



City of San Antonio

Agenda Memorandum

File Number:17-6133

Agenda Item Number: 4.

Agenda Date: 1/11/2018

In Control: City Council A Session

DEPARTMENT: Health Department

DEPARTMENT HEAD: Colleen M. Bridger, MPH, PhD

COUNCIL DISTRICTS IMPACTED: City Wide

SUBJECT: Proposed Changes to Chapter 36 (Smoking) of the City Code

SUMMARY:

An ordinance authorizing changes to Chapter 36 of the City Code to adopt the age restriction for the sale of tobacco products to 21 years of age.

BACKGROUND INFORMATION:

Tobacco use is the leading cause of preventable disease, disability, and death in the U.S., according to the CDC. 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. People who have not used tobacco by age 21 are not likely to ever start. Increasing the tobacco age to 21 will help to prevent young people from ever starting to smoke and to reduce the deaths, disease and health care costs caused by tobacco use.

Tobacco use is associated with cancer, heart disease, behavioral and learning disorders, drug use, and pregnancy complications. Tobacco use 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. Nationally, the current amount of health care and lost worker productivity costs each year related to tobacco use is \$300 billion, according to the U.S. Department of Health and Human Services.

Individuals who begin smoking at a young age are more likely to become addicted, progress to daily smoking, become heavier tobacco users as adults, and have difficulty quitting. The U.S. Surgeon General has expressed concern about the potential long-term cognitive effects of exposure to nicotine during brain development with

the potential for lasting adverse consequences. The latest local statistics available show that in 2013, 12.6% male and 9.9% female Bexar County high school students currently smoke. Nationwide, a new trend emerged in 2014; for the first time in decades, the overall nicotine and tobacco use increased among U.S. high school students. This was found to be almost entirely due to an explosion in teen use of e-cigarettes, hookahs and vaping.

Young teens often turn to older friends and classmates as sources of cigarettes. Increasing the age to purchase tobacco to 21 years would reduce the likelihood that a high school student will be able to legally purchase tobacco products for other students and underage friends. Tobacco 21 policies raise the minimum legal sale age of tobacco products to age 21. Today, 25% of all Americans are already covered by the more than 270 municipalities and 5 states that have passed laws raising the minimum age of purchase for tobacco products to 21. The five states that have passed this are California, Oregon, New Jersey, Maine and Hawaii. Outside of these five states, the following six large cities have passed this: Chicago, New York City, Boston, Washington D.C., Kansas City and Columbus, Ohio.

Council Action History:

The Tobacco 21 policy initiative was first brought to the City Council's attention when Metro Health presented during the department's fiscal year 2018 proposed budget presentation on August 22, 2017, and then again at the first Community Health and Equity Council Committee meeting on August 24, 2017 both as a public health solution to the rates of smoking in high-school aged students as well as during the discussion of the nine policy areas in the *CityHealth* initiative. During the Community Health and Equity Council Committee meeting, Council Members asked for additional information on this policy. Metro Health provided a briefing presentation to the Community Health and Equity Council Committee on October 26, 2017 and to the full City Council during a B Session on December 6, 2017. During the B Session, the main concerns from City Council included the enforcement on youth for the purchase, use and possession of tobacco and the proposed mechanism for selecting retailers for compliance checks. To address the City Councilmembers' concerns, Metro Health has since removed the enforcement on youth from the proposed ordinance, retaining enforcement on retailers only. Additionally, Metro Health will now use a random sampling method to select 10 retailers per City Council District per year to receive a compliance check.

Public Input Process:

An online survey was conducted by Metro Health to gauge the support of the community for this policy. The survey was open from September 15, 2017 to October 23, 2017 and was widely distributed to residents. Metro Health received 5,447 responses to the community survey. These responses were 77.5% in favor of increasing the minimum age to purchase tobacco to 21. Metro Health hosted a stakeholder meeting on November 13, 2017 and an in-person and virtual town hall meeting on November 16, 2017 to further garner feedback from the community on the proposed changes to City Code. To engage potential opponents of a local Tobacco 21 policy, the department mailed a letter to over 1,600 tobacco retailers specifically inviting them to attend the town hall meeting to learn more about Tobacco 21 and to voice their concerns about the proposed policy.

Implementation and compliance:

The overarching philosophy for implementation of this ordinance is education and partnership with retailers to achieve compliance with the new sale age. As well, the implementation philosophy emphasizes educating youth about the dangers of tobacco addiction and access to tobacco cessation services. Retailers and youth will be educated about the new law and every effort will be made for retailers to achieve voluntary compliance. However, for those retailers who fail to comply with the ordinance, the following processes will apply as outlined below (please also see Chart 1 beginning on page 3 of the attachment titled, SA T21 Implementation Memo for a flow chart of the implementation and enforcement processes). According to the Texas Comptroller's Office, currently less than 10% of retailers sell to underage individuals, but non-compliance is unacceptable given the addictiveness of tobacco and the health consequences to youth.

Enforcement Authority

Principal enforcement of the proposed T21 ordinance will be by Metro Health's Sanitarians. Currently Metro Health Sanitarians have the capacity to fulfill the T21 enforcement authority role since the majority of tobacco retailers already receive a routine inspection once per year. The addition of a T21 compliance check to verify T21 signage and training requirements will add minimal time to the current routine inspection. In addition, any person may register a complaint with the City of San Antonio by calling 311 to report violations of this ordinance. Metro Health Sanitarians also currently follow up on complaints made by the community through the 311 process. If fines for violations of the ordinance generate additional revenue, it will be collected by the General Fund.

Retailers:

Signage and Training Compliance (Beginning August 1, 2018)

- If a violation is identified during an education visit after the six month education period, the tobacco retailer will be issued a warning and asked to immediately rectify the violation (i.e., post appropriate signage) and information will be forwarded to the Metro Health Sanitarians.
- The Metro Health Sanitarians will subsequently conduct an unannounced compliance visit within 30 days of the violation to verify that signage and/or training violations have been corrected.
- Continued violations will result in a citation.

Tobacco Sales to Under 21 Compliance (Beginning October 1, 2018)

- If the retailer is suspected of selling tobacco products to minors (either due to 311 complaints or signage and/or training violations), Metro Health may check compliance by sending in a person under 21 to see if the retailer will sell to them.
- At least once per year, Metro Health will coordinate sales compliance checks in retail establishments based upon received complaints and simple random sampling. Metro Health will use random sampling to select 10 retailers from each Council District.
- If a tobacco retailer violates the T21 ordinance by selling to a person under the age of 21, the Metro Health Sanitarian will issue a citation.
- The penalty for the sale of tobacco products to someone under 21 years of age is a maximum fine of \$500.

The proposed changes to Chapter 36 are intended to benefit the youth in the city, leading to fewer young people using tobacco products both immediately and over the course of their lives. 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.

ISSUE:

The Texas Health and Safety Code addresses the sale, purchase and possession of tobacco products to persons under 18 years of age. State law includes e-cigarettes and electronic smoking devices within these provisions and specifically permits a political subdivision of the state to create stricter standards regarding the sale, distribution and use of tobacco products. Additionally, the City of San Antonio, as a home rule city within the State of Texas, has the authority to raise the minimum legal age of sale, purchase or possession of tobacco products to age 21.

The proposed revisions to Chapter 36 of the City Code (the “Smoking Ordinance”) will track state law, but will revise the age restriction for the sale of tobacco products to 21 years of age. Tobacco products, as defined in the proposed changes, include cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, snus, or electronic smoking devices or the liquids in these devices. The penalties for violations of the sale of tobacco products to someone under 21 are to be set at a maximum fine of \$500.00. The use of e-cigarettes and electronic smoking devices is not currently restricted by Chapter 36. The proposed revisions will not restrict the use of e-cigarettes and electronic smoking devices in enclosed public spaces or outdoor areas.

ALTERNATIVES:

If these changes to Chapter 36 of the City Code are not approved, the City Code would remain as is; the age restriction for the sale of tobacco products would not increase to 21 years of age, and the benefit of fewer young people using tobacco products both immediately and over the course of their lives would not ensue. The definition of tobacco products would not be revised to include electronic smoking devices or the liquids in these devices.

FISCAL IMPACT:

This ordinance would increase the legal sale age for tobacco products from 18 to 21. Currently, the fine is a maximum of \$500 for the sale of tobacco products to someone under 18 years of age.

The proposed amendment to Chapter 36 would be effective ~~July~~ August 1, 2018 (*updated January 5, 2018*). Currently, less than 10% of retailers sell to underage individuals, and the enforcement philosophy of this ordinance is focused on education and access to smoking cessation services. As proposed, the fine remains a maximum of \$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 approval of this ordinance, to amend Chapter 36 of the City Code (the “Smoking Ordinance”) to mirror state law, but revise the age restriction for the sale tobacco products to 21 years of age and setting the penalties for sale of tobacco products to someone under 21 at a maximum of \$500.00.