



**CITY COUNCIL MEETING
OF THE CITY OF CEDAR HILLS
Tuesday, February 5, 2019 7:00 p.m.**

Notice is hereby given that the City Council of the City of Cedar Hills, Utah, will hold a **City Council Meeting on Tuesday, February 5, 2019, beginning at 7:00 p.m.** at the Community Recreation Center, 10640 N Clubhouse Drive, Cedar Hills, Utah. This is a public meeting and anyone is invited to attend.

COUNCIL MEETING

1. Call to Order Pledge led by C. Bailey and Invocation given by Mayor Rees
2. Approval of Meeting's Agenda
3. Public Comment: Time has been set aside for the public to express their ideas, concerns and comments (comments limited to 3 minutes per person with a total of 30 minutes for this item)

CITY REPORTS AND BUSINESS

4. City Manager
5. Mayor and Council

SCHEDULED ITEMS & PUBLIC HEARINGS

6. Review/Action and Public Hearing on Approval of a Storage Facility and Taco Bell, part of the Cedar Hills Gateway Commercial Subdivision, located at approximately 9968 North 4800 West in the SC-1 Commercial Zone
7. Review Action and Public Hearing on an Ordinance Amending City Code Title 10, Chapter 5, Section 29 related to Carports, Land Sea Cargo Containers and Accessory Structures
8. Discussion on Raising the Minimum Age to Purchase Tobacco Products to Twenty-One (21)

ADJOURNMENT

9. Adjourn

Posted this 1st day of February, 2019

/s/ Colleen A. Mulvey, City Recorder

- Supporting documentation for this agenda is posted on the city's website at www.cedarhills.org.
- In accordance with the Americans with Disabilities Act, the City of Cedar Hills will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at 801-785-9668 at least 48 hours in advance of the meeting.
- An Executive Session may be called to order pursuant to Utah State Code 54-4-204 & 54-4-205.
- The order of agenda items may change to accommodate the needs of the City Council, the staff, and the public.
- This meeting may be held electronically via telephone to permit one or more of the council members to participate.



CITY OF CEDAR HILLS

TO:	Mayor and City Council
FROM:	Chandler Goodwin, City Manager
DATE:	February 5, 2019

City Council Agenda Item

SUBJECT:	Review/Action and Public Hearing on Approval of a Storage Facility and Taco Bell, part of the Cedar Hills Gateway Commercial Subdivision, located at approximately 9968 North 4800 West in the SC-1 Commercial Zone
APPLICANT PRESENTATION:	N/A
STAFF PRESENTATION:	Chandler Goodwin, City Manager
BACKGROUND AND FINDINGS: Staff noticed this as a public hearing in anticipation that this item may be ready for deliberation at the City Council meeting. These applications have not progressed past the Planning Commission. Staff requests that this item be tabled until the Planning Commission has given approvals and recommendations. A new public hearing will be scheduled in compliance with City and State code when the item is ready to come before the City Council. Staff is working with the developer to finalize engineering plans for the two sites, as well as provide the Planning Commission with the necessary information (traffic studies, lighting plans, and updated elevations) that will allow the Planning Commission to make a recommendation to the City Council.	
PREVIOUS LEGISLATIVE ACTION: Planning Commission gave conceptual approval to the Taco Bell plan on Jan 18, 2019, and the Planning Commission denied conceptual approval to the storage facility on Jan 18, 2019, citing issues with the proposed elevation.	
FISCAL IMPACT: N/A	
SUPPORTING DOCUMENTS: N/A	
RECOMMENDATION: Table item until Planning Commission has made their recommendation	
MOTION: To table the item and reschedule the public hearing to a future date after the Planning Commission has made their recommendations.	



CITY OF CEDAR HILLS

TO:	Mayor and City Council
FROM:	Chandler Goodwin, City Manager
DATE:	February 5, 2019

City Council Agenda Item

SUBJECT:	Review/Action and Public Hearing on an Ordinance Amending City Code Title 10, Chapter 5, Section 29 related to Carports, Land Sea Cargo Containers and Accessory Structures
APPLICANT PRESENTATION:	N/A
STAFF PRESENTATION:	Chandler Goodwin, City Manager; Jenny Peay, Code Enforcement Officer

BACKGROUND AND FINDINGS:

Planning Commission has spent time considering the proposed code and how it relates to properties throughout Cedar Hills. The proposed code would allow for carports to be built, and outlines certain requirements that must be met. These requirements limit the number, size, and location of the carports to certain areas in the side and rear setback areas. Carports would never be allowed in the front setback area of a property. Additionally, the proposed code sets limits on the height and size in an attempt to allow these types of structures, but not let them adversely affect a neighboring property.

The proposed code related to cargo containers would restrict the use of land sea cargo containers from being used as any type of permanent structure, and would only be allowed as a temporary use. The Planning Commission reviewed this code over the course of the last few months, and has made a positive recommendation to the City Council for adoption.

PREVIOUS LEGISLATIVE ACTION:

Planning Commission made recommendation for approval on January 15, 2019

FISCAL IMPACT:

N/A

SUPPORTING DOCUMENTS:

Proposed Ordinance amending 10-5-29 related to Carports and Land Sea Cargo Containers

RECOMMENDATION:

Review proposed code, make any changes necessary for adoption

MOTION:

To approve/not approve Ordinance _____, amending City of Cedar Hills City Code 10-5-29 as it relates to Carports and Land Sea Cargo Containers and Accessory Structures, subject to the following changes {LIST ANY APPLICABLE CHANGES NECESSARY FOR ADOPTION}.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 10, CHAPTER 5 SECTION 29 OF THE CITY CODE OF THE CITY OF CEDAR HILLS, UTAH, RELATING TO DEFINITIONS, CONDITIONS, CRITERIA RELATING TO CARPORTS, LAND SEA CARGO CONTAINERS, AND ACCESSORY STRUCTURES.

WHEREAS, pursuant to Utah Code Annotated § 10-9a-501, the City Council of the City of Cedar Hills (“City Council”) may adopt ordinances to govern the use and development of land within the City; and

WHEREAS, pursuant to Utah Code Annotated § 10-8-84, the City Council may adopt ordinances “necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the City and its inhabitants, and for the protection of property in the City”; and

WHEREAS, the City Council, has determined that it is in the best interest of the public health, prosperity, comfort, and convenience of the City of Cedar Hills, and the residents thereof, to enact certain amendments to Title 10 of the City Code relating to carports and land sea cargo containers;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR HILLS, UTAH:

SECTION I

10-2-1: TERMS DEFINED:

CARPORT: A structure not completely enclosed by walls for the shelter of vehicles and/or recreation vehicles.

CARGO CONTAINER: A large metal box used for the transportation of goods.

~~**CUSTOMARY RESIDENTIAL ACCESSORY STRUCTURE:** A structure constructed on the same zoning lot as a dwelling and that is intended for the incidental and exclusive use of the residents of said dwelling, including, but not limited to, swimming pools, tennis courts, and greenhouses.~~

CUSTOMARY RESIDENTIAL ACCESSORY STRUCTURES: A structure constructed on the same zoning lot as a dwelling and which is intended for the incidental and exclusive use of the residents of said dwelling. Such structures do not substantially alter the characteristics of the permitted principle use or structure. Accessory structures and uses include, but are not limited to buildings such as: detached garages, carports, swimming pools, tennis courts, green houses,

equipment and supply storage buildings which are customarily used in conjunction with and incidental to the principle use of the structure within each permitted zone.

10-5-29: DECKS, PORCHES, PATIOS, PERGOLAS, AWNINGS, HOT TUBS, CARPORTS AND SIMILAR STRUCTURES:

- A. Structures Permitted: Decks, porches, patios, pergolas, awnings, **carports**, hot tubs and similar structures are permitted in the rear and side setback areas subject to the following conditions: (Ord. 07-19-2016B, 7-19-2016)
1. All sides of the portion of the structure located within a designated setback area shall remain open. **Carports may only be used for the parking and storage of vehicles and/or recreational vehicles.**
 2. No structure within a setback area shall be converted into livable space, nor shall it be constructed as to appear as though it could be easily converted into livable space.
 3. Prior to construction, a building permit shall be obtained for all structures.
 - a. Prior to issuing a building permit, the chief building official shall make a finding whether the **design**, materials and finish of the proposed **attached** structure are in harmony with the primary structure ~~and the surroundings as a whole~~ and issue a permit with a positive finding.
 - b. The structure shall not be located closer than five feet (5') to the property line, except those structures that comply with subsection A3b(1) or A3b(2) of this section, notwithstanding that no structure shall be constructed within a clear view area nor on a corner lot beyond the optional enclosure area. Additionally, structures in the rear setback area shall not cover over fifty percent (50%) of the rear setback area.
 - (1) Structures located entirely at ground level shall be permitted to be located no closer than one foot (1') of the property line.
 - (2) Special exception for awnings located in the side setback area and immediately adjacent to a garage. A permanent awning located in the side setback area may be constructed immediately adjacent to the outside wall of an attached garage provided that:
 - (A) The front, rear, and sides shall remain open, except that an approved fence may be constructed independent of the structure.
 - (B) The awning shall be constructed over a "hard surface" area as defined in [chapter 2](#), "Definitions", of this title.

- (C) The awning shall be no closer than one foot (1') from the property line and no higher than seven feet (7') at the point nearest the property line. The roof pitch cannot be greater than four to twelve (4:12) and must slope away from the main building and toward the property line.
 - (D) Three feet (3') is the fire separation distance. Any portion of the awning structure projecting within three feet (3') of the property line shall be one hour fire resistance rated construction per Building Code.
 - (E) The awning shall include a system or method for retaining rainwater on the property owner's own property.
4. The finished level of any deck shall be not more than six feet (6') above the finished grade at any location within ten feet (10') from the property line.
5. The height for the structure shall not be greater than the height allowed for an accessory building at the same location.
6. A Carport may only be located in side or rear setbacks of property, provided structure is not integrated into the design front of main garage entrance.
- a. Carports shall meet side and rear setback regulations for Accessory building in each zone.
 - b. The total width of the carport located on a side setback shall not exceed twenty-four feet.
 - c. For homes with multiple side setback areas, a carport may be located in only one of the side setbacks. Carports located in side setbacks may not extend beyond side setback areas of property or the outside the existing roofline of the garage whichever is greater.
 - d. Carport elevation must not exceed the main dwelling elevation or a maximum of 20' feet, whichever is less.
 - e. Carport shall be treated as an accessory structure and shall maintain 12' separation from main dwelling.
- B. Temporary Structures: The temporary version of any structure listed in subsection A of this section shall be subject to the same provisions as that of a permanent structure. Portable garages are not permitted. Canvas, tarps, or plastic covers are prohibited as part of any permanent structure in all residential zones. Prefabricated carports will be subject to engineering approval.
- C. Storage containers, freight/cargo containers, box cars, and similar storage equipment are prohibited as permanent structures or being defined as a utility or portable shed. Temporary

storage containers may be used during a move, but may not be present on the property for more than 1 week, extensions may be granted by Code Enforcement.

1. Cargo Containers: Cargo containers may be approved for temporary use by the city under the following standards:
 - a. Construction or renovations provided a building permit has been issued for construction related activities. The cargo container may be allowed on site with an active building permit. For the purpose of permitted cargo containers, a building permit will be considered inactive after ninety (90) days after the last inspection that shows substantial progress toward completion of the project.
 - b. Cargo containers must not be located in Public Right of Ways, fire lanes, required parking spaces, recorded easements, areas deemed as a safety hazard, or on landscaping. All containers must be placed on an improved surface, unless approved with the building permit.
 - c. Storage containers, freight, cargo, box car or similar containers are prohibited from being used as part of a residential or any permanent structure on premises.

~~C.D~~ Additional Requirements: The determination that a structure is allowed by this Code shall not be interpreted as to meaning that the structure meets the requirements of any private CC&Rs applicable to the parcel. (Ord. 10-20-2009C, 10-20-2009)

SECTION II CONFLICTING ORDINANCES AND ADOPTION

1. CONFLICTING PROVISIONS

All other ordinances that are in conflict herewith are hereby repealed.

2. PROVISIONS SEVERABLE

This ordinance and the various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid it is hereby declared that the remainder of the ordinance shall not be affected thereby.

3. EFFECTIVE DATE

This ordinance shall take effect upon signing and publication as required by law.

PASSED AND ORDERED POSTED BY THE CITY COUNCIL OF THE CITY OF CEDAR HILLS, UTAH, THIS ____ DAY OF ____, 2019.

Jenney Rees, Mayor

ATTEST:

Colleen A. Mulvey, City Recorder



CITY OF CEDAR HILLS

TO:	Mayor and City Council
FROM:	Chandler Goodwin, City Manager
DATE:	February 5, 2019

City Council Agenda Item

SUBJECT:	Discussion on Raising the Minimum Age to Purchase Tobacco Products to Twenty-One (21)
APPLICANT PRESENTATION:	N/A
STAFF PRESENTATION:	Chandler Goodwin, City Manager
BACKGROUND AND FINDINGS: The City has been approached by an advocacy group that is petitioning local governments to take advantage of State law that allows for municipalities to adopt more stringent requirements relating to the purchase and selling of tobacco products. The group has provided a model ordinance that came from Rhode Island.	
PREVIOUS LEGISLATIVE ACTION: N/A	
FISCAL IMPACT: N/A	
SUPPORTING DOCUMENTS: Sample Ordinance from Rhode Island, American Heart Association Factsheet, Utah 21 Fact Sheet, San Antonio Model Ordinance	
RECOMMENDATION:	
MOTION: No motion necessary, discussion item only.	

The 101 on ^ e-Cigarettes

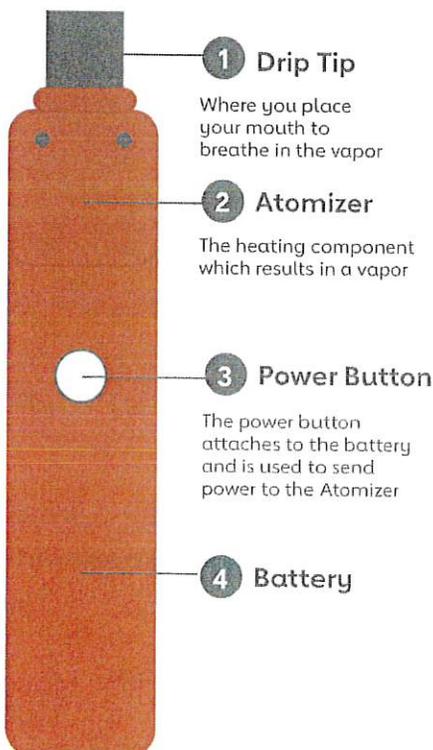


American
Heart
Association.

Vaping is becoming an increasing epidemic among teens. In 2018, e-cigarette use nearly doubled in high school students.

What is vaping?

Vaping is the **act of inhaling and exhaling the aerosol, often referred to as vapor**, which is produced by an e-cigarette or similar device. The term is used because e-cigarettes do not produce tobacco smoke, but rather an aerosol, **often mistaken for water vapor, that actually consists of fine particles. Many of these particles contain varying amounts of toxic chemicals, which have been linked to heart and respiratory diseases and cancer.**

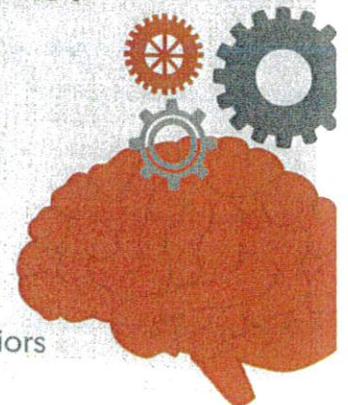


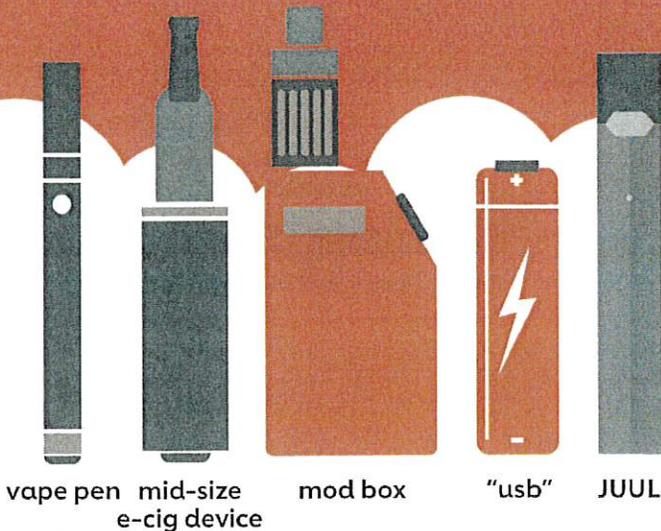
What is an e-cigarette?

Electronic cigarettes (e-cigarettes) are **battery-powered devices that can deliver nicotine and flavorings to the user in the form of an aerosol.** Most have a battery, a heating element, and a place to hold a liquid or nicotine salts. Flavors that make e-cigarettes so appealing can have toxic effects themselves, although they are GRAS (generally regarded as safe) when ingested in food or drinks.

Why are e-cigarettes unsafe for kids, teens and young adults?

- Nicotine can harm the developing adolescent brain
- e-cigarettes contain nicotine
- Nicotine addiction that occurs with e-cigarette use may lead to transition to use of combustible tobacco products
- Addiction itself, whether to nicotine or other drugs, can drive undesirable behaviors





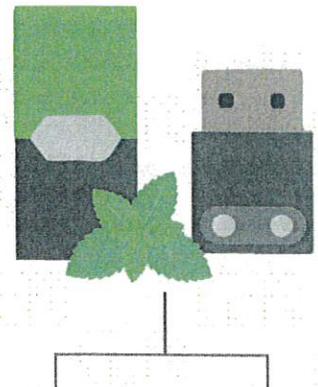
What do e-cigarettes look like?

E-cigarettes come in a wide variety of shapes and sizes; mini (often called cig-a-like), mid-size, vape pens, vape pod systems like JUUL, e-hookahs, e-cigars, advanced personal vaporizers or mods; even ones shaped to look like pens and usb drives.

What Is JUUL?

JUUL is a rapidly growing type of e-cigarette that became available in the US in 2015. It now accounts for about 72 percent of the market share of vaping products in the United States.

- JUUL is particularly appealing to adolescents and young adults because it has a slim design **shaped like a USB flash drive** (which makes it easier to hide).
- It comes in different colors, and a wide variety of flavors, including many that appeal to kids.
- **JUUL does not emit large smoke clouds**, making it optimal for discreet use.
- Not only is nicotine high in JUUL pods, it is present in a **benzoic acid salt** rather than a free base which **increases the rate of nicotine delivery** and decreases the harsh sensation in the mouth and throat.



The JUUL nicotine refill ("pods") contain as much nicotine as a pack of 20 regular cigarettes. Average pod length varies but can last up to 200 puffs.

Noting this unprecedented spike in e-cigarette use in youth, in December 2018, the US Surgeon General issued an advisory for parents, teachers and health professionals about the negative health consequences of e-cigarettes in kids.

What can parents do?

- Do not use any tobacco products
- Talk with your kids about the dangers of smoking and the importance of avoiding any tobacco use (conventional cigarettes or e-cigarettes)
- Educate your kids that e-cigarettes contain nicotine, a **HIGHLY** addictive substance
- Advocate for comprehensive tobacco prevention policies (that include e-cigarettes)



American
Heart
Association.

FACTS

Tobacco: No Minor Issue

Raising the Minimum Sale to Age 21

OVERVIEW

Tobacco use continues to be a significant public health concern and a leading cause of preventable death in the US. Though we have made some great strides, nearly 20% of high school students reported using tobacco products in 2016, including e-cigarettes, and the US Surgeon General estimated that nearly 6 million children will die prematurely in adulthood if current trends continue.^{1,2} Further, in 2015, nearly 2 million people smoked cigarettes for the first time and nearly 90% of cigarette smokers first try smoking by age 18.^{1,3}

Because of the addictive nature of nicotine, experimentation or initiation of tobacco use among youth and young adults is particularly troubling. This is a critical period for growth and development, one during which the brain may be especially susceptible and sensitive to the effects of nicotine.⁴ Increasing the minimum legal sale age (MLSA) for tobacco products to 21 would reduce our youth's access to, and use of, tobacco products.

UNDER 21: NO TOBACCO

Setting the MLSA at 21 would prohibit retailers from selling tobacco products to anyone under that age. The Tobacco 21 Act (S. 2100/H.R. 3656) has been introduced in Congress, which would raise nationwide the minimum legal age of sale for tobacco products to 21. Additionally, as of February 2018, five states (California, New Jersey, Oregon, Hawaii, and Maine) and at least 285 localities have raised the tobacco age to 21.⁵ Raising the MLSA to 21 would target the age range at which many habitual smokers consume their first cigarette and the age at which older kids are often the social source for the youngest smokers.^{2,6} Further, it would combat the tobacco industry's desire to attract a new, loyal generation of users and to re-engage those who have already quit.⁷

TOBACCO KILLING OUR FUTURE

Tobacco has deadly consequences for our youth:

- Early signs of heart disease and stroke are found in young people who smoke.²
- If current smoking rates continue, 5.6 million of today's Americans younger than 18 years of age are expected to die prematurely from a smoking-related illness. This represents about one in every 13 Americans aged 17 years or younger who are alive today.²

- Total economic costs of smoking are more than \$300 billion per year including nearly \$170 billion in direct medical care for adults and \$156 billion in lost productivity due to premature death and exposure to second hand smoke.^{2,8}

WHY 21? THE EVIDENCE:

Evidence shows that nicotine dependence and smoking intensity are strongly correlated with younger ages of smoking initiation.⁹ In other words, the younger people are when they smoke their first cigarette, the more likely they will be a smoker for life. Furthermore, some research suggests that adolescent smokers may experience more difficulty in quitting compared with adult smokers.¹⁰

In 2015, the National Academies of Sciences, Engineering and Engineering released a report¹¹ that modeled the myriad of public health benefits for raising the MLSA. Notably, the report concluded that raising the MLSA to 21 would decrease tobacco use by 12% and lead to:

- Nearly 225,000 fewer premature deaths.
- Nearly 50,000 fewer deaths from lung cancer.
- Almost 300,000 fewer pre-term births.
- 4.2 million fewer years of life lost for those born between 2000 and 2019.
- Less of a likelihood that adolescents will have peer group members who are over the MLSA.

Other research models have predicted that Tobacco 21 laws would significantly increase overall life expectancy and simultaneously reduce health-care costs.¹²

Tobacco sales to those younger than 21 years account for just 2% of total tobacco sales, yet, produce 90% of new smokers.¹³

Tobacco 21 is one of the most popular retail-based policy approaches¹⁴ – one study showed 60% of smokers and 69% of non-smokers support¹⁵. Another survey showed that among all adults, 50.4% strongly and 24.6% somewhat favored raising the age to 21 years; 77.5% of never smokers, 74.6% of former smokers, and 69.9% of current smokers strongly or somewhat favored it.¹⁶

A study in Massachusetts¹⁷ showed that local Tobacco 21 initiatives can have a significant impact:

- 30-day smoking rates decreased in Needham where Tobacco 21 was passed, from 13% to 7%, and this was

significantly greater than comparison communities (15% to 12%). This decline was consistent for both genders, Caucasian and non-Caucasian youth, and all grades surveyed. Cigarette purchases among current smokers also declined significantly more in Needham than in the comparison communities.

E-cigarettes should be included in Tobacco 21 laws; however, public health organizations should monitor implementation to assure that cigarette smoking does not increase as a result.¹⁸

NYC has done important evaluation after implementation of Tobacco 21 and found that retailer compliance is a key part of assuring that the policy is effective in reducing youth access to tobacco products.^{19, 20}

THE ASSOCIATION ADVOCATES

The American Heart Association advocates for policies at the federal, state and local levels that prohibit the sale of all tobacco products, including e-cigarettes, to anyone under the age of 21. Those laws should include effective enforcement mechanisms, including compliance checks, to ensure retailers comply with the law and not place excessive punishment or burden on youth.

1. Benjamin, EA., et al., AHA Statistical Update: Heart disease and stroke statistics – 2018 update: A report from the American Heart Association. *Circulation*. 2018; 137.
2. U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: 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.
3. U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*(https://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm). Atlanta: 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, 2012.
4. Chambers, RA, Taylor, JR, Potenza, N. Developmental neurocircuitry of motivation in adolescence: a critical period of addiction vulnerability. *Am J Psychiatry*. 2003; 160: 1041-52.
5. Campaign for Tobacco Free Kids. States and localities that have raised the minimum legal sale age for tobacco products to 21. January 2018.
6. White, MM, Gilpen, EA, Emery, SL., Pierce, JP. Facilitating adolescent smoking: who provides the cigarettes? *Am J Health Promotion*. 2005; 19:355-60.
7. Ling, PM, Glantz SA. Why and how the tobacco industry sells cigarettes to young adults: evidence from industry documents. *Am J Public Health*. 2002; 92: 908-16.
8. Xu, X., Bishop EE., Kennedy, SM., Simpson, SA., Pechacek, TF. Annual healthcare spending attributable to cigarette smoking: an update. *Am J Prev Med*. 2015. 48:326-33.
9. Buchmann, AF., Biomeyer D., Jennen-Steinmetz, C., Schmidt, MH., Esser, G., Banaschewski, T., Laucht, M. Early smoking onset may promise initial pleasurable sensations and later addiction. *Addict Biol*. 2013. 18:947-54.
10. Curry, S.J., Mermelstein, R.J., Sporer, A.K. Therapy for specific problems: youth tobacco cessation. *Annual Rev Psychol*. 2009; 60:229-55.
11. The National Academies of Sciences, Engineering, and Medicine. *Public health implications of raising the minimum age of legal access to tobacco products*. 2015.
12. Berman, M.L. Raising the tobacco sales age to 21: Surveying the legal landscape landscape. *Public Health Rep*. 2016; 131: 378-81.
13. Farber, H.J., Pakhale, S., Neptune, ER and American Thoracic Society Tobacco Action Coalition. Tobacco 21: An important public policy to protect our youth. *Ann Am Thorac Soc*. 2016; 13:2115-2118.
14. Winickoff, J.P., McMillen, R., Tanski, S., Wilson, K., Gottlieb, M., Crane, R. Public support for raising the age of sale for tobacco to 21 in the United States. *Tob Control*. 2016; 25: 284-8.
15. Farley, SM., Coady, M.H., Mandel-Ricci, J., Waddell, EN., Chan, C., Kilgore, EA., Kansagra, SM. Public opinions on tax and retail-based tobacco control strategies. *Tob Control*. 2015; 24: e10-13.
16. King, BA., Jama, AO., Marynak, K.L., Promoff, GR. Attitudes toward raising the minimum age of sale for tobacco among US adults. *Am J Prev Med*. 2015; 49:583-8.
17. Kessell Schneider, S., Buka, S.L., Dash, K., Winickoff, J.P., O'Donnell, L. Community reductions in youth smoking after raising the minimum tobacco sales age to 21. *Tob Control*. 2016; 25:355-9.
18. Pesko, M.F., Hughes, JM., Faisal, FS., The influence of electronic cigarette age purchasing restrictions on adolescent tobacco and marijuana use. *Preve Med*. 2016; 87:207-212.
19. Silver, D., Macinko, J., Giorgio, M., Bae, JY., Jimenez, G. Retailer compliance with tobacco control laws in New York City before and after raising the minimum legal purchase age to 21. *Tob Control*. 2016; 25:289-94.
20. Silver, D., Bae, JY., Jimenez, G., Macinko, J. Compliance with minimum price and legal age for cigarette purchase laws: evidence from NYC in advance of raising purchase age to 21. *Toba Control*. 2016; 25:289-94.



REASONS TO RAISE THE TOBACCO SALE AGE TO 21

UTAH

1. Tobacco is the No. 1 cause of preventable death in the United States.
2. The Institute of Medicine (now the National Academy of Medicine) has concluded that raising the tobacco sale age to 21 will have a meaningful positive impact on public health and save lives.
3. About 95 percent of all adult smokers start before the age of 21.
4. From age 19 to 21, many smokers transition from experimentation to regular use of cigarettes.
5. Delaying the age when young people first begin using tobacco will help reduce the risk that they become addicted smokers.
6. More than 480,000 Americans die each year from tobacco use, including 1,300 in Utah.
7. Tobacco use costs the U.S. about \$170 billion in health care spending each year, including \$542 million in Utah.
8. Nearly 75 percent of Americans support raising the legal sale age for tobacco products to age 21.
9. There is bipartisan support in both the Utah House and Senate for bills that would increase the tobacco sale age to 21.
10. In Utah, 3.8 percent of high school students still smoke – that's 7,300 kids.
11. 800 young Utahans become regular smokers every year. And nearly 39,000 Utah kids alive now will ultimately die prematurely from smoking if current trends continue.
12. Military leaders recognize the toll tobacco takes on troop readiness and on the military health care system and are actively taking steps to reduce tobacco use in the military. The minimum age of military service does not equal readiness to enlist in a lifetime of nicotine addiction.
13. Because adolescence and young adulthood are critical periods of growth and development, young people are more sensitive to nicotine's addictiveness and can become addicted more quickly than adults.



21

REASONS TO RAISE THE TOBACCO SALE AGE TO 21

UTAH

14. Individuals who start smoking at younger ages are more likely to smoke as adults and are among the heaviest users.
15. The health consequences of smoking begin immediately and accumulate over a lifetime.
16. Tobacco companies target kids and young adults – they know that’s when most users become addicted to tobacco.
17. Tobacco companies spend \$9.5 billion per year to promote their deadly products, including over \$39 million in Utah. Much of that marketing directly influences kids and young adults.
18. According to the Surgeon General (2012), tobacco company marketing causes the onset and continuation of smoking among kids and young adults.
19. Tobacco companies market smokeless tobacco, little cigars and electronic cigarettes in kid-friendly flavors like cotton candy, gummy bear, cherry and watermelon.
20. Friends and classmates are a common source of tobacco products for youth users. Raising the legal sale age for tobacco would help keep tobacco out of schools.
21. Tobacco companies admit that increasing the legal sale age for tobacco threatens their profits — a Philip Morris document stated, “Raising the legal minimum age for cigarette purchase to 21 could gut our key young adult market (17-20).”



American Heart Association®

You're the Cure

Source: Campaign for Tobacco-Free Kids, TobaccoFreeKids.org





RAISING THE MINIMUM LEGAL SALE AGE FROM 19 TO 21

ANSWERS TO FREQUENTLY ASKED QUESTIONS:

1) Why is it okay to take away a right from an adult?

Tobacco 21 isn't about taking choice away from young adults. It's about giving them more time to make better choices that will extend their lives and protect their health.

We don't have a specific age in our society where you're free to do whatever you want. We determine the appropriate age for various activities based upon their risk and reward – and tobacco has incredibly high risk and absolutely no reward.

2) If you can fight and die for our country, why can't you choose to smoke?

Military leaders recognize the toll tobacco takes on troop readiness and on the military health care system and are actively taking steps to reduce tobacco use in the military. The minimum age of military service does not equal readiness to enlist in a lifetime of nicotine addiction.

3) I heard the tobacco companies are trying to regulate this themselves?

Tobacco companies know that a higher legal sale age will help deter youth from smoking. Since the industry needs to recruit new smokers to keep the tobacco business profitable, it is desperate to protect its ability to attract youth at the point of sale, regardless of the impact on the health and welfare of young people.

Tobacco companies admit that increasing the sale age to 21 threatens their profits. In fact, a Phillip Morris document stated, "raising the minimum legal sale age could gut the key young adult market."

4) This won't be effective, kids will still get tobacco.

It's been proven that when the minimum legal drinking age was raised from 18 to 21, within a 6 year period, drinking in 18-21 year old range decreased by 6%, according to the CDC.

We know that youth in our high schools have friends and classmates that are 19 years and older. These friends are a common source of tobacco products for youth users. By raising the minimum legal sale age to 21 we will help keep tobacco out of our schools.

5) What about e-cigarettes? Why is this needed?

Tobacco companies market in kid-friendly flavors like cotton candy, gummy bear, cherry and watermelon. All very attractive and enticing to youth. Further, young people are more sensitive to nicotine's addictiveness and can become addicted more quickly than adults.

Once a person is addicted, it is difficult to stop. Within 6 months of beginning electronic cigarette use, 30% of youth transition to conventional tobacco products.



AN ORDINANCE 2018-01-11-0001

AMENDING CHAPTER 36, OF THE CITY CODE OF SAN ANTONIO, TEXAS ENTITLED "SMOKING," TO INCREASE THE AGE FOR SALE OF TOBACCO PRODUCTS TO 21 YEARS OF AGE, ESTABLISHING ENFORCEMENT AUTHORITY, ESTABLISHING PENALTIES AND FINES FOR VIOLATIONS AND SETTING THE EFFECTIVE DATE FOR OCTOBER 1, 2018; AND PROVIDING FOR PUBLICATION.

* * * * *

WHEREAS, in 2003, the City Council enacted an ordinance prohibiting smoking in public and private workplaces, and in some areas of restaurants; and

WHEREAS, in 2010, the City Council approved Ordinance 2010-08-19-0697 to prohibit smoking in enclosed public spaces, and some outdoor spaces, within the City of San Antonio in order (1) to protect the public health and welfare by prohibiting smoking in enclosed places and specified outdoor areas within the city; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and recognizing that the need to breathe smoke-free air shall have priority over the desire to smoke; and

WHEREAS, tobacco use is the foremost preventable cause of premature death in America and causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964; and

WHEREAS, national data show that 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use; and

WHEREAS, in 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and

WHEREAS, nationally, the current amount of health care and lost worker productivity costs each year related to tobacco use is \$300 billion; and

WHEREAS, staff made presentations and recommendations to the City Council's Community Health and Equity Committee on October 26, 2017; and

WHEREAS, a public town hall/roundtable discussion was held on November 16, 2017; and

WHEREAS, staff made a presentation to the City Council during a B Session on December 6, 2017 for input and further refinement of the proposed revisions; and

WHEREAS, the City Council of San Antonio finds that the Texas Health and Safety Code provides that political subdivisions have the authority to more strictly regulate the sale, distribution and use of tobacco products, and that as a home-rule municipality the City of San Antonio has the further ability to address matters of public health and safety; and now finds that raising the age for the sale of tobacco products to 21 years of age is a matter of public health and safety; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The current Chapter 36, of the City Code of San Antonio, Texas, entitled "Smoking," is amended by adding language that is underlined (added) and deleting language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance. Chapter 36 is amended as follows and such amendments will become effective on October 1, 2018:

CHAPTER 36 – SMOKING

...

Sec. 36-5. - Distribution, display, and sale of tobacco products; and cigarette machines.

- (a) Definition. For purposes of this section only, the term Tobacco Products means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device or liquids used in electronic smoking devices. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- (b) Distribution, display, and sale of ~~smoking~~-tobacco products, or smoking paraphernalia on any public right-of-way, city park or any city-owned building or facility is hereby prohibited.
- (c) Sale of tobacco products to persons under 21 years of age prohibited.
 - (1) A person commits an offense if the person, with criminal negligence:
 - a. sells, gives, or causes to be sold or given a tobacco product to someone who is younger than 21 years of age; or

b. sells, gives, or causes to be sold or given a tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.

(2) It is a defense to prosecution under this subsection that the person to whom the tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(3) A proof of identification satisfies the requirements for this subsection if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(d) Warning Notice.

(1) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(2) The sign must include the statement:

THE SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW WITHIN THE CITY OF SAN ANTONIO.

(3) The Director shall determine the size and design of the sign.

(4) The Department, on request, shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products.

(e) Notification of Employees and Agents.

(1) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that the city code:

a. prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 21 years of age; and

- b. requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 36-5 (d), requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties;
- (2) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of e-cigarettes or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.
 - (3) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.
 - (4) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a person authorized to enforce the city code, to provide the forms prescribed by this section.
 - (5) It is a defense to prosecution under Section 36-5 (f)(4) to show proof that the employee did complete, sign, and date the forms required by Subsections 36-5 (f)(2) and (3).
- (f) Cigarette vending machines.
- (1) Subject to the defenses provided in subsection (2) below, it shall be unlawful for any business owner, manager and employee in control of cigarette vending machines within the city to intentionally, knowingly, recklessly, or with criminal negligence allow the display or use of any cigarette vending machine upon any property within the city.
 - (2) It is a defense to prosecution under the provisions of subsection (b) that:
 - a. The cigarette vending machine is situated in a premise where entry by any person under ~~eighteen~~ twenty-one (1821) years of age is prohibited by law; or
 - b. The cigarette vending machine is located in a workplace with the permission of the employer, provided that the employer has no persons under the age of ~~eighteen~~ twenty-one (1821) years

employed at the workplace, and further provided that the cigarette vending machine is situated at a location within the workplace to which persons other than those employed at the workplace are not permitted to have access.

(g) Penalty. A violation of this any subsection of Section 36-5 is hereby declared to be a misdemeanor crime, and upon conviction, shall be punishable as set out below:

(1) A violation of subsections 36-5 (b) or (f) shall be punishable by a fine of not more than two thousand dollars (\$2,000.00).

(2) A violation of subsections 36-5 (c), (d) or (e) shall be punishable by a fine of not more than five hundred dollars (\$500.00).

...

Sec. 36-18. - Effective date.

This chapter shall become effective on August 19, 2011. Revisions made subsequent to August 19, 2011 shall become effective on October 1, 2018.

SECTION 2. All other provisions of Chapter 36 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 3. Violations occurring on or after October 1, 2018 shall be punished as provided in the revised Chapter 36 of the City Code of San Antonio, Texas. Violations prior to October 1, 2018 shall be punished under the former applicable Sections which shall remain in effect for that purpose.

SECTION 4. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 5. The City Clerk is directed to publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 6. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 7. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

EG/efg
01/11/18
Item #4

SECTION 8. Penalties provided for in this Chapter 36 of the City Code of San Antonio, Texas shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 11th day of January, 2018.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	4						
Date:	01/11/2018						
Time:	12:39:41 PM						
Vote Type:	Motion to Table						
Description:	An Ordinance amending Chapter 36 of the City Code, entitled "Smoking" to increase the age for the sale of tobacco products to 21 years of age. [Erik Walsh, Deputy City Manager; Colleen M. Bridger, MPH, PhD, Director, Health]						
Result:	Failed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor			x			
Roberto C. Treviño	District 1			x			
William Cruz Shaw	District 2			x			
Rebecca Viagran	District 3			x			
Rey Saldaña	District 4			x			
Shirley Gonzales	District 5			x			
Greg Brockhouse	District 6		x			x	
Ana E. Sandoval	District 7			x			
Manny Pelaez	District 8		x				
John Courage	District 9			x			
Clayton H. Perry	District 10		x				x

Agenda Item:	4						
Date:	01/11/2018						
Time:	12:40:35 PM						
Vote Type:	Motion to Table						
Description:	An Ordinance amending Chapter 36 of the City Code, entitled "Smoking" to increase the age for the sale of tobacco products to 21 years of age. [Erik Walsh, Deputy City Manager; Colleen M. Bridger, MPH, PhD, Director, Health]						
Result:	Failed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor			x			
Roberto C. Treviño	District 1			x			
William Cruz Shaw	District 2			x			
Rebecca Viagran	District 3			x			
Rey Saldaña	District 4			x			
Shirley Gonzales	District 5			x			
Greg Brockhouse	District 6		x				x
Ana E. Sandoval	District 7			x			
Manny Pelaez	District 8			x			
John Courage	District 9			x			
Clayton H. Perry	District 10		x			x	

Agenda Item:	4						
Date:	01/11/2018						
Time:	12:43:27 PM						
Vote Type:	Other: Effective Date Of October 1, 2018						
Description:	An Ordinance amending Chapter 36 of the City Code, entitled "Smoking" to increase the age for the sale of tobacco products to 21 years of age. [Erik Walsh, Deputy City Manager; Colleen M. Bridger, MPH, PhD, Director, Health]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6			x			
Ana E. Sandoval	District 7		x			x	
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10			x			



CITY OF SAN ANTONIO
METROPOLITAN HEALTH DISTRICT

Tobacco 21

Colleen M. Bridger, MPH, PhD
Director

City Council A Session
January 11, 2018



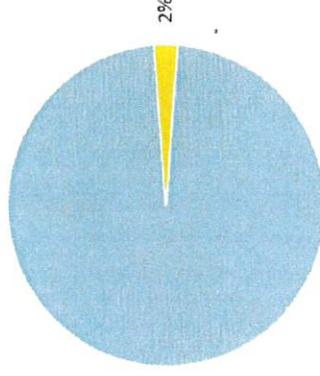
Tobacco

- Leading cause of **preventable** disease, disability, and death in the United States.
- Every day, nearly 2,100 young people under the age of 21 become daily cigarette smokers.
- Nicotine is highly addictive and the adolescent brain is more susceptible to it.

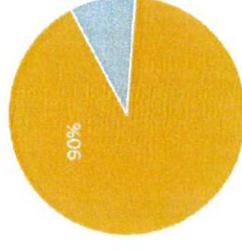
Why Raise the Age?

- 95% of adult smokers began smoking before they turned 21.
- Only 2% of cigarettes sold are purchased by 18-20 year olds, but that 2% supplies 90% of the addictive tobacco to younger people.

Sale of Tobacco Products



Supply of Tobacco to Youth



■ 21 and older ■ 20 and younger ■ Other sources

Increasing the Sale Age to 21

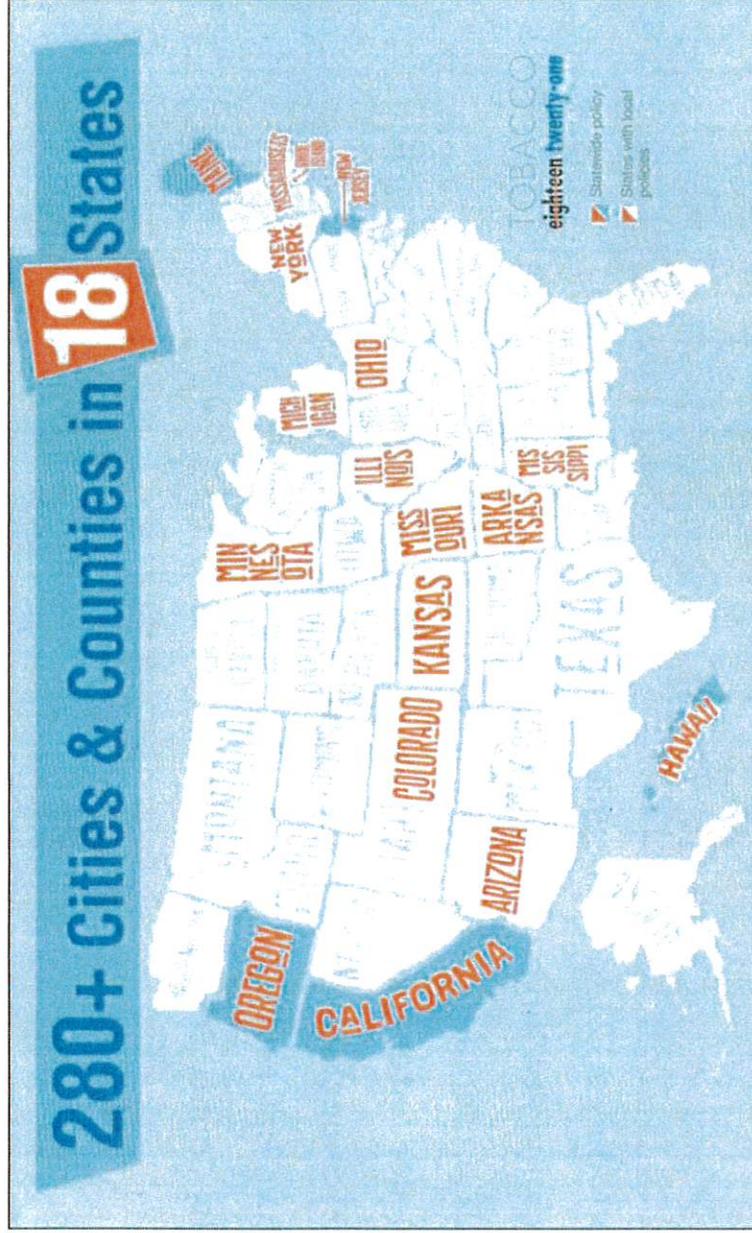
A Public Health Solution

- Delay age of first tobacco use and reduce risk of becoming regular smoker.
- Help keep tobacco out of schools.
- Younger teens have harder time passing themselves off as 21.



Where is T21 already in place?

25% of
Americans
covered



Timeline

Dates	Activity
August 24 th	Introduced T21 to Community Health & Equity Committee
Sept. 15 th – Oct. 23 rd	Community Survey
October 26 th	T21 presentation to Community Health & Equity Committee
November 3 rd	Mailed letter & town hall invite to over 1,600 local tobacco retailers
November 13 th	T21 Supporter / Stakeholder Meeting
November 16 th	Town Hall Meeting
December 6 th	City Council B Session

Proposed implementation timeline:

January – July 2018	Educate retailers and community on ordinance and enforcement
August OCTOBER August 1, 2018	Tobacco sale age raised from 18 to 21

Local Survey Results

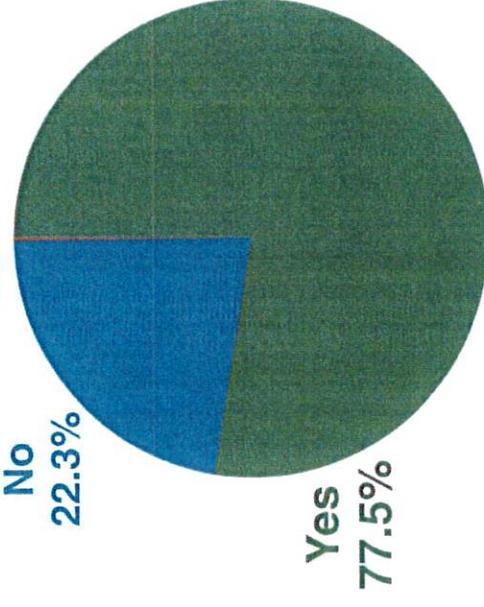
5,447 individuals responded to our Tobacco 21 survey that asked the question:

Do you believe that the minimum tobacco sales age should be raised from 18 to 21?

77.5% answered Yes

Blank
0.2%

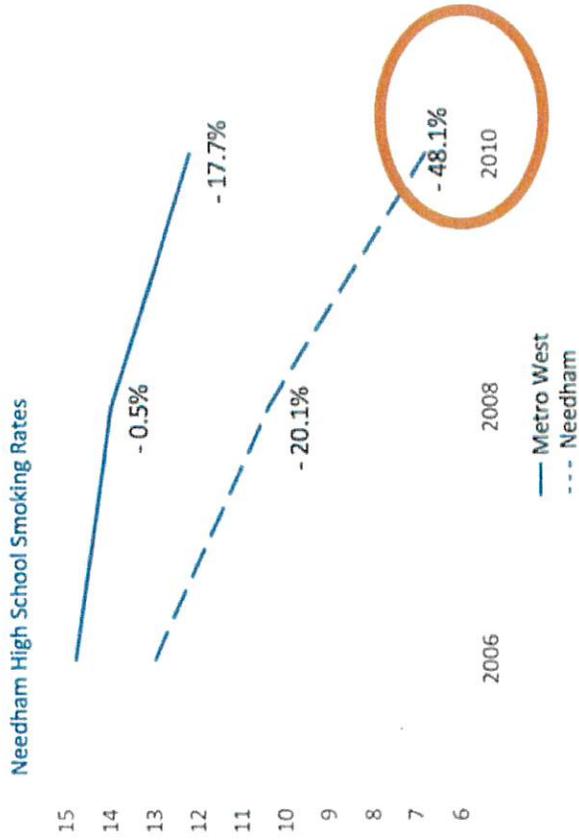
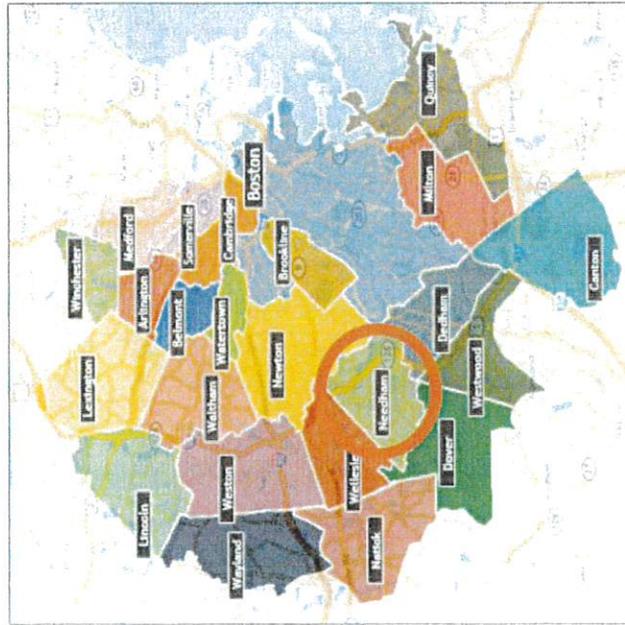
No
22.3%



Economic data

Concern	Response
Will this program save lives?	Just under 500 San Antonio 18-20 year old lives will be saved each year from implementing T21.
Is this program cost effective?	The Texas DSHS estimated \$406 million saved in health care spending on pre-term birth and low birth weight related expenses alone for statewide implementation.
Is this program bad for business?	Since implementation in Needham, MA in 2005, no convenience stores have gone out of business. Smokers cost employers almost \$6,000 more per year than non smokers.

Needham Case History



Concerns Raised at B Session

Concern raised in December

Addressed by

Proposed method of selecting stores for unannounced compliance checks

Will use random sampling

Enforcement on 18-20 year olds purchase, use and possession

Have dropped enforcement on 18-20 year olds; retaining enforcement on retailers

Draft Ordinance

Age group	Tobacco Retailers (sale)	Youth (PUP)
< 18 years of age	<u>State law</u> Violations of sale – misdemeanor, with max. fine of \$500.	<u>State law</u> Violations of youth PUP – misdemeanor, with max. fine of \$250.
18-20 years of age	<u>COSA Ordinance</u> Mirror state law, but will raise age restriction to 21	<u>COSA Ordinance</u> No enforcement

Implementation Plan

- Six month grace period - effective ^{OCTOBER} August 1, 2018
- Provide education to youth and families to ensure awareness of new law and educate tobacco retailers and staff on changes in law.
- Metro Health will lead enforcement
- Random sampling used to determine locations of unannounced compliance checks at tobacco retailers

Fiscal Impact

- Minimal fiscal impact
- As proposed, the fine is up to \$500 for the sale of tobacco products to someone under 21 years of age.
- Revenues from these fines will be deposited in the General Fund.

Recommendation

Staff recommends City Council approve the proposed changes to Chapter 36 of the City Code, titled Smoking



Thank you. Any Questions?



CITY OF SAN ANTONIO
METROPOLITAN HEALTH DISTRICT

Colleen M. Bridger, MPH, PhD
Director

Model Rhode Island Ordinance

**Raising the Minimum Legal
Sales Age for Tobacco
Products to 21**

WITH ANNOTATIONS

The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Introduction

This Model Ordinance was developed to assist Rhode Island cities and towns interested in raising the minimum legal sales age for tobacco products and tobacco paraphernalia from 18 to 21 years old (“Tobacco 21”). Communities have adopted Tobacco 21 policies to reduce youth access to tobacco and limit the negative public health effects associated with tobacco use.

Communities that want to implement a stand-alone Tobacco 21 ordinance can adopt this model as is. Communities that have adopted local tobacco retailer licensing can integrate the ordinance’s operative provisions into their licensing scheme.

In some instances, italicized text within brackets (e.g., [*Name of City/Town*]) prompt you to customize the language of the Model Ordinance to fit your community’s needs. You must replace the italicized text with the appropriate information and remove the brackets. In other cases, the Model Ordinance provides options (e.g., [choice one / choice two]). Provisions entirely in *italicized text* (without brackets) are optional. If you include the optional provision(s) in your ordinance, remove the italics. If you choose not to include the optional provision(s), delete that text from the ordinance. Some Model Ordinance provisions are followed by comments that describe the legal components in more detail. Some degree of customization is always necessary to ensure the ordinance is consistent with a community’s existing laws. Your local government’s legal counsel is likely the best person to check this for you.

Legal Authority

Rhode Island cities and towns have the authority to legislate on local matters concerning public health and safety,¹ and state law explicitly grants cities and towns the authority to enact ordinances and regulations “respecting the purchase and sale of merchandise or commodities within their respective cities and towns.”² Therefore, cities and towns in Rhode Island likely have the authority to enact a local Tobacco 21 law raising the minimum legal sales age for tobacco products to 21. A comprehensive legal analysis of Rhode Island laws corroborates this, concluding that Rhode Island cities and towns likely can legally adopt a local Tobacco 21 law and that state law likely does not preempt a local government from taking such action.³

This Model Ordinance has been carefully drafted to avoid conflicts with state and federal laws. However, all new laws carry certain risks, and local Tobacco 21 laws have not been tested in Rhode Island courts. Prior to adopting this ordinance, communities should consult with an attorney licensed to practice in their jurisdiction.

Disclaimer

The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult with an attorney licensed in their jurisdiction.

AN ORDINANCE OF THE [CITY / TOWN] OF [Name of City/Town] RAISING THE MINIMUM LEGAL SALES AGE OF TOBACCO PRODUCTS TO 21 AND AMENDING THE [Name of City/Town] MUNICIPAL CODE

The [Name of City/Town's Legislative Body] of the [City / Town] of [Name of City/Town] does ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. FINDINGS. The [Name of City/Town's Legislative Body] of the [City / Town] of [Name of City/Town] hereby finds and declares as follows:

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death;⁴ and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will be responsible for 8.3 million deaths per year and 10% of all deaths worldwide;⁵ and

WHEREAS, tobacco use is the number one cause of preventable death⁶ in Rhode Island⁷ and continues to be an urgent public health challenge, as evidenced by the following:

- 1,800 Rhode Island adults die from smoking-related diseases each year;⁸
- Nearly 1 in 13 Rhode Island youth who are alive today will die early from smoking-related diseases;^{9,10,11} and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87% of lung cancer deaths, 79% of all chronic obstructive pulmonary disease deaths, and 32% of coronary heart disease deaths;¹² and

WHEREAS, every year smoking costs Rhode Island nearly \$1.1 billion dollars in direct health care costs and lost productivity;¹³ and

WHEREAS, the Rhode Island Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidence by these facts:

- The Legislature has declared that the "use of tobacco by Rhode Island children is a health and substance abuse problem of the utmost severity" (R.I. Gen. Laws § 11-9-13.3); and
- State law prohibits selling, giving, or delivering to any person under 18 years old tobacco in any form, including electronic smoking devices (R.I. Gen. Laws. §§ 11-9-13, 11-9-13.8); and

- State law requires businesses selling tobacco products to post prominently for public viewing signs conveying the negative health effects of tobacco (R.I. Gen. Laws § 11-9-13.8.1); and

WHEREAS, nearly 95% of people who smoke start by age 21;¹⁴ and

WHEREAS, individuals who begin smoking at an early age are more likely than those who start at a later age to develop a severe addiction to nicotine;^{15,16} and

WHEREAS, the earlier people start smoking in their life, the greater their risk of many adverse health outcomes, such as hospitalizations and lifetime risk of respiratory disease, chronic obstructive pulmonary disease, and lung cancer;¹⁷ and

WHEREAS, studies have shown that young adults between the ages of 18 and 20 are more likely than adults over the age of 21 to purchase tobacco for minors;^{18,19} and

WHEREAS, raising the minimum legal age of access for tobacco products reduces the ability of youth under age 18 to appear legally old enough to buy tobacco products and decreases the probability that nonsmoking youth will have social networks that contain smokers;²⁰ and

WHEREAS, the Institute of Medicine found that raising the minimum legal age of access to 21 will likely delay initiation and reduce tobacco prevalence across all ages with the largest proportionate reduction in initiation likely occurring among adolescents between the ages of 15 and 17;²¹ and

WHEREAS, most individuals transition from experimental to regular smoking before age 21;^{22,23} and²⁴

WHEREAS, tobacco companies target young adults between the ages of 18 and 24 to increase the frequency with which young adults use tobacco products to encourage them to transition into habitual users;²⁵ and

WHEREAS, research has repeatedly found that raising the minimum age of access for tobacco products is an effective strategy for reducing tobacco use among youth and young adults as evidenced by the following:

- Research has overwhelmingly demonstrated that minimum legal drinking age laws decreased alcohol consumption rates in the United States, especially among youth and young adults;²⁶ and

- An evaluation of a law in Needham, MA, that raised the minimum tobacco sales age to 21 found that within 5 years the prevalence of youth smoking had reduced by nearly half (12.9% in 2006 versus 6.7% in 2010);²⁷ and
- The Institute of Medicine found that a nationwide law raising the minimum age of legal access for tobacco products to 21 would save almost one-quarter of a million lives of people born between 2000 and 2019;²⁸ and

WHEREAS, as of September 27, 2016, at least 200 jurisdictions in 14 states have laws raising the minimum legal sale age for tobacco products to 21;²⁹ and

WHEREAS, nationally, 70.5% of people, including 57.8% of people who currently smoke, support raising the minimum age of legal access for tobacco products to 21;³⁰ and

NOW THEREFORE, it is the intent of the [*Name of City/Town's Legislative Body*], in enacting this Ordinance, to provide for the public's health, safety, and welfare and reduce youth access to Tobacco Products by prohibiting the selling, giving, or furnishing of Tobacco Products or Tobacco Paraphernalia to any individual under the age of 21.

COMMENT: The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. In addition to serving an educational purpose and building political and popular support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the legislation. Courts generally defer to legislative determinations of factual issues, which often influence legal conclusions. Your city or town may select findings from this list to include in its legislation, along with additional findings about tobacco use among youth and young adults specific to your city or town. Particularly useful are local findings and data that demonstrate the issue to be addressed by the legislation and how the legislation addresses that specific issue. Any legal precedent that directly supports the legislation should also be included.

SECTION II. [Article / Chapter] of the [*Name of City/Town*] Municipal Code is hereby amended to read as follows:

Sec. [_____ (*1)]. **DEFINITIONS.** The following words and phrases, whenever used in this [article / chapter], shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) “Person” means an individual, partnership, corporation, limited liability company, limited liability partnership, joint stock association, association, organization, or any other legal or commercial entity.

COMMENT: Existing law(s) in your city or town may already contain a definition of “Person,” and if so, the definition provided here can be omitted.

- (b) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (c) “Tobacco Product” means
- (1) Any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
 - (2) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

COMMENT: This definition is written broadly to include nonconventional tobacco and nicotine products, such as electronic cigarettes, nicotine gel, and nicotine lollipops. The definition also includes electronic cigarettes that do not contain nicotine. There is an exception for FDA-approved cessation products intended to benefit public health (e.g., nicotine patches and other nicotine cessation products).

- (d) "Tobacco Retailer" means any Person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration tobacco, Tobacco Products or Tobacco Paraphernalia.

Sec. [_____ (*2)]. **REQUIREMENTS AND PROHIBITIONS APPLICABLE TO TOBACCO PRODUCT AND TOBACCO PARAPHERNALIA SALES**

- (a) A Person shall not sell, give, or furnish any Tobacco Product or Tobacco Paraphernalia to any individual under 21 years of age.

COMMENT: This is the primary operative section of the ordinance. It prohibits any individual or business from selling, giving, or furnishing a Tobacco Product or Tobacco Paraphernalia to any individual under age 21. This provision is broadly worded to include not only retail sales but also any exchange or distribution of Tobacco Products and Tobacco Paraphernalia. However, it's important to note that this Model Ordinance imposes penalties only on Tobacco Retailers who violate the ordinance's requirements and prohibitions.

- (b) A Tobacco Retailer shall check the identification of Tobacco Product or Tobacco Paraphernalia purchasers to establish the age of the purchaser, if the purchaser reasonably appears to be under 27 years of age.

COMMENT: Federal law requires persons selling tobacco products to check the identification of any individual who appears to be under the age of 27. 21 C.F.R. §§ 1140.14(a)(2), (b)(2). However, states can enact requirements that are stricter than federal law. 21 U.S.C. § 387p. Therefore, localities may choose to set this requirement at age 27 or older.

- (c) A Tobacco Retailer shall post the sign(s) required by Chapter 321 of the Public Laws of 1996 as amended (R.I. Gen. Laws § 11-9-13 et seq.).

- (d) A Tobacco Retailer shall post sign(s) adjacent to the sign(s) required by Chapter 321 of the Public Laws of 1996 as amended (R.I. Gen. Laws § 11-9-13 et seq.), which include the following statement in both English and Spanish:

"The [City / Town] of [*Name of City/Town*] prohibits this store from selling or providing a tobacco product or tobacco paraphernalia to any individual under 21 years of age."

- (e) The size, design, and typeface requirements for the sign(s) required by subsection (d) shall be the same as the requirements for sign(s) required by subsection (c).

COMMENT: Rhode Island state law requires tobacco retailers to post several signs with specified information about (1) the state minimum age requirement for the purchase and sale of tobacco products and electronic nicotine-delivery systems, as well as photo identification check requirements; and (2) the health effects of tobacco. A local Tobacco 21 law may not modify these requirements. This means that in jurisdictions adopting a local Tobacco 21 law, Tobacco Retailers still must comply with state law by posting these signs.

The first sign required by Rhode Island state law must "[c]ontain in red bold lettering a minimum of three-eighths ($\frac{3}{8}$ ") inch high on a white background the following wording in both English and Spanish:

THE SALE OF CIGARETTES, TOBACCO AND ELECTRONIC NICOTINE-DELIVERY SYSTEM PRODUCTS TO PERSONS UNDER THE AGE OF 18 IS AGAINST RHODE ISLAND LAW (§ 11-9-13.8(1), Rhode Island Statutes) PHOTO ID FOR PROOF OF AGE IS REQUIRED FOR PURCHASE." R.I. Gen. Laws § 11-9-13.7(1).

The sign must also "[c]ontain the phone number at the department of behavioral healthcare, developmental disabilities and hospitals, where violations of §§ 11-9-13.2 -- 11-9-13.19 can be reported, in addition to any other information required by the department of behavioral healthcare, developmental disabilities and hospitals." R.I. Gen. Laws § 11-9-13.7(2). Tobacco Retailers must have the sign "displayed prominently for public view, wherever tobacco products are sold at each cash register, each tobacco and/or electronic nicotine-delivery systems vending machine, or any other place from which tobacco products and/or electronic nicotine-delivery systems are sold." R.I. Gen. Laws § 11-9-13.7(3).

The second sign required by Rhode Island state law must "[c]ontain red bold lettering a minimum of one-quarters of an inch ($\frac{1}{4}$ ") high on a white background the following wording, in both English and Spanish:

WARNING: SMOKING CIGARETTES CONTRIBUTES TO LUNG DISEASE, CANCER, HEART DISEASE, STROKE AND RESPIRATORY ILLNESS AND DURING PREGNANCY MAY RESULT IN LOW BIRTH WEIGHT AND PREMATURE BIRTH." R.I. Gen. Laws § 11-9-13.8.1(1).

The sign must also "include information regarding resources available to Rhode Island residents who would like to quit smoking," R.I. Gen. Laws § 11-9-13.8.1(2), and "be displayed prominently for public view wherever tobacco products are sold at each cash register, each tobacco vending machine, or any other place from which tobacco products are sold." R.I. Gen. Laws § 11-9-13.8.1(3).

To prevent confusion, this Model Ordinance requires Tobacco Retailers to post an additional sign stating that the sale of Tobacco Products and Tobacco Paraphernalia to individuals under 21 years of age is prohibited in the city or town adopting the ordinance. This sign is in addition to, not in lieu of, the signs required by state law. The additional sign required by this ordinance must be placed adjacent to the signs required by state law and comply with the same size, design, and typeface requirements that apply to the signs required by state law.

(f) Subsection (a) does not apply to the handling or transportation of a Tobacco Product or Tobacco Paraphernalia by an individual under 21 years of age under the terms of that individual's employment.

COMMENT: This is an optional provision that allows individuals under 21 years of age to work in jobs that require the handling and/or transportation of Tobacco Products and Tobacco Paraphernalia (e.g. a retail store clerk).

Sec. [_____] (*3). **ENFORCEMENT**

(a) Any Tobacco Retailer found to have violated this ordinance shall be assessed a fine not to exceed [two hundred fifty dollars (\$250.00)] for the first violation, or [five hundred dollars (\$500.00)] for each subsequent violation [within a 5-year period].

COMMENT: This provision imposes fines for violating the ordinance. The fine amounts can be adjusted but cannot exceed \$500 per violation. R.I. Gen. Laws § 45-6-2.

(b) A Person is liable for the acts of their clerk, servant, agent, or employee in violating this ordinance.

COMMENT: This provision allows enforcement against a business owner when their employees violate this ordinance.

(c) Each violation, and every day in which a violation occurs, shall constitute a separate violation.

(d) Violations of this [article / chapter] may, in the discretion of the [*Name of Prosecuting Body or Officer (e.g. City Prosecutor or District Attorney)*], be prosecuted as a criminal offense punishable by a fine not exceeding [five hundred dollars (\$500.00)] or imprisonment not exceeding [thirty (30)] days in a jail or house of correction when the interests of justice so require.

COMMENT: Sometimes called a "wobbler," this provision affords the prosecuting attorney discretion whether to pursue a violation as a civil violation (punishable by a fine of up to \$500) or as a criminal offense (punishable by a fine of up to \$500 or imprisonment for up to 30 days). Alternatively, violations can be set as *either* a civil offense or a criminal offense in all circumstances. Regardless of whether a violation is treated as a civil or criminal offense, the penalty for each violation cannot exceed either a \$500 fine or 30 days imprisonment. R.I. Gen. Laws § 45-6-2.

(e) It shall be an affirmative defense to a violation of this ordinance that the defendant, or the defendant's agent or employee, demanded, was shown, and reasonably relied upon bona

vide evidence that an individual was at least 21 years of age. For these purposes, bona fide evidence that an individual is at least 21 years of age is a document issued by a federal, state, county, or municipal government, or subdivision or agency of those governments that includes a photo and the date of birth of the individual, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

COMMENT: This provision allows a person to avoid penalties for violating this ordinance if they prove that either they, their employee, or their agent reasonably relied upon identification provided by the purchaser indicating that the purchaser was at least 21 years old. The provided identification must be issued by a federal, state, county, or municipal government, or subdivision or agency of those governments, and must contain a photo and the date of birth of the individual presenting the identification.

COMMENT ON YOUTH PURCHASE, USE, AND POSSESSION: This Model Ordinance does not prohibit or penalize the purchase, use, or possession ("PUP") of tobacco products or paraphernalia. Instead, the Model Ordinance prohibits only the selling, giving, or furnishing of a tobacco product or paraphernalia to an individual under 21 and penalizes tobacco retailers who violate this prohibition.

Well-enforced laws targeting retailers provide greater public health benefits than laws penalizing youth for PUP.³¹ Studies show that PUP laws only minimally affect tobacco use, and prioritizing enforcement of other tobacco control laws can more effectively reduce youth access to tobacco.³² Finally, PUP laws raise significant equity concerns because their enforcement often disproportionately affects youth of color.³³

For the reasons explained above, some communities have chosen to repeal their PUP laws. This Model Ordinance does not include provisions for repealing an existing PUP law. However, communities looking to adopt this Model Ordinance should determine whether they have a PUP law and, if so, how they should address youth PUP in their local ordinance.

This Model Ordinance does not exempt individuals under 21 from liability for purchasing tobacco products or paraphernalia during youth decoy ("sting") operations. Such exceptions are unnecessary in jurisdictions without existing PUP laws because this Model Ordinance does not prohibit or penalize the PUP of tobacco products or paraphernalia. Moreover, Rhode Island state law prohibits only individuals under age 18 from purchasing tobacco products. Therefore, individuals aged 18 to 20 who purchase tobacco products or paraphernalia during enforcement operations will not be subject to criminal or civil liability under either this Model Ordinance or state law. However, jurisdictions with PUP laws that apply to 18, 19, and 20-year-olds should consider repealing their PUP law. Alternatively, these jurisdictions may provide immunity to those individuals when they participate in enforcement operations.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Ordinance, or its application to any other person or circumstance. The [*Name of City/Town's Legislative Body*] of the [City / Town] of [*Name of City/Town*] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

COMMENT: This is standard language. Often this boilerplate language is found at the end of an ordinance, but its location is irrelevant.

Sec. [_____ (*5)]. **EFFECTIVE DATE**

This ordinance shall take effect on [*Date or Length of Time After Adoption*].

COMMENT: You should check state and local requirements on the minimum amount of time between passing an ordinance and when a law can go into effect. Additionally, localities may wish to delay the ordinance's effective date to allow sufficient time to educate retailers about the new requirements and to produce and distribute the required signage. Several localities who that recently implemented Tobacco 21 laws suggest a delay of 6 to 9 months, but the specific amount of time required will depend on a locality's needs and resources.

¹ See State ex rel. Town of Westerly v. Bradley, 877 A.2d 601 (R.I. 2005).

² R.I. Gen. Laws § 45-6-1

³ See July 2016 Memorandum titled "Local Authority for Tobacco 21 Policy in Rhode Island" from ChangeLab Solutions to Geri A. Guardino, Tobacco Control Program, Rhode Island Department of Health.

⁴ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking — 50 Years of Progress. A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.

⁵ World Health Organization. 2007. *World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health*, p. 12, www.who.int/whosis/whostat2007_10highlights.pdf.

⁶ U.S. Department of Health and Human Services. *The Health Consequences of Smoking — 50 Years of Progress A Report of the Surgeon General Executive Summary*; 2014. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf

⁷ Centers for Disease Control and Prevention. Prevention Status Reports 2013: Tobacco Use — Rhode Island. 2014. Available at: <http://www.cdc.gov/psr/2013/tobacco/2013/ri-tobacco.pdf>

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- ⁸ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Rhode Island. 2016. Available at: https://www.tobaccofreekids.org/facts_issues/toll_us/rhode_island.
- ⁹ According to the Campaign for Tobacco-Free Kids, 16,000 kids now under 18 and alive in Rhode Island will die prematurely from smoking. The U.S. Census estimates that in 2014 there were approximately 212,852 Rhode Island youth under age 18. Nearly one in thirteen was calculated by dividing the number of youth who will die prematurely (16,000) by the number of youth under age 18 in Rhode Islander (212,852).
- ¹⁰ U.S. Census. Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties, and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2014. 2015. Available at: <http://factfinder.census.gov/bkmk/table/1.0/en/PEP/2014/PEPAGESEX/0400000US44>
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- ¹⁴ Campaign for Tobacco-Free Kids. Increasing the Minimum Legal Sale Age for Tobacco Products to 21. 2016. Available at: <https://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>
- ¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: US National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 15, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf
- ¹⁶ Institute of Medicine of the National Academies. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*.; 2015. Available at: <http://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.
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