



Tobacco 21 Ordinance Checklist

Through licensing and related regulations, local governments (cities and counties) have the opportunity to address the sale of tobacco and related devices and products (such as electronic cigarettes) in the retail environment. This fact sheet provides an overview of considerations when raising the minimum legal sales age for tobacco products from 18 to 21. It is one in a series of resources providing Minnesota-specific information on local retail tobacco licensing and point-of-sale options.

Background

Nearly all adults who smoke begin smoking before the age of 21. Tobacco 21 (T21) policies are expected to reduce tobacco use initiation, improve health, and save lives. These public health implications and the other important issues that T21 policies can affect are detailed in [other resources](#).

T21 policies are not as simple as crossing out 18 and replacing it with 21. Each community starts in a different place and has unique characteristics and values. This checklist identifies important decision points to help ensure a community's policy intent is reflected in its T21 ordinance.

Policy Options and Considerations

A number of policy options and considerations should be taken into account when drafting a T21 ordinance.

■ Use retail licensing authority

- Counties must license and regulate the sale of tobacco and related products unless a city chooses to license and regulate on its own. Retailers licensed by a city are not required to obtain a second, county-issued license.¹
- Local ordinances may provide for more restrictive regulation of the sale of tobacco and related products than state and federal law.²

■ Add relevant findings

- Identify the problems being addressed so policy rationale, purpose, and intent are clear.
- While general findings are helpful,³ use local data when possible.⁴

■ Revise the sales age provision to T21. Prohibit the sale of tobacco and related products, including electronic cigarettes, to anyone under the age of 21.

• Add definition(s) to cover all products

- Since 2014, state law requires a local license to sell four types of products: (1) tobacco (cigars, cigarettes, snuff, etc.), (2) tobacco-related products (pipes, rolling papers, etc.), (3) electronic delivery devices (e-cigarettes, e-liquids, etc.), and (4) nicotine or lobelia delivery products/devices.⁵
- Determine whether other provisions of the tobacco retail licensing code need to be updated to cover all products.

• Add an age verification provision

- Federal law requires photographic ID age verification for anyone under the age of 27.⁶
- When the sales age is raised to 21, best practice is also to raise the age verification age to 30.

• Add other provisions to promote compliance

- Provide T21 signage that must be posted and clearly visible to buyers at the point of sale.
- Require retailer training on applicable laws.

■ Carefully consider violations and penalties for underage persons

- Licensing regulations focus on the actions of, and related consequences for, the regulated

entity. While prohibiting the possession, use, and purchase (PUP) of tobacco and related products by underage persons is a part of many existing ordinances, PUP provisions remain a controversial strategy for reducing underage tobacco use. Some question their effectiveness and whether they are enforced fairly.⁷ Inconsistent enforcement that is selectively applied can have a disproportionate burden on individuals from certain racial and ethnic groups who are then inequitably introduced to the criminal justice system.

- Avoid the potential criminalization of young people and other marginalized groups by eliminating underage PUP provisions or considering alternative consequences as required by licensing authorities for minors.⁸

■ Revise compliance/enforcement programs, penalties, and other administrative provisions

- When the sales age is raised to 21, best practice is also to raise the age of underage decoys for compliance checks to include 18-20 year olds. Ensure they are exempt from penalties when participating in compliance checks.
- Written consent is only required for those under age 18.⁹ State law does not require written consent for 18-20 year olds.
- Since 1997, annual unannounced compliance checks of each licensee are required.¹⁰
- Consider increasing administrative fines and other penalties, including license suspension and revocation, and more frequent compliance checks to ensure your new deterrents are effective.¹¹
- Ensure adequacy of license fees to cover the cost of administering licenses, training programs, and enforcement of T21 and other retail licensing requirements.¹²

■ Address licensee and clerk age

- When the sales age is raised to 21, best practice is also to raise the age for obtaining a retail license.
- Consider also establishing or raising the minimum clerk age to reduce a social peer source.

■ Consider other more restrictive options to protect and promote public health.¹³

¹ MINN. STAT. § 461.12, subd. 1.

² MINN. STAT. § 461.19; 21 U.S.C. § 387p.

³ See generally Public Health Law Center, *Tobacco 21: Sample Ordinance (2016)*, <http://www.publichealthlawcenter.org/sites/default/files/resources/phlc-Tobacco-21-Ordinance-2016.pdf>.

⁴ See, e.g., Raymond G. Boyle et al., *Raising the Minimum Legal Sale Age for Tobacco to 21: The Estimated Effect for Minnesota*, Jan/Feb 2017 MINNESOTA MEDICINE 35 (2017), <http://www.mnmed.org/MMA/media/Minnesota-Medicine-Magazine/Clinical-BOYLE.pdf>.

⁵ MINN. STAT. § 461.12.

⁶ 21 C.F.R. § 1140.14(a)(2)(ii) and (b)(2)(ii).

⁷ Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (2015), <http://www.nationalacademies.org/hmd/Reports/2015/TobaccoMinimumAgeReport.aspx>.

⁸ MINN. STAT. § 461.12, subd. 4.

⁹ MINN. STAT. § 461.12, subd. 5.

¹⁰ *Id.*

¹¹ See generally Public Health Law Center, *Minnesota Tobacco Point-of-Sale Policy Toolkit: Violations and Penalties* (2016), <http://www.publichealthlawcenter.org/sites/default/files/resources/phlc-fs-MDH-POS-Penalties-2016.pdf>.

¹² See generally Public Health Law Center, *Minnesota Tobacco Point-of-Sale Policy Toolkit: Retail License Fees* (2016), <http://www.publichealthlawcenter.org/sites/default/files/resources/phlc-fs-MDH-POS-License-Fees-2016.pdf>.

¹³ See generally Center for Public Health Systems Science, *Point-of-Sale Strategies: A Tobacco Control Guide* (2014), <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-guide-pos-policy-WashU-2014.pdf>.

CONTACT US

Please feel free to contact the Public Health Law Center at (651) 290-7506 or publichealthlaw@mitchellhamline.edu with any questions about the information included in this fact sheet or to discuss concerns you may have about implementing these policy options.