City of Ketchikan
City Manager
334 Front Street
Ketchikan, AK 99901

Phone (907) 228-5603
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TRANSMITTAL MEMORANDUM

TO: The Honorable Mayor and City Council

FROM: Karl R. Amylon, City Manager

DATE: June 14, 2019

RE: Tobacco 21 Initiative

At its meeting of June 12, 2019, the Ketchikan Gateway Borough/City of Ketchikan Cooperative Relations Committee considered the City of Ketchikan's referral of the Tobacco 21 Initiative to the committee. The Cooperative Relations Committee adopted a motion referring the initiative to the Borough Assembly. A copy of the committee's agenda statement is attached for City Council review. My office will advise the City Council of any action, if any, the Borough Assembly takes.

Tobacco 21 Initiative – *referred by City Council*

Member Flora spoke in support of moving forward with the proposal. Member McQuerry commented that City police did not participate in enforcement, so it could become a burden on City police. Conversely, she said, the Borough would be dependent on State troopers. She voiced concern about enacting more laws that could not be enforced. Manager Amylon said based on discussions with the City Police Chief, if the Borough and City were to adopt the law, the State would not enforce the 21 age limit, but would still enforce it at 19. To be effective, he said, both jurisdictions would need to go forward.

Mr. Robbins responded to questions raised by committee members and urged the Borough to move forward to consider the proposal. He said that the City and Borough of Sitka had passed the tobacco age limit to 21.

M/S MCQUERRY/FLORA to forward the Tobacco 21 Initiative to the Borough Assembly

Upon roll call the vote on the MOTION was:

YES: FLORA, COOSE, MCQUERRY, PIERCE
NO: WESTERGARD

MOTION DECLARED CARRIED

Reports of Officers or Staff

Report on Online Sales Tax Collection – *Borough Finance Director*

Finance Director Gubatayao provided a summary of the recent State online sales tax meeting she attended:

- Definitions may be problematic as the code could not have a separate set of definitions for online sales tax;
- The Borough currently received remittance from half a dozen online retail companies;
- The overall vision was a statewide sales tax administrator as an arm of AML similar to the Alaska Municipal League Joint Insurance Association (AMLJIA);
- Eventually, once administrator and software in place, Borough and City would separately consider whether to opt in to statewide collection while still collecting locally;
- Program would include an administration fee, send checks to two bodies;
- Consideration should be given to the fact that citizens may interpret it as a new tax;
- Two committees were formed: 1) Definitions; and 2) Establishing an administrator; volunteered for both committees, and inviting Borough Attorney to participate.

Report on Request for Community Flag – *City Mayor*

Bob Sivertsen, City Mayor, reported a request for a community flag was presented to the City and forwarded to the committee. Kathleen Light, KAAHC Director, presented the current City of Ketchikan flag depicting a salmon on a green background. She recommended moving slowly on the project to include community input, and suggested it could start at the Blueberry Arts Festival with a comment box. She said the Arts Council was willing to participate and build the process and budget for the committee to consider.

After a discussion, consensus was reached to forward the request to the Assembly and Council.

Kacie Paxton

From: Karl Amylon <KarlA@City.Ketchikan.Ak.Us>
Sent: Friday, May 03, 2019 8:58 AM
To: Kim Stanker; Kacie Paxton
Cc: Ruben Duran; Lacey Simpson
Subject: FW: Tobacco 21
Attachments: dianew@city.ketchikan.ak.us_20190503_083046.pdf

Kim and Kacie,

Last night the City Council discussed the Tobacco 21 Initiative. The relevant information is attached. It was determined that prior to the City taking any action on increasing the legal age for purchasing tobacco/vaping products to 21, it made sense for the issue to be first reviewed by the Cooperative Relations Committee. Please add this item to the next agenda for consideration by the committee. Thanks.

Karl

Karl R. Amylon
City Manager/KPU General Manager
(907) 228-5603
karla@ktn-ak.us

-----Original Message-----
From: dianew@city.ketchikan.ak.us [mailto:dianew@city.ketchikan.ak.us] On Behalf Of dianew@
Sent: Friday, May 03, 2019 9:31 AM
To: Karl Amylon
Subject: Tobacco 21

Reply to: dianew@city.ketchikan.ak.us <dianew@city.ketchikan.ak.us> Device Name: City of Ketchikan Device Model: MX-4141N
Location: Not Set

File Format: PDF (Medium)
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.
Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.
Adobe(R)Reader(R) can be downloaded from the following URL:

http://www.adobe.com/

Ketchikan INDIAN COMMUNITY

RESOLUTION: KIC 19-19

TITLE: A RESOLUTION OF SUPPORT FOR TOBACCO 21

WHEREAS, the Ketchikan Indian Community ("KIC or the "Tribe"), is a federally recognized Tribal government organized under a Constitution and Bylaws (collectively, the "Constitution") ratified on October 18, 2017, and previously organized under a Constitution and Bylaws ratified on January 16, 1979, and previously organized under a Constitution and Bylaws ratified on January 27, 1940, in each instance pursuant to Section 16 of the Indian Reorganization Act ("IRA") of 1934 as amended; and

WHEREAS, the KIC Tribal Council (the "Tribal Council") is the representative Tribal Government of the Tribe; and

WHEREAS, Alaska Native/American Indians have the highest rate of tobacco use in the state of Alaska;

WHEREAS, tobacco use is the leading cause of preventable death and disease and Alaska Native/American Indians suffer serious health consequences including heart disease, and cancer;

WHEREAS, the annual economic impact of smoking in the U.S is more than $300 billion in healthcare and lost work productivity costs;

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

WHEREAS, fewer young tobacco users will lead to fewer adult smokers, saving our community from the burden of medical expenses and lost productivity;

WHEREAS, the developing brains of young people are particularly susceptible to the addictive properties of nicotine, and as a result, approximately 3 out 4 teen smokers end up smoking into adulthood;

WHEREAS, electronic smoking device use among minors has recently tripled;

WHEREAS, a 2015 Institute of Medicine report concludes that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged 15 to 17, and that it will improve health across the lifespan and save lives; and that raising the minimum legal sales age for tobacco products to 21 nationwide would, over time, lead to a 12 percent decrease in smoking prevalence;

WHEREAS, the Institute of Medicine also predicts that raising the minimum legal sales age for tobacco products to 21 nationwide would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and that it would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome;

WHEREAS, a growing number of states have enacted laws mandating a minimum legal sales age for tobacco products to 21, including the states of Hawaii, California, Arkansas, Maine, Massachusetts, New Jersey, Oregon, Utah, Washington, Virginia and 450 localities nationwide, including Sitka, NY City, Chicago, San Antonio, Boston, Cleveland, Minneapolis, KC and Washington D.C;

WHEREAS, the retail impact of ordinances mandating a minimum legal sales age of 21 for tobacco products is expected to be minimal in the first years of the policy because it works by reducing or delaying initiation of smoking, especially among younger populations;

WHEREAS, raising the legal drinking age to 21 led to reduced alcohol use and dependence among youth, and contributed to a decline in drunk driving fatalities;

THEREFORE, BE IT RESOLVED THAT, The Ketchikan Indian Community recommends that the City of Ketchikan and the Borough of Ketchikan raise the minimum legal sales age for tobacco products to 21.

CERTIFICATION

The foregoing resolution was adopted at a duly convened meeting of the Ketchikan Indian Community Tribal Council, assembled this 25 day of April, 2019 at 2960 Tongass, Ketchikan, Alaska 99901, by a vote of: 8 FOR and 0 AGAINST

04/25/2019

Norman Skan, President Date

ATTEST:

04/25/2019

Gloria Burns, Secretary Date

Effective: April 25, 2019 KIC 19-19			
Roll Call	Yes	No	Absent
SKAN			
JOHNSON	X		
BURNS	X		
FRANK	X		
PICKRELL	X		
BENNETT	X		
RAMIREZ	X		
LEASK GUTHRIE	X		
WILLIAMS	X		

RAISING THE TOBACCO SALE AGE TO 21:
BUILDING STRONG ENFORCEMENT INTO THE LAW

Raising the minimum legal sale age of tobacco products to 21 (Tobacco 21) is an important, emerging policy strategy to reduce smoking that complements and builds on proven approaches such as tobacco prevention and cessation programs, higher tobacco taxes and smoke-free air laws. Raising the tobacco sale age to 21 will have a substantial positive impact on public health and save lives.

Under federal law, and the law of every state, it is illegal for a retailer to sell tobacco products to persons younger than 18 years of age; a few states have set the minimum age at 19.[1] In recent years, over 350 localities in more than twenty states have enacted ordinances or issued regulations raising the minimum age for tobacco sales to 21. In 2015, Hawaii became the first state to enact such a law. California followed suit in 2016, followed by Maine, New Jersey, and Oregon in 2017, and Massachusetts in 2018.

The momentum for Tobacco 21 was strengthened in 2015 with the release of an Institute of Medicine report predicting that raising the tobacco sale age to 21 nationally would, over time, reduce the smoking rate by about 12 percent and smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer and 4.2 million fewer years of life lost.

To be effective, youth access laws must be rigorously enforced. Unfortunately youth access laws are often poorly enforced. The national "Monitoring the Future" survey reports that over 60 percent of 10th grade students found cigarette access to be "fairly easy or very easy."[2] The most recent federally mandated retailer compliance rate survey under the Synar Program found that one in ten retailers sell to kids aged 14-17.[3] Moreover, too few retailers are fined or suffer license suspension. Because adolescents readily identify those retailers who will sell to them, an effective law must substantially reduce these levels of retailer non-compliance.

It is critical that age of sale laws are strictly enforced to ensure a high rate of compliance. **The most effective way to ensure compliance is to take enforcement into account in drafting an ordinance or regulation, rather than considering it only after a proposal is adopted.**

The purpose of this Memorandum is to provide recommendations for enforcement to localities considering raising the tobacco sale age to 21.

In part, these recommendations are drawn from ordinances that already have been adopted. They are also drawn from lessons learned from setting the sale age at 18.[4] Jurisdictions considering raising the sale age should review their current laws to identify weaknesses that can be addressed in new minimum age legislation. We have provided alternatives because each locality is unique and the best way to include language in any ordinance may vary from jurisdiction to jurisdiction. Nevertheless, these suggestions are based on common principles that apply to all situations and each suggested provision should be considered by any state, city or county in crafting language to raise the tobacco sale age.

Designate an Enforcement Agency

Designating an enforcement agency in advance and making clear who is responsible for enforcement, and the tools that will be available to the enforcement agency, always enhances enforcement, but not all existing ordinances do so.

Some existing sale-at-21 ordinances define violations and specify the penalties for violation, without designating a particular agency as responsible and accountable for enforcement of the ordinance. Practically, this may be less of a problem in jurisdictions that have existing youth access laws, have previously designated the enforcement agency for enforcing those laws, and are merely raising the age from 18 to 21 under the same authority. However most state and local authorities rely on compliance checks organized and funded by the FDA under the 2009 Family Smoking Prevention and Tobacco Control Act. Unfortunately the FDA can only enforce up to age 18. If the FDA or its contract agent does all of the youth access enforcement in a jurisdiction, an alternative arrangement may be needed to enforce age 21.

After understanding what agency or authority currently enforces youth access to tobacco, it is important to ascertain how successful the retailer compliance program has been. Enforcement programs often consist of compliance checks in which "decoy" underage purchasers test compliance with age-verification requirements as well as minimum-age restrictions under the supervision of an adult. Effective programs visit each retail tobacco outlet at least once or twice per year to conduct random unannounced inspections, with follow-up checks on non-compliant stores.

For those with no preexisting youth access law or for local jurisdictions in which enforcement of age 18 has been handled entirely by a state enforcement agency or the FDA, it is important to designate a local enforcement agency and to give that agency explicit authority to enforce the ordinance, in the text of the ordinance itself. This will provide certainty as to what entity is responsible for enforcement and, just as important, what agency is accountable for enforcement. Determining who will enforce, and how enforcement will be conducted, will require pre-planning to allow time to communicate with key stakeholders. It is advisable to identify the intended enforcing agency in advance, consult with the agency where possible, and then include its representatives in discussions as the language is drafted.

Some existing ordinances designate the local public health department or officer, some designate local law enforcement, and others designate both a public health enforcement entity and a law enforcement entity. The designation of more than one locus of enforcement responsibility may provide needed flexibility, as long as there is no confusion as to responsibility and accountability. When possible under state law, we advise using existing regulatory authorities such as health department inspectors or experienced contractors rather than relying on the police or sheriff's office where resources may be stretched. Enforcement should focus on the retailer who sells to a person under 21, not on the below-age purchaser. Generally

enforcement does not take place at the time of the compliance check. Instead a violation letter is sent later describing the violation and stipulating the warning or penalty.

Identify a Dedicated Funding Source for Enforcement

Regardless of what agency is designated for enforcement duties, effective enforcement requires a consistent, dependable source of funding for enforcement efforts. Such a program of decoy-based compliance checks, of course, requires commitment and adequate resources.

A jurisdiction should not automatically assume that existing funding is adequate because a local authority already has funds to enforce the existing youth access law. For example, it may be that localities currently receive funding from state tobacco control programs or the FDA to enforce 18 as the minimum age under current state or local law, but this money may not be available to enforce local ordinances raising the age to 21 because selling tobacco products to 18-20 year olds does not violate state or federal law. Compliance checks to enforce Tobacco 21 ordinances necessarily involve decoys in the 18-20 age range and state or federal funding may not be available to recruit and deploy decoys of that age group.

Identifying funds is important for success and the source of such funds should be specified in the ordinance. Again, determining the source of funding will require a pre-drafting planning process to consult with stakeholders. For example, some localities specify that fines for non-compliance are to be used to fund compliance checks and other enforcement activities. When establishing the level of fines for violation of the ordinance, jurisdictions should consider not only the minimum necessary to encourage compliance, but also the level sufficient to provide a dependable source of enforcement funding going forward.

Where a jurisdiction requires a license to sell tobacco products, license fees can also be specified as a source of enforcement funds. Some jurisdictions (e.g. Boston, MA) provide for the use of both fines and fees. To the extent possible, it is desirable that tobacco enforcement and/or regulatory activity be self-funding (through the use of fines and fees) to ensure continuous and dependable funding. The ordinances of some jurisdictions identify a preexisting fund for enforcement not limited to tobacco enforcement (e.g. county or city general funds).

Require a Specified Number of Compliance Checks

Localities should also consider including a provision mandating a minimum number of compliance checks per retailer for a specific period of time. For example, the Minneapolis, MN licensing law enforces the minimum age of 18 for tobacco sales by requiring unannounced compliance checks to be conducted at least annually at each location where tobacco is sold and then, in the event of a first violation, mandating another check within the following six months and at least twice within a year of the first violation. The Santa Clara County, CA ordinance specifies a minimum standard of two decoy-based compliance checks each year for implementation of its age 21 law. This kind of requirement should be a substantial incentive for compliance, as well as making the enforcement authority easily accountable for a given level of enforcement activity.

License Tobacco Retailers or, Where There Is An Existing Licensing System, Use Threat of License Suspension or Revocation as an Enforcement Sanction

A tobacco retailer licensing system can be important in enhancing enforcement. Not only does a license fee provide a stable and reliable source of funding for enforcement, but also the threat of license suspension and revocation can be a powerful incentive for compliance. As example, Needham, MA, often cited as the progenitor city for Tobacco 21, developed excellent retailer compliance only after it issued a 60 day suspension to one retailer. The requirement of license renewal also allows local enforcement agencies to keep a current census of tobacco retailers. In several jurisdictions, including Boston, MA and Santa Clara County, CA, license suspension or revocation is expressly available as a sanction for non-compliance with the minimum legal sale age of 21. Most states already have a tax-license system for tobacco, but we suggest that age 21 ordinances contain a revocable local license that also funds enforcement efforts.

Provide for Citizen Complaints of Violations

The ordinances of several jurisdictions, including Bergenfield, NJ, Rutherford, NJ and Boston, MA, provide for citizen complaints of violations. While some citizens currently contact agencies in their community to report violations of laws, this type of provision may help invite the community to assist in enforcement of these ordinances, while providing an additional incentive for compliance and enhance accountability. Ordinances should make clear how, and with what agency, such complaints should be filed, as well as providing for public education to ensure general knowledge of the complaint mechanism.

Require Appropriate Signage at Retail Stores

Local Tobacco 21 ordinances also can enhance compliance by requiring retailers to post appropriate signage, or change existing signage, in prominent locations easily readable by consumers and the public, making it clear that 21 is the minimum age to purchase tobacco products. Cleveland's ordinance, for example, has an express provision for signage. In addition, if the public is more aware of the new minimum age, it will tend to encourage citizen complaints of violations. Signage should include information about state and local resources to help tobacco users quit. In the pre-drafting planning phase, it is important to determine who will be responsible for printing and distributing signs, including covering the cost. It also is important to work with the enforcing agency ahead of time to determine how the newly-required signs concerning the local 21 ordinance will relate to any preexisting signage required by state law for sales to persons under 18.

Provide for Retailer Education

Local ordinances should provide for the education of retailers as to the new minimum age and specify the agency responsible for conducting such education. Retailer education will prevent inadvertent non-compliance due to ignorance of the new age limit, as well as laying the groundwork for successful enforcement actions and the application of appropriate penalties when violations occur. It is important to build in time between enactment of the policy and its effective date to make sure there is enough time to educate retailers, adopt new signage, etc.

[1] The states with the tobacco sale age at 19 are Alaska, Alabama, and Utah.
[2] Johnston, L. D., et al. (2017). Monitoring the Future national survey results on drug use, 1975-2016: Overview, key findings on adolescent drug use. Ann Arbor: Institute for Social Research, The University of Michigan. http://monitoringthefuture.org/pubs/monographs/mtf-overview2016.pdf.
[3] Tobacco Sales to Youth. Annual Synar Reports FFY 2014. Substance Abuse and Mental Health Services Administration.
[4] DiFranza, Joseph R. "Best practices for enforcing state laws prohibiting the sale of tobacco to minors," *Journal of Public Health Management and Practice* November-December 11(6), 2005.

INCREASING THE SALE AGE FOR TOBACCO TO 21 WILL REDUCE SMOKING AND SAVE LIVES

Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 Americans each year.[1] Tobacco use is known to cause cancer, heart disease and respiratory diseases, among other serious health problems and costs the U.S. as much as $170 billion in health care expenditures each year.[2] Each day, 350 kids under the age of 18 become regular, daily smokers; and almost one-third will eventually die from smoking.[3] If current trends continue, 5.6 million of today's youth will die prematurely from a smoking-related illness.[4]

Because tobacco is so harmful, we should do everything we can to prevent tobacco use among young people. Increasing sale age for tobacco to 21 will help reduce smoking and save lives.

Raising the Minimum Legal Sale Age Will Help Save Lives

A March 2015 report by the Institute of Medicine (IOM) concluded that raising the tobacco sale age to 21 will have a substantial positive impact on public health and save lives.[5] The IOM finds that raising the tobacco sale age will:

- significantly reduce the number of adolescents and young adults who start smoking;
- reduce smoking-caused deaths, and
- immediately improve the health of adolescents, young adults and young mothers who would be deterred from smoking, as well as their children.

Raising the Minimum Legal Sale Age Is Being Adopted Across the U.S. and Is Popular

- Jurisdictions across the country are increasing the sale age for tobacco. California, New Jersey, Oregon, Hawaii, and Maine have raised the tobacco sale age to 21, along with at least 270 localities, including New York City, Chicago, Boston, Cleveland and both Kansas Cities.
- Raising the legal sale age is popular with the public, including smokers. A July 2015 CDC report found that three quarters of adults favor raising the tobacco age to 21, including seven in 10 smokers. The idea has broad-based support across the country, including support among men and women, and Americans of all income, education, race/ethnicity and age groups.[6]

Addiction Occurs Early—Most Adult Smokers Start Smoking Before Age 21

- About 95% of adult smokers begin smoking before they turn 21, and about 80% first try it before age 18.[7] While less than half (47%) of adult smokers become regular, daily smokers before age 18, four out of five become regular, daily smokers before they turn 21.[8] This means the 18 to 21 age range is a time when many smokers transition to regular smoking.
- Tobacco companies know that if they don't capture new users by their early 20's, it's very unlikely they ever will.[9]
- Adolescents are particularly vulnerable to the addictive effects of nicotine. The U.S. Surgeon General has stated that "the potential long-term cognitive effects of exposure to nicotine in this age group are of great concern."[10] Because adolescence and young adulthood are critical periods of growth, exposure to nicotine can have lasting, negative consequences on brain development.
- Young people can feel addicted to nicotine earlier than adults.[11] As a result of nicotine addiction, about 3 out of 4 teen smokers end up smoking into adulthood, even if they intend to quit after a few years.[12]

Older Adolescents and Young Adults are a Source of Cigarettes for Youth

- More than 60% of 10th grade and nearly half of 8th grade students say it's easy to get cigarettes.[13]
- Youth smokers identify friends and classmates as a common source of cigarettes. With more 18-19 year olds in high school, youth have daily contact with students who can legally buy tobacco for them.[14]
- Setting the minimum legal sale age at 21 instead of 18 would help keep tobacco out of schools because legal purchasers would be less likely to be in the same social networks as high school students and therefore less able to sell or give cigarettes to them.

More information on increasing the sale age for tobacco products to 21 is available at

http://www.tobaccofreekids.org/what_we_do/state_local/sales_21.

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[1] 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

[2] HHS. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*, 2014; Xu, X., et al., "Annual Healthcare Spending Attributable to Cigarette Smoking: An Update," *Am J Prev Med*, 2014.

[3] Substance Abuse and Mental Health Services Administration (SAMHSA),HHS, *Results from the 2016 National Survey on Drug Use and Health, NSDUH: Detailed Tables,*https://www.samhsa.gov/data/sites/default/files/NSDUH-DetTabs-2016/NSDUH-DetTabs-2016.pdf

[4] HHS. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.* 2014.

[5] Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Washington, DC: The National Academies Press, 2015, http://www.nationalacademies.org/hmd/Reports/2015/TobaccoMinimumAgeReport.aspx ; In addition, a recent study suggests that raising the sale age to 21 is a promising practice, finding that the policy contributed to a greater decline in youth smoking in one community that passed a 21 ordinance compared to comparison communities that did not pass an ordinance restricting tobacco product sales to 21 and older. While the results are promising, the magnitude of the impact is unknown given that there are no baseline measurements and there were confounding issues that were not controlled for. See Kessel Schneider, S. et al, "Community reductions in youth smoking after raising the minimum tobacco sales age to 21," *Tobacco Control*, June 12, 2015, http://tobaccocontrol.bmj.com/content/early/2015/06/12/tobaccocontrol-2014-052207.1.abstract

[6] King, Brian A., Jama, AO, Marynak, KL, and Promoff GR, "Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults," *American Journal of Preventive Medicine*, 2015, http://www.sciencedirect.com/science/article/pii/S0749379715002524

[7] United States Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Center for Behavioral Health Statistics and Quality. National Survey on Drug Use and Health, 2014. ICPSR36361-v1. Ann Arbor, MI:; see also Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Washington, DC: The National Academies Press, 2015, http://iom.nationalacademies.org/Reports/2015/TobaccoMinimumAgeReport.aspx

[8] Calculated from data in the National Survey on Drug Use and Health, 2014, http://www.icpsr.umich.edu/icpsrweb/SAMHDA/.

[9] RJ Reynolds: "If a man has never smoked by age 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one," RJ Reynolds, "Estimated Change in Industry Trend Following Federal Excise Tax Increase," September 10, 1982, Bates Number 513318387/8390, http://legacy.library.ucsf.edu/tid/tib23d00;jsessionid=211D4CCF0DBD25F9DC2C9BB025239484.tobacco03.

[10] HHS. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*, 2014.

[11] HHS. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.* , 2014.HHS,*Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,* 2012; U.S. Department of Health and Human Services (USDHSS), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General,* U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.

[12] HHS. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,* 2012.

[13] Johnston, LD, et al., *Monitoring the Future study*, 2016, http://www.monitoringthefuture.org/data/16data/16cigtbl3.pdf.

[14] National Center for Education Statistics, "Enrollment Trends by Age (Indicator 1-2012)," *The Condition of Education,* 2012, http://nces.ed.gov/programs/coe/pdf/coe_ope.pdf. U.S. Census Bureau, Current Population Survey, Data on School Enrollment, http://www.census.gov/hhes/school/data/cps/index.html; See also. Institute of Medicine, *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*, Washington, DC: The National Academies Press, 2015; Ahmad, S, "Closing the youth access gap: The projected health benefits and costs savings of a national policy to raise the legal smoking age to 21 in the United States," *Health Policy*, 75:74 – 84, 2005. White, MM, et al. "Facilitating Adolescent Smoking: Who Provides the Cigarettes?" *American Journal of Health Promotion*, 19(5): 355 – 360, May/June 2005.

INCREASING THE MINIMUM LEGAL SALE AGE FOR TOBACCO PRODUCTS TO 21

"Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) where we sell about 25 billion cigarettes and enjoy a 70 percent market share."[1]
— Philip Morris report, January 21, 1986

Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year.[2] It is known to cause cancer, heart disease and respiratory diseases, among other health disorders, and costs the U.S. as much as $170 billion in health care expenditures each year.[3] Each day, more than 300 kids under the age of 18 become regular, daily smokers; and almost one-third will eventually die from smoking.[4] If current trends continue, 5.6 million of today's youth will die prematurely from a smoking-related illness.[5]

High tobacco taxes, comprehensive smoke-free laws and comprehensive tobacco prevention and cessation programs are proven strategies to reduce tobacco use and save lives. Increasing the minimum legal sale age (MLSA) for tobacco products to 21 complements these approaches to reduce youth tobacco use and to help users quit.

Nine states – Arkansas, California, Hawaii, Massachusetts, Maine, New Jersey, Oregon, Utah and Virginia – have raised the tobacco age to 21, along with at least 450 localities, including New York City, Chicago, San Antonio, Boston, Washington, DC, Cleveland, Minneapolis, and both Kansas Cities.[6]

Raising the legal sale age is popular with the public, including smokers. A July 2015 CDC report found that three quarters of adults favor raising the tobacco age to 21, including seven in 10 smokers. The idea has broad-based support across the country, including support among men and women, and Americans of all income, education, race/ethnicity and age groups."[7]

There is strong reason to believe that MLSA 21 will contribute to reductions in youth tobacco use. Central to the MLSA strategy are the facts that many smokers transition to regular, daily use between the ages of 18 and 21; many young adult smokers serve as a social source of tobacco products for youth; and tobacco companies have long viewed young adults ages 18 to 21 as a target market group. The key facts supporting the policy derive from the 2015 Institute of Medicine report on raising the tobacco sale age; evidence from jurisdictions that have adopted the policy; research on youth and young adult tobacco use and access, and research on industry marketing tactics.

The IOM Predicts MLSA 21 Will Reduce Smoking and Save Lives

A March 2015 report by the Institute of Medicine (IOM), one of the most prestigious scientific authorities in the United States, strongly concluded that raising the tobacco sale age to 21 will have a substantial positive impact on public health and save lives.[8] Based on a review of the literature and predictive modelling, it finds that raising the tobacco sale age will significantly reduce the number of adolescents and young adults who start smoking; reduce smoking-caused deaths; and immediately improve the health of adolescents, young adults and young mothers who would be deterred from smoking, as well as their children. Specifically, the report predicts that raising the minimum age for the sale of tobacco products to 21 will, over time, reduce the smoking rate by about 12 percent and smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost.

Emerging Evidence Is Promising

Because it is a relatively new strategy, data on the impact of increasing the MLSA to 21 is limited; but, the data that are available provide strong reason to believe that it will contribute to reductions in youth tobacco use.

Based on preliminary data available from California, New York City, and Chicago, raising the tobacco sale age to 21 can be easily implemented and can help reduce youth access to and use of tobacco.

California

California's Tobacco 21 law became effective in June 2016. Initial evaluation results indicate that there is high awareness and support for the new law among tobacco retailers and young adults, two key audiences for ensuring compliance with the law. In addition, tobacco purchase data show that there is high compliance with the law among retailers.[9]

- Implementation: Virtually all retailers (98.6%) were aware of the new law 7 months after its effective date, and a large majority of retailers supported the law (60.6%). Nearly two-thirds of young adults were aware of the law.

- Retail sales to teens: Tobacco purchase data show a significant decline in tobacco sales to younger teens following implementation of the law. Specifically, compliance data for 15-16 year olds showed a 45% reduction in sales of tobacco products to underage buyers before and after the law. Before the law, 10.3% of sampled retailers sold tobacco to 15 to 16 year olds. After the law, 5.7% of sampled retailers sold tobacco to 15-16 year olds. Prior to the higher sale age law, for this age group, the retailer violation rate had been flat since 2009, suggesting strongly that the higher age limit is related to the decline. There was also a significant decrease in illegal tobacco sales among tobacco-only retailers after the law was implemented.

New York City

In August of 2014, New York City simultaneously implemented policies to raise the tobacco sale age to 21 and to reduce sources of cheap tobacco. While reductions in smoking cannot be attributed solely to the Tobacco 21 law, preliminary findings suggest that the law is contributing to reductions in youth tobacco use:

- Data from the Youth Risk Behavior Survey show that there was a 29 percent decline in current cigarette smoking among high school students between 2013 and 2015. There were also reductions in ever trying cigarettes (-18%) and smoking initiation in the past 12 months (-13%), over the same time period.[10]

Chicago

Chicago has taken a number of actions to reduce tobacco use in recent years including increasing the cost of tobacco and restricting the sale of flavored tobacco products. In addition, in July 2016, Chicago implemented a policy to raise the tobacco sale age to 21. Data show that Chicago's comprehensive approach is reducing smoking:

- Data from the Youth Risk Behavior Survey show only 6% of Chicago high school students reported current cigarette smoking in 2017, an all-time low. This represents a 56% decrease in cigarette smoking among youth since 2011.

- Chicago's annual Healthy Chicago survey found that current smoking of cigarettes and e-cigarettes among 18-20 year olds declined by over one third between 2015 and 2016, from 15.2% to 9.7%.[11]

Most Adult Smokers Start Smoking Before Age 21

National data show that about 95 percent of adult smokers begin smoking before they turn 21, and a substantial number of smokers start even younger— about three-quarters of adult smokers first try smoking before age 18.[12] While less than half (46%) of adult smokers become regular, daily smokers before age 18, four out of five become regular, daily smokers before they turn 21.[13] This means the 18 to 21 age range is a time when many smokers transition to regular use of cigarettes.[14] According to one national survey, the prevalence of current smoking among 18-20 year olds is more than double that of 16-17 year olds (18.8% vs. 7.5%).[15]

Another national survey found that among middle and high schoolers who had ever smoked cigarettes, the median age of first trying smoking was 12.6 years old. Over half (55.4%) of youth who had ever smoked cigarettes had initiated by age 13. Youth who started smoking before or at age 13 were more likely to be current smokers and to report greater nicotine dependence.[16]

Tobacco companies have admitted in their own internal documents that, if they don't capture new users by their early 20's, it is very unlikely that they ever will. In 1982, one RJ Reynolds researcher stated:

> *"If a man has never smoked by age 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one."*[17]

Delaying the age when young people first experiment or begin using tobacco can reduce the risk that they transition to regular or daily tobacco use and increase their chances of successfully quitting, if they do become regular users.[18] The IOM report notes that the age of initiation is critical and predicts that "Increasing the minimum age of legal access to tobacco products will likely prevent or delay initiation of tobacco use by adolescents and young adults."[19]

Adolescents are particularly vulnerable to the addictive effects of nicotine. The IOM report found that "The parts of the brain most responsible for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continue to develop and change through young adulthood, and adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction."[20] The U.S. Surgeon General has stated that "the potential long-term cognitive effects of exposure to nicotine in this age group are of great concern."[21] Because adolescence and young adulthood are critical periods of growth and development, exposure to nicotine may have lasting, adverse consequences on brain development. The IOM report's review of the literature on the developmental context of youth tobacco use emphasizes that the brain continues to develop "until about age 25."[22] As reported by the U.S. Surgeon General:

> *"This earlier age of onset of smoking marks the beginning of the exposure to the many harmful components of smoking. This is during an age range when growth is not complete and susceptibility to the damaging effects of tobacco smoke may be enhanced. In addition, an earlier age of initiation extends the potential duration of smoking throughout the lifespan. For the major chronic diseases caused by smoking, the epidemiologic evidence indicates that risk rises progressively with increasing duration of smoking; indeed, for lung cancer, the risk rises more steeply with duration of smoking than with number of cigarettes smoked per day."*[23]

Adding to the concern is the fact that young people can often feel dependent earlier than adults.[24] Though there is considerable variation in the amount of time young people report it takes to become addicted to using tobacco, key symptoms of dependence—withdrawal and tolerance—can be apparent after just minimal exposure to nicotine.[25] According to the 2014 Report of the Surgeon General, "the addiction caused by the nicotine in tobacco smoke is critical in the transition of smokers from experimentation to sustained smoking and, subsequently, in the maintenance of smoking for the majority of smokers who want to quit."[26] IOM's recent review summed up the evidence:

> *"It is clear that the juxtaposition of numerous risk factors during the adolescent and young adult years is likely to increase the probability that first trials of tobacco use will turn into persistent use. These factors include the sequence of neurodevelopment in the adolescent years, the unique sensitivity of the adolescent brain to the rewarding properties of nicotine, the early development of symptoms of dependence in an adolescent's smoking experience (well before reaching the 100-cigarette lifetime threshold), and the difficulties that adolescents have in stopping smoking."*[27]

As a result of nicotine addiction, about three out of four teen smokers end up smoking into adulthood, even if they intend to quit after a few years.[28] As noted above, smoking-related health problems are influenced by both the duration (years) and intensity (amount) of use. Unfortunately, individuals who start smoking at younger ages are more likely to smoke as adults, and they also are among the heaviest

users.[29] In addition to longer-term health risks such as cancer and heart disease, young people who smoke are at risk for more immediate health harms, like increased blood pressure, asthma and reduced lung growth.[30]

Over the past several years, there has been a rapid rise in youth use of electronic cigarettes. This is a concern because as stated by the Surgeon General, "E-cigarette use poses a significant – and avoidable – health risk to young people in the United States. Besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, e-cigarette use is associated with the use of other tobacco products that can do even more damage to the body."[31]

E-cigarettes are now the most popular tobacco product among young people. According to the National Youth Tobacco Survey, 20.8 percent of high schoolers and 4.9 percent of middle schoolers reported current use of e-cigarettes in 2018.[32] 2014-2016 data from the same survey showed that among middle and high schoolers who had ever tried e-cigarettes, the median age of first trying an e-cigarette was 14.1.[33] A 2018 report by the National Academies of Science, Engineering and Medicine (NASEM) found the effect of e-cigarette use on cigarette smoking initiation to be causal, concluding that "There is substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults."[34]

Older Adolescents and Young Adults Are a Source of Cigarettes for Youth

According to the 2018 Monitoring the Future Survey, more than 60% of 10th grade students and nearly half (46%) of 8th grade students say it is easy to get cigarettes. More than 60% of 10th grade students also say it is easy to get vaping devices and e-liquids.[35] This perception that getting tobacco products is easy exists despite the fact that fewer retailers are selling tobacco to underage youth than before. In 2014 (federal fiscal year), the national retailer violation rate was 9.8 percent.[36] This suggests that youth are obtaining cigarettes from sources other than direct store purchases.

Research shows that youth smokers identify social sources, such as friends and classmates, as a common source of cigarettes. Although older and more established youth smokers are more likely to attempt to purchase their cigarettes directly than kids who smoke less frequently or are only "experimenting," they are also major suppliers for kids who do not purchase their own cigarettes but instead rely on getting them from others.[37] And with more 18- and 19-year olds in high school now than in previous years, younger adolescents have daily contact with students who can legally purchase tobacco for them.[38]

National studies find that underage youth commonly obtain cigarettes from social networks. The 2013-2014 wave of the Population Assessment of Tobacco and Health (PATH) study found that 75% of 15-17 year old current smokers obtained cigarettes from social sources.[39] Data from the National Survey on Drug Use and Health (NSDUH) show that nearly two-thirds (63.3%) of 12- to 17-year olds who had smoked in the last month had given money to others to buy cigarettes for them. One-third (30.5%) had purchased cigarettes from a friend, family member or someone at school. In addition, six out of ten (62%) had "bummed" cigarettes from others.[40]

Raising the sale age of tobacco to 21 is likely to make both direct retail purchase and social source acquisition more difficult for underage youth, especially for 15-,16-, and 17- year olds, "who are most likely to get tobacco from social sources, including from students and co-workers above the [minimum legal age of access] MLA."[41] With the minimum legal sale age set at 21 instead of 18, legal purchasers would be less likely to be in the same social networks as high school students and therefore less able to sell or give cigarettes to them.

Tobacco Companies Target Young Adults Ages 18 to 21

Tobacco industry advertising and promotional activities cause youth and young adults to start smoking, and nicotine addiction keeps people smoking past those ages.[42] Tobacco companies heavily target young adults ages 18 to 21 through a variety of marketing activities—such as music and sporting events, bar promotions, college scholarships and parties—because they know it is a critical time period for solidifying

tobacco addiction.[43] It is also a time when the industry tries to deter cessation and recapture recent quitters.[44]

Tobacco companies realize that the transition into regular smoking that occurs during young adulthood is accompanied by an increase in consumption, partly because the stresses of life transitions during that time—going to college, leaving home, starting a new job, joining the military, etc.—invite the use of cigarettes for the effects of nicotine.[45] Statements obtained from the tobacco industry's internal documents emphasize the importance of increasing consumption within this target market in order to maintain a profitable business:

> *"...eighteen to twenty-four year olds will be "[c]ritical to long term brand vitality as consumption increases with age."*[46]

> *"...[t]he number one priority for 1990 is to obtain younger adult smoker trial and grow younger adult smoker share of market."*[47]

> *"To stabilize RJR's share of total smokers, it must raise share among 18-20 from 13.8% to 40%...ASAP."*[48]

> *"Our aggressive Plan calls for gains of about 5.5 share points of smokers 18-20 per year, 1990-93 (about 120,000 smokers per year). Achieving this goal would produce an incremental cash contribution of only about $442MM during the Plan period (excluding promotion response in other age groups and other side benefits). However, if we hold these YAS [young adult smokers] for the market average of 7 years, they would be worth* ***over $2.1 billion in aggregate incremental profit.*** *I certainly agree with you that this payout should be worth a decent sized investment." [emphasis in original]*[49]

In 2006, after reviewing the evidence against the tobacco companies in a civil racketeering case brought forth by the U.S. Department of Justice, U.S. District Court Judge Gladys Kessler made this conclusion about the industry's marketing practices:

> *"From the 1950s to the Present, Different Defendants, at Different Times and Using Different Methods, Have Intentionally Marketed to Young People Under the Age of Twenty-one in Order to Recruit 'Replacement Smokers' to Ensure the Economic Future of the Tobacco Industry."*[50]

And in 2014, the U.S. Surgeon General eliminated all doubt regarding the industry's role in perpetuating our nation's tobacco epidemic. He stated:

> *"...the root cause of the smoking epidemic is also evident: the tobacco industry aggressively markets and promotes lethal and addictive products, and continues to recruit youth and young adults as new consumers of these products."*[51]

Increasing the Minimum Drinking Age Law to 21 Reduced Youth Drinking and Fatalities

The public health benefits and lessons learned from increasing the minimum drinking age to 21 offer additional support for pursuing a higher MLSA for tobacco products. In the early 1980's, many states raised the legal drinking age to 21. By 1988, all states had minimum drinking age laws of 21.[52] Data from the Monitoring the Future Survey show that past month and binge drinking among high school seniors decreased by 22 percent between 1982 and 1998, while youth drinking driver involvement in fatal crashes decreased by 61 percent over this same time period. The decrease in drinking may account for some of the decrease in drinking and driving.[53]

Subsequent research suggests that raising the minimum drinking age to 21 is associated with reduced alcohol consumption among youth and young adults and fewer alcohol-related crashes.[54] In fact, the National Highway Traffic Safety Administration reports that, since 1975, increasing the minimum drinking age has saved more than 21,000 lives.[55] Moreover, research shows that, when the drinking age is 21,

individuals under 21 drink less and continue to drink less through their early twenties.[56] With increased enforcement of the law, these impacts could be even greater.[57]

The IOM concluded in its review that "raising the minimum legal drinking age for alcohol coupled with rigorous enforcement and penalties for violations has been associated with lowered rates of alcohol consumption among adolescents and adults as well as with reduced rates of alcohol-related adverse events (e. g. traffic crashes and hospitalizations)."[58]

Benefits of Raising the MLSA to 21

Comprehensive approaches to addressing public health problems work. Much like increasing the minimum drinking age has not eliminated underage drinking, a higher MLSA is not likely to eliminate underage tobacco use. Rather, it is one more part of a comprehensive tobacco control effort that offers several benefits that could help reduce youth tobacco use and increase the likelihood that youth will grow up to be tobacco-free:

- Delaying the age when young people first begin using tobacco would reduce the risk that they will transition to regular or daily tobacco use and increase their chances of quitting, if they become regular users.[59]
- Raising the MLSA to 21 would increase the age gap between adolescents initiating tobacco use and those who can legally provide them with tobacco products by helping to keep tobacco out of schools.[60]
- Younger adolescents would also have a harder time passing themselves off as 21-year-olds than they would 18-year-olds, which could reduce underage sales.[61]
- MLSA of 21 may simplify identification checks for retailers, since many state drivers' licenses indicate that a driver is under the age of 21 (e.g. license format, color or photo placement).[62]

Campaign for Tobacco-Free Kids, April 2, 2019 / Laura Bach

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