means whereby the customer may have access to such items without having to request assistance from an employee of the licensed premises. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco-related product or tobacco-related device between the customer and the licensee or employee. All tobacco, tobacco-related products or tobacco-related devices shall be stored or displayed behind a sales counter or in

#### Comment [PHLC7]: Why would this be added/changed?

In order to raise the minimum sales age to 21, and to prohibit people from purchasing tobacco on an underage person's behalf.

Note: These two restrictions are found in the city's current code, with only the minimum age changed from 18 to 21.

While it would apply to any sale, the restrictions are as a whole retail-retailer focused.

Unlike some other city ordinances, "gifting" or "furnishing" aren't specifically covered by these restrictions.

They can be added.

But if they are broadly added (covering all gifting/furnishing that happens anywhere in the city), you could create some of the "interactions" you are hoping to avoid.

They could be added more narrowly and only really apply to retailers. But, the expanded free sampling prohibition found in the FDA deeming regulation may make that change pretty unnecessary.

#### Comment [PHLC8]: Why would this be added?

In order to require retailers to check identification, as well as to provide a consequence under these regulations for those retailers who don't.

Federal law requires age verification for those under 27. This would raise the age commensurate with the higher minimum.

#### Comment [PHLC9]: Why would this be added?

To require licensees to post notice of the higher age and ID verification requirements.

Written so that the city will create the signage and the license will be required to use what is provided.



other rooms or display areas which are not freely accessible to customers. Provided, however, the requirements of this section shall not apply to establishments which:

- (1) Prohibit ~~minors~~ persons under 21 years of age from entering the establishment at all times unless accompanied by a parent or legal guardian;
- (2) Post notice advising of the prohibition is conspicuously displayed at all entrances to the establishment; and
- (3) ~~DEither derive at least 90 percent of their revenues from the sale of tobacco and tobacco-related products or limit self-service merchandising to cigars and cigar related products.~~

~~Sec. 12-251. Illegal possession.~~

~~No minor shall have in his possession any tobacco, tobacco-related product or tobacco-related device. This section shall not apply to minors lawfully involved in compliance checks.~~

~~Sec. 12-252. Illegal use.~~

~~No minor shall smoke, chew, sniff or otherwise use any tobacco, tobacco-related product or tobacco-related device.~~

~~Sec. 12-253. Illegal procurement.~~

~~No minor shall purchase or attempt to purchase or otherwise obtain any tobacco, tobacco-related product or tobacco-related device, and no person shall purchase or otherwise obtain such items on behalf of a minor. No person shall coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco-related product or tobacco-related device. This section shall not apply to minors lawfully involved in compliance checks.~~

**Sec. 12-254. - Use of false identification.**

No person under the age of 21 ~~minor~~ shall attempt to disguise his or her 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.

**Sec. 12-255. - Compliance checks and inspections.**

**Comment [PHLC10]:  
Why would this be added/changed?**

While self-service or open displays are generally prohibited, state law provides an exception for certain "adult-only" facilities. Under state law, that would be 18 and over.

If the minimum sales age is raised to 21, the minimum age to enter a tobacco-only shop in Edina could be raised as well. If an 18, 19, or 20 year old isn't allowed to purchase tobacco (and related devices and products), there's no real reason why they should be inside the store.

**Comment [PHLC11]:  
Why would this be added/changed?**

Because it is a typo. I guess it doesn't have to be changed, but they might want to fix it.

**Comment [PHLC12]:  
Why would this be added/changed?**

To align with state law.

**Comment [PHLC13]:  
Why would this be deleted?**

In order to remove the local-city age-based restriction.

**Comment [PHLC14]: Why would this be deleted?**

In order to remove the local-city age-based restriction.

**Comment [PHLC15]:** In order to remove the local-city age-based restriction.

Note: - The "procurement on behalf of a minor" content was retained, moved to the "legal age" section.

**Comment [PHLC16]:  
Why would this be added/changed?**

To cover any/all underage persons who might use false identification in order to attempt t

**Comment [PHLC17]:  
Why would this be changed?**

Gender equity.

- (a) All licensed premises shall be open to inspection by the city or other authorized official during regular business hours.
- (b) From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with ~~the written consent of their parents or guardians, minors persons~~ over 15 years but less than 218 years, to enter the licensed premises to attempt to purchase tobacco, tobacco-related products or tobacco-related devices.
- (1) Prior written consent is required for any minor who participates in a compliance check.
- (2) ~~Minors~~Persons used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel.
- (3) ~~Persons~~Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor unlawful possession of tobacco, tobacco-related products or tobacco-related devices when such items are obtained or attempted to be obtained as a part of the compliance check.
- (4) ~~3~~ No ~~person~~minor used in the compliance checks shall attempt to use a false identification misrepresenting the ~~person's~~minor's age, and all ~~persons~~minors lawfully engaged in a compliance check shall answer all questions about the ~~person's~~minor's age for which he or she is asked.
- (c) Nothing in this article 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.

#### Sec. 12-256. - Smoking and vapor lounges.

Smoking lounges and vapor lounges are prohibited.

#### Sec. 12 - 2 Liquid Packaging.

No person shall sell or offer to sell any liquid, whether or not such liquid contain nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

#### Secs. 12-257—12-273. - Reserved.

##### Comment [PHLC18]: Why would this be added/changed?

State law requires written parental/guardian consent for minors involved in compliance checks.

Consent would not be required for 18, 19, and 20 years-olds who act as "decoys." Written consent is still relevant, but its placement within the subsection could or should be altered.

##### Comment [PHLC19]: Why would this be changed?

So 18, 19, and 20 year olds can participate in compliance checks in order to monitor retailer compliance regarding all underage individuals.

##### Comment [PHLC20]: Why would this be added?

State law requires written parental/guardian consent for minors involved in compliance checks. Consent would not be required for 18, 19, and 20 years-olds. As such, this requirement could or should be moved to a different location in this subsection

##### Comment [PHLC21]: Why would this be changed?

If the minimum sales age is raised, "non-minors" will be used in these compliance checks as well. Use of "persons" is more accurate.

##### Comment [PHLC22]: Why would these changes be made?

If the minimum sales age is raised, "non-minors" will be used in these compliance

##### Comment [PHLC23]: Why would this be changed?

Gender equity.

##### Comment [PHLC24]: City can determine the appropriate section for this new regulation.

##### Comment [PHLC25]: Why would this be added?

Beginning January 1, 2015, liquids ("e-liquids" or "e-juice") that are sold for use in electronic delivery devices (more commonly referred to

## **DIVISION 4. - ENFORCEMENT; PENALTIES**

### **Sec. 12-274. - Violations.**

The notification and hearing process set forth in this division will apply to violations of this article.

### **Sec. 12-275. - Notice.**

Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violations and which shall inform the alleged violator of his rights to be heard on the accusation.

### **Sec. 12-276. - Hearings.**

If a person accused of violating this division so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

### **Sec. 12-277. - Hearing officer.**

The city council shall serve as the hearing officer until such time a hearing officer is appointed by the city council.

### **Sec. 12-278. - Decision.**

If the hearing officer determines that a violation of this article did occur, that decision along with the reasons for finding a violation and the penalty to be imposed under section 12-282, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

### **Sec. 12-279. - Appeals.**

Appeals of any decision made by the hearing officer shall be filed in the county district court.

**Sec. 12-280. - Misdemeanor prosecution.**

Nothing in the article shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this article. If the city elects to seek misdemeanor prosecution, an administrative penalty may also be imposed.

**Sec. 12-281. - Continued violation.**

Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**Sec. 12-282. - Penalties.**

The following administrative penalties will be applied as set forth in this section:

- (1) **Licensees.** Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine of:
  - a. \$75.00 for the first violation of this article;
  - b. \$200.00 for the second offense at the same licensed premises within a 24-month period;
  - c. \$250.00 for a third offense at the same location within a 24-month period and the license shall be suspended for not less than seven days; and
  - d. \$500.00 for a fourth offense at the same location within a 24-month period. In addition, after the fourth offense, the license shall be revoked.
- (2) **Other individuals.** Other individuals, other than persons/minors regulated by subsection (3) of this section, found to be in violation of this article shall be charged an administrative fee of \$50.00.
- (3) **Underage persons/Minors.** Persons under 21 years of age Minors who use or are found in unlawful possession of, or who unlawfully purchase or attempt to use false identification to purchase, tobacco, tobacco-related products or tobacco-related devices may be subject to tobacco-related education classes, shall be charged an administrative fee of \$75.00 per offense or a minimum fee of \$25.00 and satisfactory completion of a diversion programs, community service, or other penalty that acceptable to the city believes will be appropriate or effective.

**Comment [PHLC26]:**  
Why would this be changed?

Because some adults will also be covered by the penalty provided in subsection 3 – not just minors any more.

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**Comment [PHLC27]:**  
Why would this be changed?

The prohibited activities (possession, use, and purchase) have been stripped out of the section, leaving only false identification.

Administrative fine removed, with alternative consequences prioritized.

- (4) **Misdemeanor.** Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this article.

**Sec. 12-283. - Exceptions and defenses.**

~~Nothing in this article shall prevent the providing of tobacco, tobacco-related products or tobacco-related devices 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 article for a person to have reasonably relied on proof of age as described by state law.

**Secs. 12-284—12-314. - Reserved.**

**Comment [PHLC28]:**  
**Why would this be changed?**

The “use” and “possession” restrictions have been stripped out of these regulations.

As such, it is not necessary to specifically provide an exception that would allow minors (or 21 and under) from using tobacco during these types of ceremonies.

# Raising the Minimum Legal Sale Age for Tobacco to 21

## *The Estimated Effect for Minnesota*

BY RAYMOND G. BOYLE, PHD, JOHN H. KINGSBURY, PHD, AND MICHAEL J. PARKS, PHD

A campaign to raise the minimum legal sale age for tobacco products from 18 to 21 years known as Tobacco 21 is having a nationwide impact, with at least 200 localities in 14 states having already implemented a Tobacco 21 policy. A 2015 report from the Institute of Medicine (IOM) estimated the effects of such policy on cigarette use at the national level; however, little is known about the expected effects for individual states. The purpose of this study was to consider the effect on smoking initiation in Minnesota if the minimum sale age were 21 in 2015. Estimates from the Minnesota Adolescent Community Cohort and Minnesota Adult Tobacco Survey were used to calculate the uptake of smoking in a hypothetical cohort of Minnesota adolescents 15 to 20 years of age. Expected reductions in initiation in the IOM report were used to calculate the effects of Tobacco 21 policy on smoking uptake in this cohort. Results revealed that raising the sale age to 21 in 2015 would prevent 3,355 young Minnesotans from starting to smoke.

Minnesota addresses tobacco use through a comprehensive approach that includes coordinating smoke-free policies, promoting normative changes in the social acceptability of tobacco use, establishing and expanding the reach of cessation programs, keeping the price of tobacco high and preventing young people from initiating tobacco use. The overall effect of these actions has been a 35% reduction in cigarette smoking in Minnesota since 1999;<sup>1</sup> however, tobacco use remains popular among young adults in Minnesota and nationally.<sup>1,2</sup>

The persistence of tobacco use among young adults, coupled with an evolving marketplace that includes new flavored products (eg, flavored cigars and cigarillos) and new delivery methods (eg, electronic cigarettes), has led to a desire for increased regulation of tobacco. In 2009

the U.S. Congress granted authority to the Food and Drug Administration (FDA) through the Family Smoking Prevention and Tobacco Control Act to regulate the manufacture, distribution and marketing of tobacco products.<sup>3</sup>

Although this law prohibited the FDA from increasing beyond age 18 the national minimum sale age for tobacco products, state and local governments are able to raise the minimum sale age for tobacco. In addition, the law required a study of the health implications of a higher minimum age of legal access. The Institute of Medicine (IOM), now the National Academy of Medicine, conducted the study using national data to consider the effects of different minimum purchase ages (19, 21 or 25 years) and examine multiple outcomes, including preventing young people from starting and encouraging current smokers to quit smoking, and the health benefits from reduced smoking because of an in-

creased purchase age. Nationally, increasing the purchase age to 21 would result in approximately 223,000 fewer premature deaths and 50,000 fewer deaths from lung cancer.<sup>4</sup>

Adolescents younger than age 18 frequently obtain tobacco from social sources who are older than 18 but younger than 21.<sup>5</sup> If tobacco could not be sold to 18- to 20-year-olds, they would be far less likely to provide tobacco to younger teens. By age 21, young adults are likely to have friends older than high-school age and, therefore, less likely to provide tobacco to minors.

The IOM's 2015 report is particularly important because it provides scientific guidance for state and local governments as they seek to protect public health. Although the report provided novel information on the expected effects of Tobacco 21 policy on a national level, it provided little

information about the expected effects at a state level.

The purpose of this study was to consider the effects on smoking initiation in Minnesota if the legal minimum sale age for tobacco products were 21. The specific goal was to calculate how many young people ages 15 to 20 years would not start smoking if the assumptions from the IOM report were applied to Minnesota.

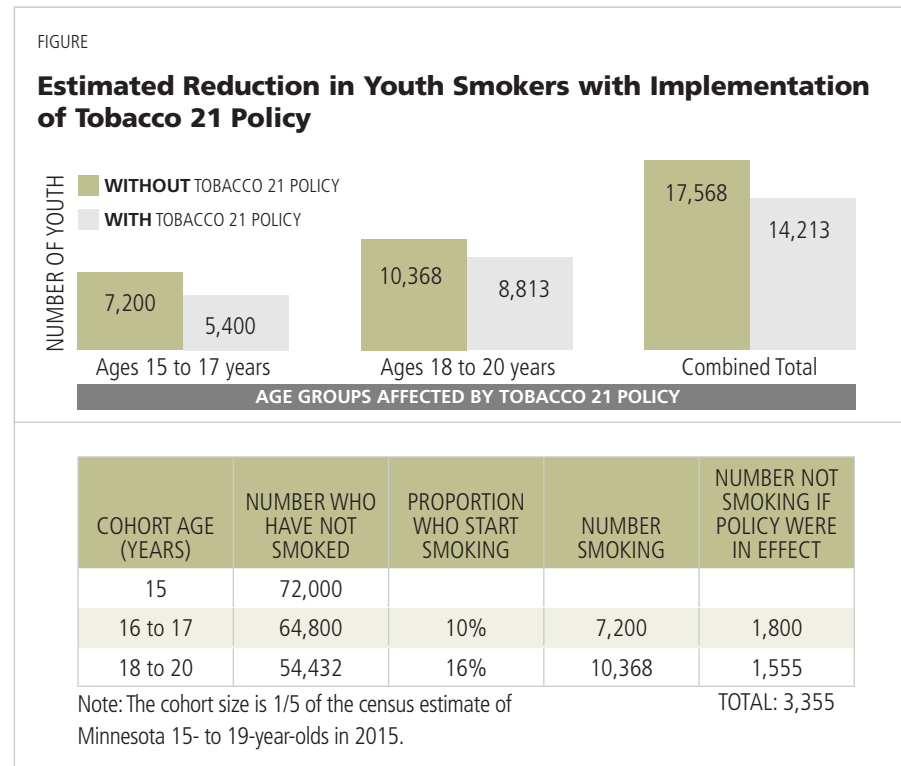
## Methods and Assumptions

**Age groups:** The 2015 IOM report examined effects among specific age groups: under 15 years, 15- to 17-year-olds and 18- to 20-year-olds. In this analysis, we limited the consideration to ages 15 and older.

**Initiation rate:** Cohort studies that follow participants over time provide the best estimates of smoking initiation. The Minnesota Adolescent Community Cohort (MACC) study was a population-based study of Minnesota youth ages 12 to 16 in 2000 who were followed until 2008. In 2003, approximately 19% of the cohort reported smoking in the previous month.<sup>6</sup> Smoking among Minnesota high school students has fallen to about 10% since 2003. Therefore, in this analysis we used 10% as the estimate of smoking initiation among youth 15 to 17 years of age.

In a later analysis of the MACC data, 16% of the cohort who did not start smoking in high school took up smoking (smoked in the past month) between the ages of 18 and 21.<sup>7</sup> This estimate of smoking uptake is consistent with the prevalence of smoking among young adults in the Minnesota Adult Tobacco Survey. For this analysis we used 16% as the estimate of 18- to 20-year-olds who would initiate smoking.

**Estimated effects of Tobacco 21 policy:** An increase in the minimum sale age is expected to apply to all commercial tobacco products; however, for the purpose of estimating effects similar to those in the IOM report, the scope of this study was restricted to cigarette smoking. In addition,



tion, the expected reduction in smoking initiation is thought to vary by age. The effect is expected to be larger among youth 15 to 17 years of age, with an expected reduction in the uptake of smoking of 25%. Among those 18 to 20 years of age, the expected reduction is 15%.<sup>4</sup>

**Variation by demographic variables:** Smoking rates vary substantially by population groups in Minnesota. For example, in 2014 the overall adult smoking rate was about 14%,<sup>1</sup> but within the urban American Indian population the smoking rate was 59%.<sup>8</sup> There is a lack of literature on how smoking initiation would be affected in population groups with higher smoking rates if the sale age were increased. Thus, the estimate here is not adjusted by gender or other demographic variables (eg, race/ethnicity, income).

**Enforcement:** States are required to enact and enforce laws prohibiting the sale or distribution of tobacco products to individuals younger than 18 years of age. A major assumption of Tobacco 21 policy is that the same level of current enforcement and retailer compliance would remain in effect. Although Minnesota has a high rate of retailer compliance with current law,<sup>9</sup> retailer cooperation has been lower

in other places. For example, in New York City, compliance has fallen over time after Tobacco 21 policy was implemented.<sup>10</sup>

**Calculation:** In this analysis, we began with a cohort of Minnesota 15-year-olds in 2015—approximately 72,000. We estimated the smoking initiation rate in two periods: during high school (ages 15 to 17 years) and after high school (ages 18 to 20 years). Next, the reduction in smoking was calculated for each period if the sale age for tobacco were raised to 21 in 2015. We assumed that the smoking uptake in high school and after high school would not change in future years. The difference is reported as the number of young people 15 to 20 years of age who would not have started smoking.

## Results

In 2015, the Minnesota population of those 15-year-olds was approximately 72,000. Of these, an estimated 7,200 will start smoking during their high school years. If the minimum legal sale age in 2015 were 21, an estimated 1,800 would not start smoking in high school.



Of those who finished high school without initiating smoking, 10,368 will begin smoking between ages 18 and 21. Under a Tobacco 21 policy, 1,555 fewer young people would start smoking after high school. Overall, 3,355 fewer young people would start smoking in this cohort of youth if a Tobacco 21 policy were in effect (see Figure). In other words, increasing the sale age to 21 would increase the proportion of nonsmokers in a cohort of 15-year-olds from 76% to 80%.

## Discussion

Increasing the sale age to purchase tobacco products from 18 to 21 would have a positive effect on Minnesota, where tobacco use remains popular among young adults.<sup>1</sup> Given that almost 95% of smokers start smoking by age 21, raising the age of sale to 21 years would prevent the vast majority of young people from becoming addicted to the nicotine in tobacco.

At least 200 localities in 14 states have raised the minimum legal sale age for tobacco products to 21 years.<sup>11</sup> Notably, Hawaii was the first state (2015) followed by California (2016), and New York City (2013) is the largest city to adopt a Tobacco 21 policy. This policy has broad support and is viewed positively by both smokers and nonsmokers. In New York City, 60% of smokers and 69% of nonsmokers have supported the age increase.<sup>12</sup> In a national sample of adults, 70.5% supported the increase.<sup>13</sup> And in an online survey, 77.5% of never smokers and 70% of current smokers either strongly favored or somewhat favored raising the legal purchasing age to 21.<sup>14</sup>

We acknowledge that some young people will begin using tobacco at a later age. The amount is unknown; but even if 5% eventually take up smoking, this would not diminish the overall effect of Tobacco 21 policy. In addition, while we have highlighted how Tobacco 21 would inhibit more than 3,300 youth from initiating smoking, it is important to note the policy could have additional and more indirect benefits. Youth tend to respond more

strongly to smoking bans than to other types of tobacco control<sup>15</sup> in part because a ban is an unambiguous anti-tobacco message that indirectly influences social norms, creating a social environment that discourages health-risk behavior.<sup>16</sup> Put differently, the effects of Tobacco 21 policy would extend into the future as new cohorts of young people do not start using tobacco.

Our analysis considered only cigarette smoking; but a Tobacco 21 policy would apply to all tobacco products. Whether the effects of raising the purchasing age to 21 would be similar across all demographic and racial/ethnic groups is not known. Similar to the IOM, we did not adjust the Minnesota estimate for any variation by demographics other than age. This question should be examined when there is sufficient data on communities that have implemented the policy.

## Conclusion

Raising the minimum sale age for tobacco to 21 would prevent the uptake of smoking among youth and young adults, subsequently reducing smoking prevalence over time. Applying national estimates from the 2015 IOM report to Minnesota, we found that implementing a Tobacco 21 policy could have a marked impact on smoking initiation among Minnesota's young people. Tobacco 21 should be considered an effective strategy for reducing smoking initiation. Preventing smoking among youth remains a primary focus for reducing morbidity and mortality as well as promoting health across the lifespan. **MM**

Raymond Boyle is director of research programs for ClearWay Minnesota. John Kingsbury and Michael Parks are research scientists for the Minnesota Department of Health.

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# INCREASING THE TOBACCO PURCHASE AGE TO 21

**Minnesotans agree** that kids shouldn't use tobacco products – and more can and should be done to make sure they don't. A national consensus is growing to prevent addictions and future health problems by **raising the minimum age to purchase tobacco products to 21**. Minnesotans for a Smoke-Free Generation supports this movement.

RAISING THE PURCHASE AGE TO 21 WILL PREVENT YOUTH TOBACCO USE AND SAVE LIVES.



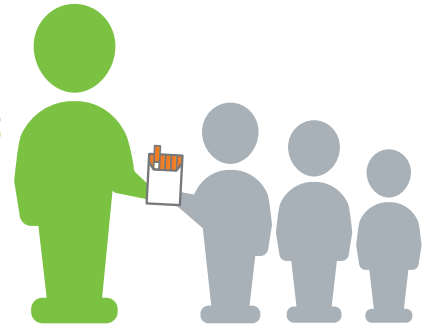
According to a 2015 report from the Institute of Medicine, increasing the legal age to purchase tobacco will mean fewer teenagers starting to smoke. For example, research predicts a 25 percent reduction in smoking initiation among 15-17-year-olds alone following such an increase.<sup>1</sup>

THE BEST WAY TO REDUCE THE HARM OF TOBACCO IS TO PREVENT KIDS FROM STARTING

- Almost 90 percent of addicted adult smokers started smoking by age 18.<sup>2</sup>
- Increasing the age gap between kids and those who can legally buy tobacco will help remove access to tobacco products from the high-school environment.



BIG TOBACCO ACTIVELY RECRUITS REPLACEMENT SMOKERS TO GUARANTEE PROFITS.



- The tobacco industry heavily **targets 18-to-21-year olds** with menthol and candy flavoring, magazine advertisements, product design and packaging, and event sponsorships and promotions.<sup>3</sup>

ADULTS SUPPORT RAISING THE TOBACCO PURCHASE AGE TO 21.

- A 2014 national survey shows that **75 percent** of adults favor increasing the minimum **purchase age for tobacco to 21**.<sup>4</sup>
- Even **70 percent of smokers** are in support of raising the minimum legal age.<sup>4</sup>



## STATE AND LOCAL GOVERNMENTS ARE TAKING ACTION TO INCREASE THE MINIMUM LEGAL AGE AND PROTECT YOUTH.

- The state of Hawaii and at least 125 localities in the United States have raised the age to purchase tobacco to 21, including New York City, Boston and Kansas City.
- One city in Massachusetts found that tobacco use among high-school students **fell by nearly half** after raising the age to 21.<sup>5</sup>



## NICOTINE MAY HARM ADOLESCENT BRAIN DEVELOPMENT.

- Nicotine is addictive, and adolescents are especially vulnerable to the health impacts of tobacco use.<sup>6</sup>
- The adolescent brain is negatively impacted by nicotine, and its long-term effects are a significant public health concern.<sup>7,8</sup>



Minnesotans for a Smoke-Free Generation is a coalition of Minnesota's leading health and other interested organizations. We share a common goal of saving Minnesota youth from a lifetime of addiction to tobacco. Each year in Minnesota tobacco use is responsible for more than 5,100 deaths and almost \$3 billion in preventable health care costs and 90 percent of adult smokers started before the age of 18. Minnesotans for a Smoke-Free Generation supports policies that reduce youth smoking and help end the death and disease associated with tobacco use.

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