

MEMORANDUM

To: Members of the Dublin City Council

CC: Dana McDaniel, City Manager

From: Jennifer D. Readler, Law Director
Thaddeus M. Boggs

Date: May 4, 2017

Re: Ordinance 24-17 - Amending the Dublin Codified Ordinances to Prohibit the Sale or Other Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products to Persons Under 21 Years Old.

Ordinance 24-17, to prohibit the sale of tobacco to persons under the age of 21 in the City of Dublin, was introduced and received its first reading at Council's April 24, 2017 meeting. At earlier meetings, concerns were expressed from Council members regarding enforcement of the proposed age restriction. Similar concerns were raised by Rob Crane, M.D., of the Preventing Tobacco Addiction Foundation, who initially presented this issue to Council earlier in the year.

Since the ordinance's introduction, legal staff, the City Manager, and the Chief of Police have met with Dr. Crane and Micah Berman of The Ohio State University's colleges of law and of public health. These discussions have reinforced the need for effective enforcement to ensure that a tobacco-21 ordinance would have its intended effect. Because the ordinance is primarily a public health measure, the parties to these discussions have agreed that the most effective enforcement would come from public health professionals.

The City of Dublin contracts with Franklin County Public Health (FCPH) for its public health-related services, and consequently does not have public health professionals on City staff. FCPH serves townships, unincorporated areas of the county, and several other suburban municipalities within Franklin County. The goal of effectively enforcing tobacco-21 legislation creates an opportunity for collaboration and shared service between the City of Dublin, FCPH, and FCPH's other municipal clients.

Staff therefore recommends that Council table Ordinance 24-17 so that a comprehensive plan for enforcement can be discussed with FCPH and other FCPH-served municipalities. The City Manager has volunteered to reach out to the Franklin County Health Commissioner to start this process. The intention of these discussions is to create a practical plan for enforcement within Dublin and beyond. This plan was discussed in staff's most recent meeting with Dr. Crane, who agreed that this is an opportunity for the City of Dublin to take the lead and pursue a tobacco-21 enforcement policy that can be a model for other communities across Ohio.

MEMORANDUM

To: Members of Dublin City Council

CC: Dana L. McDaniel, City Manager

From: Jennifer D. Readler, Law Director
Thaddeus M. Boggs

Date: April 20, 2017

Re: Ordinance 24-17 - Amending the Dublin Codified Ordinances to Prohibit the Sale or Other Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products to Persons Under 21 Years Old.

BACKGROUND

Council recently heard a presentation regarding local efforts to increase the age-of-sale for tobacco products from eighteen years old to twenty-one years old. This movement, commonly known as “Tobacco-21,” has spread across the country in recent years as over 200 municipalities, as well as the states of Hawaii and California, have passed legislation to limit the sale of tobacco products to individuals over twenty-one. In Ohio, six cities have adopted Tobacco-21 legislation since 2015, most recently including the City of Columbus in December of 2016. Additionally, Upper Arlington, Bexley, Grandview Heights, and New Albany have adopted Tobacco-21 ordinances.

At its April 10, 2017 meeting, Council gave direction to Staff to move forward with legislation increasing the age-of-sale for tobacco products from eighteen years old to twenty-one years old. Council also asked that all of the potentially affected retailers be notified of the consideration of this Ordinance and we have provided that notice.

ORDINANCE SUMMARY

The Tobacco-21 ordinance provided draws upon the others to create an effective and enforceable measure. The features include:

- Confronting tobacco at its source by focusing on the entity selling to persons under 21.
- Creating a distinct violation for sales to persons between 18 and 21, rather than having the same prohibition apply to children and persons 18–21.

- This avoids inadvertent conflict with state law with respect to the provisions applicable to children.

Council may notice that, unlike Columbus’s recent Tobacco-21 ordinance, our suggested ordinance does not propose creation of a new licensing system for the City of Dublin. This is due partially to concerns related to the staffing resources necessary to administer such a system. Columbus has a health department with staff equipped to administer its system, while Dublin does not have comparable capacity. Additionally, if challenged, the licensing system could be vulnerable to invalidation on state preemption grounds. These issues are described more fully in the remainder of the memo.

LAW AND ANALYSIS

Ohio municipalities have authority to adopt Tobacco-21 ordinances as a matter of municipal home-rule. The Home Rule Amendment to the Ohio Constitution gives municipalities authority to “adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” A municipal ordinance only conflicts with a general law where it permits what the state’s general law forbids, or forbids what the state’s general law permits. *See, e.g., Middleburg Hts. v. Ohio Bd. of Bldg. Standards*, 65 Ohio St.3d 510, 513, 605 N.E.2d 66 (1992), citing *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923).

Ohio law prohibits the sale of tobacco products to persons under the age of eighteen. O.R.C. § 2927.02. The State requires that any wholesaler or retailer of cigarettes obtain a license for that activity from the county auditor under procedures established by state law. O.R.C. § 5743.15. The county auditor must issue the retail license to the applicant upon receipt of a completed application and presentation of proof of payment of the license fee to the county treasurer. O.R.C. § 5743.15(B)(2). The statute and rules providing for the retail cigarette license does not state that the license permits sale to anyone over the age of eighteen. Therefore, because sale to anyone over eighteen is not expressly permitted by Ohio law, municipalities may use their home-rule authority to raise the minimum age of sale.

1. Penalties for Violation: Criminal prosecution, including potential jail time, vs. civil enforcement.

Violation of the State’s law against sale or distribution of tobacco products to minors (anyone under eighteen) is a fourth-degree misdemeanor for a first offense, and a third-degree misdemeanor for subsequent offenses. The potential penalties for a fourth-degree misdemeanor are a fine up to \$250 and up to thirty days in jail, while the potential penalties for a third-degree misdemeanor are a fine up to \$500 and up to sixty days in jail. O.R.C. §§ 2929.24; 2929.28.

Except for Upper Arlington (which makes violation an unclassified misdemeanor subject to increasing fines but includes no potential jail time) the other Central Ohio municipalities that have enacted Tobacco-21 ordinances have adopted fourth-degree misdemeanor and third-degree misdemeanor penalties for sale or distribution of tobacco products to persons under the age of twenty-one. All of the municipalities now limit the application to the vendor of the tobacco product, not to the under-21 person’s possession of the tobacco product. Cleveland, which has

had a Tobacco-21 law in place since April 2016, follows suit. The approach of targeting the sale, rather than the possession, reflects the consensus approach for Tobacco-21 efforts nationwide.

All Tobacco-21 ordinances in Central Ohio address violations as a criminal matter, while Columbus has an additional retailer licensing component. Columbus is still in the education and licensing phase to set up enforcement of its ordinance, so active enforcement has not yet begun. Cleveland did not provide data regarding whether citations have been issued (the ordinance is administered by the city's health department). Grandview Heights police have confirmed that they have not issued citations for violations of Grandview Heights' ordinance. Likewise, neither Bexley, New Albany, nor Upper Arlington have had charges filed for non-compliance with their respective ordinances. These suburban cities each have only a small number of retailers who sell tobacco products (New Albany, for example, only has one tobacco retailer).

2. Enforcement through licensure and state preemption risk.

Columbus, with the most recent ordinance, has also imposed a local licensing system for cigarettes and other tobacco products, including e-cigarettes and chewing tobacco. Columbus's ordinance would prohibit retailers from selling or distributing these products without getting a valid license from the Columbus Board of Health, without reference to whether the retailer has a retail cigarette license provided under Ohio law. A retailer that violates the section by selling or distributing without a license is guilty of a first-degree misdemeanor (potential fine up to \$1,000 and up to 180 days in jail). A repeat violator can be prohibited from obtaining a local license for up to five years. All fines collected under this section are to be deposited into a "Tobacco Enforcement and Education Fund" maintained by Columbus.

One concern with creating a licensing system for Dublin is that it requires staff resources for tracking and enforcement. Columbus has a health department with staff; Dublin does not. For this reason, the licensing system advanced by Columbus may not be a practical approach for each municipality, including Dublin.

Although Columbus's licensing section is a creative method to obtain compliance with the Tobacco-21 ordinance, by identifying tobacco retailers in the jurisdiction and seeking to fund enforcement activities, it risks invalidation if challenged. The Ohio Supreme Court has invalidated a similar local licensing system for private investigators in *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 602 N.E.2d 1147 (1992). There, the city attempted to exact a \$15.00 registration fee from any private investigator practicing within the city. State law stated that no fees would be charged by the state or any political subdivision for conducting a private investigation business. *Id.* at 243. The court stated that "inasmuch as the local ordinance restricts an activity which a state license permits, the ordinance is in conflict with a general law of the state and violates" the Home Rule Amendment. *Id.* at 245. The court had also reached a similar conclusion in *Westlake v. Mascot Petroleum Co.*, 61 Ohio St.3d 161, 573 N.E.2d 1068 (1991) when it invalidated a zoning ordinance that prohibited liquor establishments that had valid permits from the Ohio Department of Liquor Control. More recent rulings have reaffirmed that municipalities cannot, through local licensing ordinances, prohibit activities permitted by state permits. *See State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St.3d 271, 2015-Ohio-485, 37 N.E.3d 128, ¶¶26–27. Based on the authorities mentioned above, a local licensing system is vulnerable to challenge.

DUBLIN POLICE DEPARTMENT REVIEW

The Dublin Police Department has reviewed the proposed Tobacco-21 legislation and will support the new law. Investigations of alleged violations will be on a complaint driven basis.

CONCLUSION

Staff recommends that Council approve Ordinance 24-17 at the second reading/public hearing on May 8, 2017 to increase the age-of-sale for tobacco products from eighteen years old to twenty-one years old.

RECORD OF ORDINANCES

Ordinance No. 24-17

Passed _____, 20____

AN ORDINANCE AMENDING THE DUBLIN CODIFIED ORDINANCES TO PROHIBIT THE SALE OR OTHER DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER 21 YEARS OLD.

WHEREAS, every year tobacco products lead to the deaths of nearly one-half million Americans and drain more than \$268 billion in directly related healthcare and lost productivity costs; and

WHEREAS, nearly all adult smokers began smoking before the age of 18, while very few smokers start smoking after the age of 21, according to a 2015 white paper published by The Ohio State University College of Public Health; and

WHEREAS, studies have shown that many children under the age of 18 who smoke obtain their cigarettes from acquaintances who are 18-20; and

WHEREAS, to date, over 200 communities across the United States, as well as the States of Hawaii and California, have passed legislation to raise the minimum age for tobacco sales to 21 years old; and

WHEREAS, since 2015, six municipalities in the State of Ohio have adopted ordinances increasing the age for tobacco sales to 21 years old; and

WHEREAS, raising the age for tobacco sales in the City of Dublin would lessen the accessibility of tobacco to minors and further the City's interest in furthering the health, safety, and general welfare of the residents of the City of Dublin.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, Delaware, Franklin, and Union Counties, State of Ohio, _____ of the elected members concurring that:

Section 1. Section 135.17, Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products; Transaction Scans, in the General Offenses Code, is hereby amended to read as follows:

§ 135.17 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS.

(A) *Illegal distribution of cigarettes, other tobacco products, or alternative nicotine products.*

(1) As used in this section:

AGE VERIFICATION. A service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is ~~18~~ 21 years of age or older.

ALTERNATIVE NICOTINE PRODUCT.

1. Subject to division 2. of this definition, an electronic cigarette or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling.

2. The phrase does not include any of the following:

- a. Any cigarette or other tobacco product;
- b. Any product that is a "drug" as that term is defined in 21 U.S.C. § 321(g)(1);
- c. Any product that is a "device" as that term is defined in 21 U.S.C. § 321(h);
- d. Any product that is a "combination product" as described in 21 U.S.C. § 353(g).

CHILD. Has the same meaning as in R.C. § 2151.011.

CIGARETTE. Includes clove cigarettes and hand-rolled cigarettes.

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DISTRIBUTE. Means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

ELECTRONIC CIGARETTE .

1. Subject to division 2. of this definition, any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.

2. The phrase does not include any item, product, or device described in division 2. of the definition for "alternative nicotine product" in this section.

PERSON UNDER 21. For purposes of this section, means a person who has reached the age of 18 years but has not yet reached the age of 21 years.

PROOF OF AGE. Means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under R.C. §§ 4507.50 to 4507.52 that shows that a person is ~~18~~ 21 years of age or older.

TOBACCO PRODUCT. Means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

VENDING MACHINE. Has the same meaning as "coin machine" in R.C. § 2913.01.

(2) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:

(a) Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any child;

(b) Give away, sell, or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under ~~18~~ 21 years of age is prohibited by law;

(c) Knowingly furnish any false information regarding the name, age, or other identification of any child or person under 21 with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that child or person under 21;

(d) Manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;

(e) Sell cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;

(f) Give, sell, or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification.

(g) Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any person under 21.

(3) No person shall sell or offer to sell cigarettes, other tobacco products, or alternative nicotine products by or from a vending machine, except in the following locations:

(a) An area within a factory, business, office, or other place not open to the general public;

(b) An area to which children are not generally permitted access;

(c) Any other place not identified in division (A)(3)(a) or (A)(3)(b) of this section, upon all of the following conditions:

1. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes, other tobacco product, and alternative nicotine product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom,

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restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

2. The vending machine is inaccessible to the public when the place is closed.

(4) The following are affirmative defenses to a charge under division (A)(2)(a) and (A)(2)(g) of this section:

(a) The child or person under 21 was accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child.

(b) The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child under division (A)(2)(a) of this section or to a person under 21 under division (A)(2)(g) of this section is a parent, spouse who is 18 years of age or older, or legal guardian of the child or person under 21.

(5) It is not a violation of division (A)(2)(a), ~~or (A)(2)(b)~~, or (A)(2)(g) of this section for a person to give or otherwise distribute to a child or person under 21 cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the child or person under 21 is participating in a research protocol if all of the following apply:

(a) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol, or the person under 21 has consented in writing on his or her own behalf.

(b) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

(c) The child or person under 21 is participating in the research protocol at the facility or location specified in the research protocol.

(6)(a) Whoever violates division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e), or (A)(2)(f) or (A)(3) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e), or (A)(2)(f) or (A)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(b) Whoever violates division (A)(2)(c) of this section is guilty of permitting children to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(c) of this section or a substantially equivalent state law or municipal ordinance, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(c) Whoever violates division (A)(2)(g) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under 21. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under 21 shall be a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(c) or (A)(2)(g) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products to a person under 21 is a misdemeanor of the third degree.

(7) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child in violation of this section and that are used, possessed, purchased, or received by a child in violation of R.C. § 2151.87 are subject to seizure and forfeiture as contraband under R.C. Chapter 2981.

(B) *Transaction scan.*

(1) As used in this division and division (C) of this section:

CARD HOLDER. Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes, other tobacco products, or alternative nicotine products from a seller, agent, or employee.

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IDENTIFICATION CARD. Means an identification card issued under R.C. §§ 4507.50 through 4507.52.

SELLER. Means a seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, other tobacco products, or alternative nicotine products is subject to the prohibitions of division (A) of this section.

TRANSACTION SCAN. Means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes, other tobacco products, or alternative nicotine products.

TRANSACTION SCAN DEVICE. Means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes, other tobacco products, or alternative nicotine products.

(b) If the information deciphered by the transaction scan performed under division (B)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes, other tobacco products, or alternative nicotine products to the card holder.

(c) Division (B)(2)(a) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes, other tobacco products, or alternative nicotine products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (B) and division (C) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder;
2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (B)(4)(a) of this section, except for purposes of division (C) of this section.

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (C) of this section or another section of this code or the Ohio Revised Code.

(5) Nothing in this division (B) or division (C) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale, giving away, or other distribution of cigarettes, other tobacco products, or alternative nicotine products.

(6) Whoever violates division (B)(2)(b) or (B)(4) of this section is guilty of engaging in an illegal tobacco product or alternative nicotine product transaction scan,

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and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.

(C) *Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (A) of this section in which the age of the purchaser or other recipient of cigarettes, other tobacco products, or alternative nicotine products is an element of the alleged violation, if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive cigarettes, other tobacco products, or alternative nicotine products presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The cigarettes, other tobacco products, or alternative nicotine products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (C)(1) of this section, the trier of fact in the action for the alleged violation of division (A) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (A) of this section. For purposes of division (C)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes cigarettes, other tobacco products, or alternative nicotine products is ~~18~~ 21 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (C)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.

(D) *Shipment of tobacco products.*

(1) As used in this division (D):

AUTHORIZED RECIPIENT OF TOBACCO PRODUCTS means a person who is:

1. Licensed as a cigarette wholesale dealer under R.C. § 5743.15;
2. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
3. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;

4. An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;

5. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;

6. A department, agency, instrumentality, or political subdivision of the federal government or of this state;

7. A person having a consent for consumer shipment issued by the Tax Commissioner under R.C. § 5743.71.

MOTOR CARRIER. Has the same meaning as in R.C. § 4923.01.

(2) The purpose of this division (D) is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in R.C. § 1346.01, and to prevent the sale of cigarettes and other tobacco products to persons under 21.

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(3) (a) No person shall cause to be shipped any cigarettes to any person in this municipality other than an authorized recipient of tobacco products.

(b) No motor carrier or other person shall knowingly transport cigarettes to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the motor carrier or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products.

(4) No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this municipality in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes".

(5) A court shall impose a fine of up to \$1,000 for each violation of division (D)(3)(a), (D)(3)(b) or (D)(4) of this section.

Section 2. The provisions of this Ordinance and Section 135.17 of the Dublin Codified Ordinances are severable, and if any is found to be invalid for any reason by a court of competent jurisdiction then the remainder shall remain in full force and effect.

Section 3. The Council finds that all deliberations and actions of the public body relating to this Ordinance were taken in an open meeting in compliance with Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance shall take effect at the earliest date provided by law.

Passed this _____ day of _____, 2017.

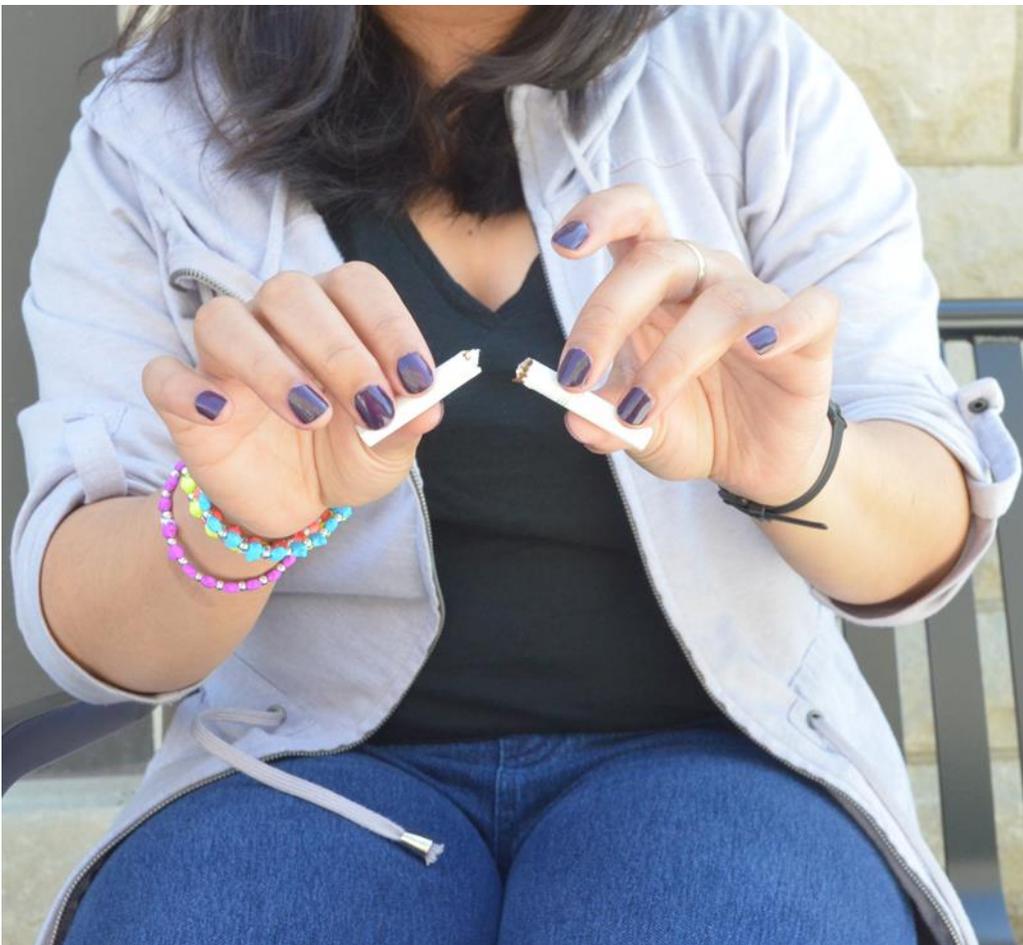
Mayor – Presiding Officer

ATTEST:

Clerk of Council

RUNNING THE NUMBERS

Raising the minimum tobacco sales age to 21 will reduce tobacco use and improve public health



THE OHIO STATE UNIVERSITY

COLLEGE OF PUBLIC HEALTH

Micah Berman, JD
Rob Crane, MD
Natalie Hemmerich, JD
Thomas Geist

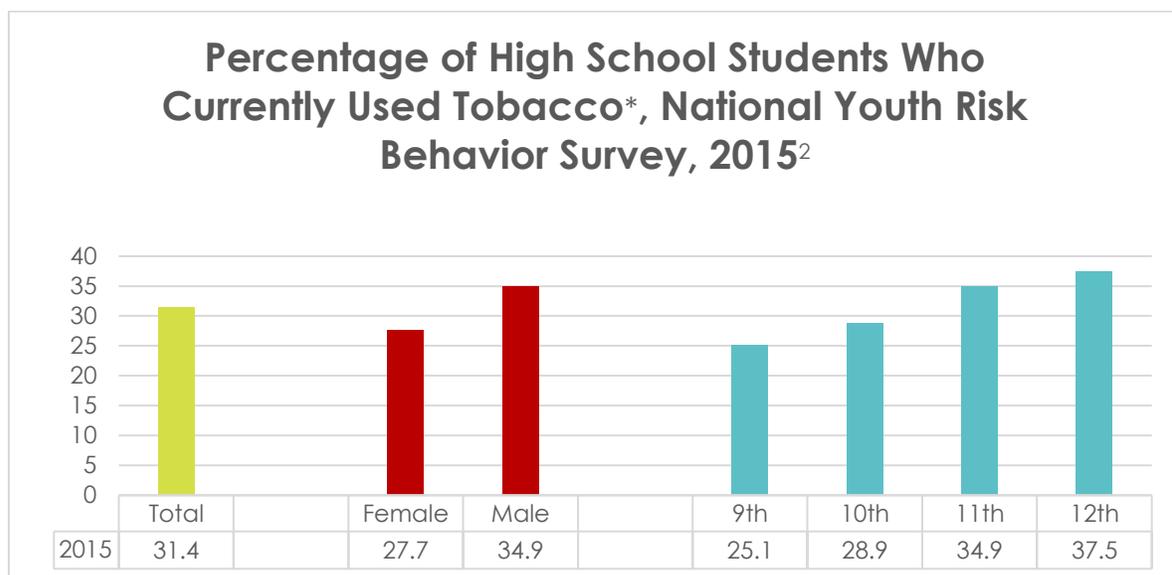
The Ohio State
University College of
Public Health

July 2016

Raising the minimum tobacco sales age to 21 is an effective way to reduce youth tobacco use and prevent lifelong addiction.

For the reasons discussed below, increasing the minimum sales age to 21 is one of the most powerful measures a community can take to protect its youth from lifelong addiction to tobacco.

If current trends continue, 5.6 million American youth alive today will die prematurely from tobacco use.¹ While cigarette smoking has declined among U.S. youth in recent years, overall use of tobacco products, including e-cigarettes and cigars, has increased or remained stable.² In 2015, nearly one in three high school students reported using some form of tobacco (including e-cigarettes) in the past 30 days, and between 2011 and 2015, e-cigarette use among high school students shot up from 1.5% to 16%.^{2,3}



* Cigarette, smokeless tobacco, cigar, or electronic vapor products use on at least 1 day during the 30 days before the survey.

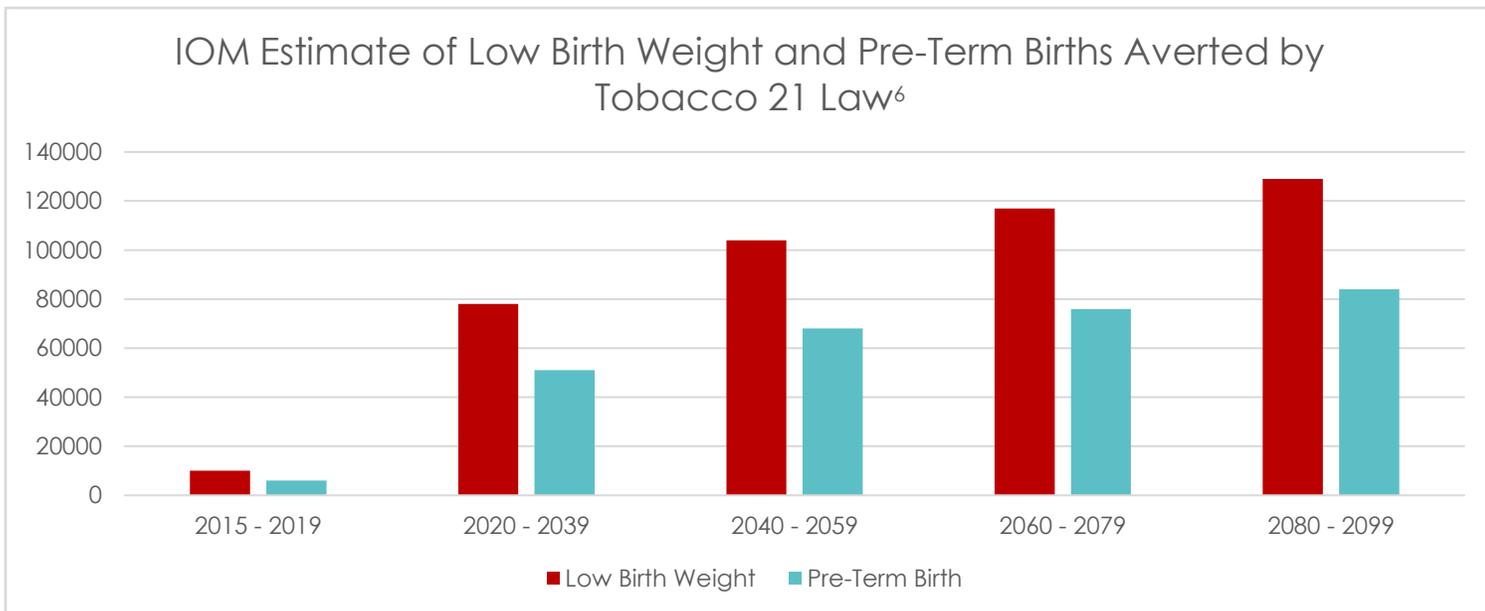
Nearly all adult smokers began smoking by the age of 18 – almost no one starts smoking after 21. The U.S. Surgeon General has referred to tobacco use as a “pediatric epidemic,” because most tobacco use starts in the high school years. Of those who begin smoking as youth, 80 percent will smoke into adulthood because of the powerful effects of nicotine, and one-half of adult smokers will die prematurely from tobacco-related diseases.⁴

Tobacco use in the teenage years has long-term consequences.

The teenage brain is particularly susceptible to nicotine addiction. Beginning smoking at a young age increases the risk of long-term addiction to tobacco and to other drugs and makes quitting more difficult. Lung cancer and other smoking-related diseases are more common among those who begin smoking as teens.⁴

There is a significant link between teen smoking and infant mortality.

The infant mortality rate in the United States is dramatically higher than in many other high-income countries. In fact, the U.S. infant mortality rate is triple the rate of numerous other economically developed countries, including Japan and Sweden.⁵ Smoking during pregnancy causes premature birth, certain birth defects, and other risk factors for infant death.⁴ The Institute of Medicine (IOM) estimates that if the legal purchasing age for tobacco were raised to 21 nationwide, by 2100 there would be approximately 285,000 fewer pre-term births, 438,000 fewer low-birth-weight babies and 4,300 fewer deaths from sudden infant death syndrome (SIDS).⁶



The tobacco industry spends more than \$26 million every day marketing its products in the U.S.

That works out to \$30 per person (children and adults) per year.⁷ The tobacco industry knows that recruiting new “replacement smokers”—primarily youth under the age of 21—is key to its survival,⁸ We need effective policy measures to help counter this barrage of tobacco advertising.

Raising the tobacco sales age can help reduce racial and ethnic disparities.

Studies show that nonwhite young adults, particularly African Americans, are more likely than non-Hispanic white young adults to start smoking after turning 18.⁹ In particular, greater percentages of African Americans report beginning to smoke at ages 18, 19, and 20.¹⁰ Raising the legal purchasing age to 21 may therefore help to reduce smoking-related health disparities.

“Tobacco 21” is a policy approach that is catching on nationally.

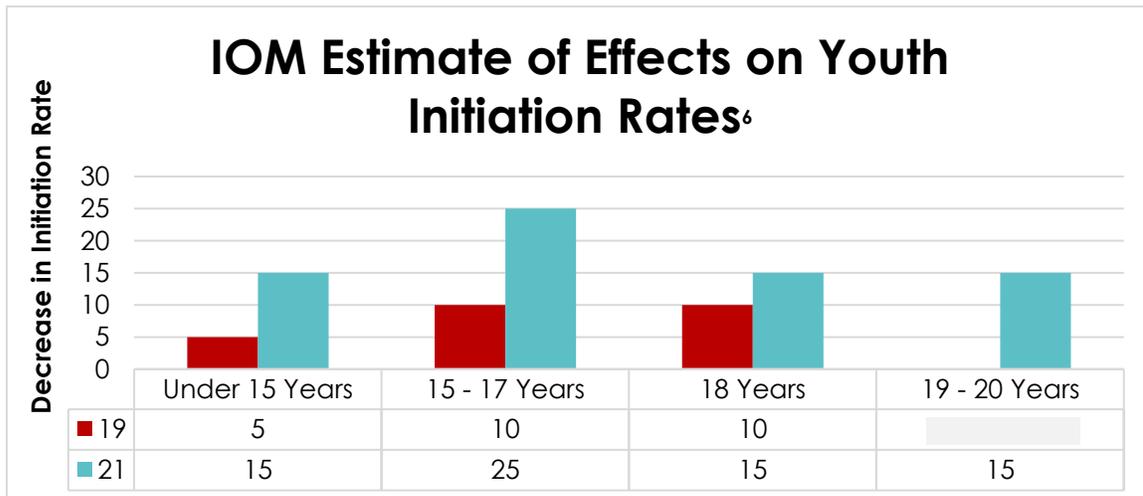
Increasing the tobacco sales age to 21 is a promising strategy that can help to delay tobacco use until after high school – at which point initiation is substantially less likely to occur.¹ Currently, 176 communities across 11 states, as well as the entire states of Hawai’i and California – have acted to protect their kids by raising the tobacco sales age. In addition to Hawai’i and California, states with local Tobacco 21 laws include Arizona, Illinois, Kansas, Massachusetts, Mississippi, Missouri, New Jersey, New York, and Ohio. The majority of these communities have included *all* forms of nicotine delivery (with the exception of FDA-approved cessation therapies) in their legislation.¹¹

THE EVIDENCE

Raising the minimum age for tobacco sales to 21 is a policy option supported by many different types of evidence.

Statistical Projections

The Institute of Medicine projects that raising the legal purchasing age to 21 will meaningfully decrease youth tobacco use. In 2015, the IOM used statistical modeling to estimate that raising the legal purchasing age to 21 would result in a 15-25% decrease in the initiation of tobacco use by adolescents. Significantly, the IOM projected that the impact of increasing the legal purchasing age to 21 would be substantially higher than increasing the legal purchasing age to 19.¹²



The IOM projects that if the legal purchasing age for tobacco were raised to age 21 nationwide, for those born between 2000 and 2019 there would be roughly 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and **4.2 million fewer years of life lost.**⁶

Biological Evidence

A legal age of 18 is out of touch with current scientific data on brain development and addiction in adolescents. Biologically, adolescents are particularly vulnerable to long-term neurological harm. Because of the impact of nicotine on brain development, adolescent tobacco use leads to heavier daily consumption, stronger nicotine addiction, and more difficulty quitting tobacco use later in life. Although previous research had suggested that smoking was linked to mental illness because it served a coping function, emerging research suggests that early tobacco use may predispose youth to several mental disorders or illnesses including depression, anxiety, and schizophrenia.^{13,14,15,16,17,18,19, 20, 21, 22}

Social Factors

Teen smoking is driven by sales to 18- to 20-year-olds. High school students get tobacco primarily from social sources (their friends) – but these social sources purchase them in stores. Currently, 90 percent of those who supply cigarettes to minors are themselves under the age of 21.²³ As the table below illustrates, the majority of underage users obtain their cigarettes from others. Raising the minimum sales age to 21 pushes legal purchasers outside the social circle of most high school students.

During the past 30 days, how did you get your own cigarettes?	Percent of Smokers		
	Age Group		
	9-14	15-17	18+
I bought a pack of cigarettes myself	10.8	20.3	71.1
I had someone else buy a pack of cigarettes for me	31.4	36.6	9.9
I bought cigarettes from another person	14.2	7.6	4.8
I asked someone to give me a cigarette	32.3	34.4	23.8
Someone offered me a cigarette	46.9	41.0	30.8
I took cigarettes from a store or another person	26.2	6.2	5.2
I got cigarettes some other way	40.1	12.0	4.8

Social pressure to smoke and the urge to engage in risky behaviors decreases after the teenage years. Youth who have not fully developed their capacity for self-control should not be put at risk for a deadly, lifelong addiction. If tobacco use can be delayed beyond the age of 21, it is much less likely to occur.¹

A legal age of 21 makes it much more difficult for 16- and 17-year-olds to purchase tobacco. Although most youth tobacco use results from *legal* sales to older youth, illegal sales to 16- and 17-year-olds also contribute to the problem.²⁴ Even if not fully effective at preventing purchases by those under age 21 (no law is perfectly enforced), raising the tobacco sales age to 21 would undoubtedly make it more difficult for younger teens to engage in illegal tobacco purchases.

Alcohol Sales Age

Raising the alcohol sales age to 21 resulted in reduced alcohol use by youth. When most states raised their sales age for alcohol to 21 in the 1980s, alcohol use, daily drinking, and binge drinking all dropped by more than a third among high school seniors. Deaths caused by drunk drivers under the age of 21 also fell significantly.^{25,26,27,28}

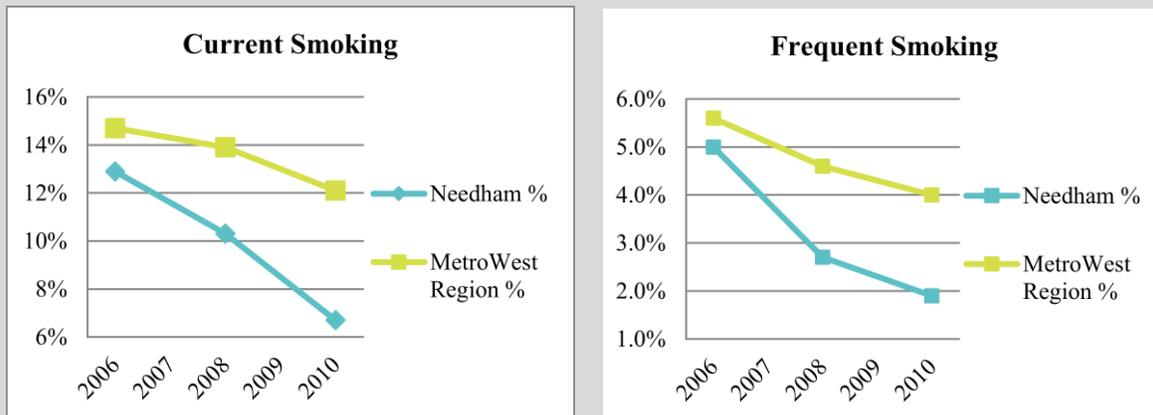
From the Tobacco Industry's Own Files

The tobacco industry knows that Tobacco 21 laws will be effective. In 1986, a Philip Morris strategist wrote in a confidential memo that “[r]aising the legal minimum age for cigarette purchase to 21 could gut our key young adult market (17-20) ... If we completely lost this market segment, it could cause nearly a \$400 million drop in [sales].”²⁹ The industry will lobby against raising the tobacco sales age to 21 because it knows that such laws threaten its ability to recruit new customers. In a Lorillard memo, an executive stated, “Younger adult smokers are the only source of replacement smokers... If younger adults turn away from smoking, the industry must decline.”³⁰

Other Communities

Needham, Massachusetts saw a significant decrease in youth smoking after raising its tobacco sales age to 21. In 2005, Needham, Massachusetts became the first city in the U.S. to increase its tobacco sales age to 21. Data from Needham show a dramatic decline in youth smoking after the law was put in place. Current tobacco use among high school students dropped almost in half, and the rate of frequent tobacco use fell by 62 percent. Tobacco use among high school students fell significantly faster in Needham than in the sixteen surrounding suburbs.³¹

MetroWest Adolescent Health Surveys 2006-2010 – High School Smoking²⁸



The Needham experience suggests that raising the tobacco sales age is effective, even if surrounding communities do not make the same change.

Needham's Tobacco 21 law effectively blocked the social sources that had been providing tobacco to Needham's high school students. Even without similar laws in place in surrounding communities, the law had a dramatic impact.

Addressing Concerns

The economic impact would be minimal. Sales to those under 21 account for only 2 percent of total cigarette sales.³³ Relatively few cigarettes are sold to those under 21, but those cigarettes are the ones that set American teens on a path to lifelong addiction.⁴ Increasing the sales age will have a significant impact on public health, while the impact on tobacco retailers will be minimal. Moreover, raising the tobacco sales age to 21, equal to that of alcohol, will provide clerks with a uniform birth date reference when checking identification.

Sales will not shift to other cities. Opponents claim that the law will be ineffective because people will travel to other cities to purchase tobacco. A large amount of research demonstrates, however, that when customers need to travel a significant distance to obtain tobacco products, they are likely to decrease their use.^{34,35} This is particularly true for youth, who often have limited transportation options.

The minimum age of military service does not equal readiness to enlist in a lifetime of nicotine addiction. Tobacco use is not a right or a privilege; it is an addictive and deadly activity. For the overwhelming majority of smokers, tobacco use is not an “adult choice;” it is the result of an addiction that began when they were in high school or younger. “*If someone is young enough to fight for their country, they should be free from addiction to a deadly drug.*” -Navy Rear Adm. John Fuller³⁶

These concerns raised by the opponents of Tobacco 21 laws echo the unfounded scare tactics used to oppose smoke-free laws in the past. There is no evidence that raising the tobacco sales age to 21 would harm the economy or lead to an increase in illegal cigarette sales.

There are no legal barriers to raising the minimum age to 21. There is nothing natural or unchangeable about the minimum age of 18. The fact that tobacco products are legal for adults does not mean the minimum age cannot be raised. Although federal law prohibits the FDA from requiring a minimum age higher than 18, it clearly permits state and local governments to increase the tobacco sales age.³⁶ (Note, however, that some state laws might limit the authority of local governments to raise the minimum age to 21.³⁷)

Tobacco 21 laws do not represent an expansion of government regulation. Such laws merely update and adjust existing regulations that already set a minimum age for tobacco sales. At the local level, such laws are typically enforced by health inspectors as part of the health code.

Tobacco is not like other products. Cigarettes are the most deadly product sold in America and the only legal product that, when used exactly as intended, will kill up to half of its long-term users.¹ Each year, tobacco use takes more lives than AIDS, automobile accidents, homicides, suicides, alcohol, and illegal drugs combined.³⁸ Unlike other products, such as alcohol, tobacco cannot be used safely in moderation.

Raising the tobacco sales age to 21 does not change anything for current smokers age 21 or older. Raising the tobacco sales age to 21 would protect our youth without changing any laws or regulations that apply to current smokers over the age of 20.

There is overwhelming support for this policy approach. There is broad agreement that we should do everything possible to protect the next generation from tobacco. A 2014 national poll of more than 3000 participants revealed 71% support for raising the minimum age. All demographic groups sampled, including current smokers, strongly endorsed an increase in the sales age to 21. Of the most affected by this policy, respondents aged 18-20 years old, 61.7% supported raising the legal purchase age to 21.³⁹

FINAL POINTS TO CONSIDER

Communities that raise the tobacco sales age to 21 are on the leading edge of the fight against the nation's leading preventable cause of death.

Raising the minimum sales age to 21 also protects youth from newly emerging products such as electronic cigarettes and hookah. Recent survey evidence suggests that high school students are using electronic cigarettes (“e-cigarettes”) and other electronic nicotine products more often than conventional cigarettes.^{2,40} While much is unknown about the health effects of these products, we know they often contain nicotine at addictive levels, in addition to other toxins.⁴¹ Hookah use has also been increasing among youth – from 4.1% in 2011 to 7.2% in 2015.³ Many youth mistakenly believe that hookah use is safe.⁴² To protect our youth from new products that could lead to lifelong addiction, laws that increase the tobacco sales age to 21 should also include e-cigarettes, hookah, and other nicotine products, with an exception for products approved as tobacco cessation aids by the FDA.

A minimum age of 21 for purchasing all nicotine and tobacco products draws a bright policy line that is easy to understand and enforce. This low-cost option is beneficial from both a public health and economic perspective.

Raising the minimum age is a simple and effective way to save lives, while failure to do so endangers our youth.

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The Ohio State University
College of Public Health
July 2016

Consider This...

Smoking is costly to our community – in many ways.

Each American taxpayer pays approximately \$1000 per year in state and local taxes that goes toward government expenditures for smoking-related costs.³⁸ The American Lung Association estimates that each pack of cigarettes consumed costs our society \$18.05 in increased health care and work-related expenditures.⁴³ An Ohio State University study demonstrated that an employee who smokes costs his or her employer more than \$5800 per year compared to a non-smoking employee. Those costs include markedly increased absenteeism, reduced productivity, increased health costs, and time lost to smoking breaks.⁴⁴

Many less risky activities have a minimum legal age of 21.

All U.S. states prohibit the sale of alcohol to individuals under 21, and most states with casino gambling set 21 as the minimum gambling age. Those states with legal marijuana use set the minimum age at 21. The difference in minimum sales age cannot be explained on the basis of risk, as tobacco use is far more deadly than these other activities.⁴⁵

Raising the minimum purchasing age to 21 is an effective way to reduce tobacco and protect American youth at minimal cost.

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