



Community Health Commission

ACTION CALENDAR

January 26, 2016

To: Honorable Mayor and Members of the City Council
 From: Community Health Commission
 Submitted by: Ces Rosales, Chairperson, Community Health Commission
 Subject: Tobacco 21 Recommendation

RECOMMENDATION

In response to the City Council's referral (Attachment 1), and upon further investigation, the Community Health Commission recommends that Council amend Berkeley Municipal Code section 9.80.035 to add a subdivision H, stating: "Effective January 1, 2017, no tobacco retailer or person shall sell tobacco-related products, including flavored tobacco products, electronic nicotine delivery systems and e-liquid, to individuals under the age of 21."

This recommendation, in our belief, would advance three main objectives:

1. Decrease the rate of youth smoking in Berkeley, which would ultimately lower the rate of adult-aged regular smokers;
2. Lower the amount of secondhand smoke near schools and places where youth congregate;
3. Decrease long-term medical costs by decreasing smoking rates among the city population.

SUMMARY

The recommendations in this report are in response to Council's referral from September 15, 2015. Council referred the Community Health Commission to investigate the advisability and impact of raising the minimum age for purchasing tobacco and tobacco products, including electronic cigarettes, to 21 years of age.

The Community Health Commission established a subcommittee to address this referral. Subcommittee members investigated existing research and policy, which shows that the 18 to 21 age range is a critical period in the formation of long-term smoking habits. According to the Campaign for Tobacco-Free Kids, four out of five of adult smokers become regular, daily smokers before they turn 21."¹

¹ Campaign for Tobacco-Free Kids, "Increasing the Minimum Legal Sale Age for Tobacco Products to 21" (October 12, 2015), page 1, available at <https://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>

Additionally, in Needham, Massachusetts—an early adopter of the raised age limit in 2005 – teenage smoking rates have decreased significantly since the policy was implemented.

Given the current rates of tobacco and e-cigarette use among Berkeley youth—and the known connection to adult cigarette addiction and its long-term consequences—the Community Health Commission recommends that the Berkeley Municipal Code be amended to raise the minimum age to purchase tobacco products, and therefore continue public health efforts in reducing youth smoking.

FISCAL IMPACTS OF RECOMMENDATION

Increasing the minimum age for tobacco purchases would decrease sales and revenues for local tobacco retailers and, as a result, the amount of tax revenue generated. The impact on tax revenue is unknown.

At the same time, if increasing the purchase age to 21 decreases smoking rates among youth and eventually the population overall, this would likely have a long-term effect of reduced healthcare costs borne by the community.

CURRENT SITUATION AND ITS EFFECTS

Under state law, the current minimum age to purchase tobacco products is 18 years. A bill passed by the State Senate this year, SB-7 (2015), would have raised the minimum age to 21, but failed to advance in the State Assembly.

Since 2010, Council has taken multiple actions to protect Berkeley youth from the negative impacts of tobacco by adopting ordinances (1) prohibiting smoking in multi-unit housing; (2) prohibiting the use of electronic nicotine delivery systems (ENDS) in all places where smoking is prohibited; and, most recently, (3) prohibiting the sale of all tobacco products (conventional and electronic) within 600 feet of schools and parks.

BACKGROUND

Cigarette smoking is the single most preventable cause of disease and death in the United States.

In Berkeley, teen smoking rates are an ongoing issue of concern, in part because it is well-established that teenagers who smoke are more likely to develop a regular habit of smoking as adults than people who start at a later age.² According to the most recent California Healthy Kids Survey, ten percent of BUSD 11th graders report “currently” smoking cigarettes or using smokeless tobacco.³ This is in addition to an alarming rate

² CDC, “Smoking & Tobacco Use: 2012 Surgeon General’s Report—Preventing Tobacco Use Among Youth and Young Adults,” 2012. Available: http://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm.

³ Berkeley Unified School District. California Healthy Kids Survey (“Healthy Kids Survey”), 2013-14: Main Report. Page 27.

of e-cigarette use, notably among younger teenagers. In 2013-2014, for instance, 13 percent of BUSD 9th graders reported current use of e-cigarettes.⁴ This follows a nationwide trend, in which e-cigarette use among high school students tripled in one year from 4.5 percent in 2013 to 13.4 percent in 2014.⁵ Not only do e-cigarettes present a health risk on their own, but a recent study has shown that e-cigarettes are a gateway to traditional tobacco use among teenagers⁶—raising the specter that teen smoking rates may increase once more.

In addition to concern over teen smoking, research has further shown that the 18 to 21 age range is a critical period in the formation of long-term smoking habits. This is because, according to the Campaign for Tobacco-Free Kids, “[w]hile 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.”⁷

Older teenagers and young adults are also suppliers of cigarettes to teenagers. According to one survey of underage smokers in California in 2005, 40 percent reported obtaining cigarettes from legal-age smokers, the majority of whom were between 18 and 20 years of age.⁸ This comports with national estimates that 90 percent of cigarettes purchased for minors are purchased by 18 to 20 year olds.⁹ In Berkeley, thirty-nine percent of 11th graders said in 2014 that cigarettes were “very easy to obtain.”¹⁰

For these reasons, delaying the availability of tobacco has been one approach taken by local governments to reducing tobacco use.

According to the Campaign for Tobacco-Free Kids, 90 cities and counties across the country, as well as the state of Hawaii, have raised the minimum age to purchase tobacco products to 21. While these laws are too new in many localities to assess their impact, some cities have reported success.

⁴ Healthy Kids Survey. Page 29.

⁵ See Centers for Disease Control and Prevention, “E-cigarette use triples among middle and high school students in just one year,” <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>

⁶ Primack, Brian A. et al., “Progression to Traditional Cigarette Smoking After Electronic Cigarette Use Among US Adolescents and Young Adults,” *JAMA Pediatrics* (November 2015), available at <http://archpedi.jamanetwork.com/article.aspx?articleid=2436539>.

⁷ Campaign for Tobacco-Free Kids, “Increasing the Minimum Legal Sale Age for Tobacco Products to 21” (October 12, 2015), page 1, available at <https://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>

⁸ White, MM, et al. “Facilitating Adolescent Smoking: Who Provides the Cigarettes?” *American Journal of Health Promotion*, 19(5): 355–360, May/June 2005.

⁹ Steinberg MB, Delnevo CD. Increasing the “smoking age”: the right thing to do. *Annals of internal medicine*. 2013; 159(8):558-559

¹⁰ Healthy Kids Survey. Page 27.

For instance, in Needham, Massachusetts—an early adopter of the raised age limit in 2005—teenage smoking rates fell by half from 13 percent to 7 percent in the first five years that the law went into effect.¹¹ In addition, a March 2015 report by the Institute of Medicine predicted that raising the minimum purchase age to 21 nationwide would significantly reduce the number of adolescents and young adults who start smoking; and reduce the overall smoking rate by about 12 percent and smoking-related deaths by 10 percent.¹²

ENVIRONMENTAL SUSTAINABILITY

Any reduction in smoking resulting from this law could reduce secondhand-smoke air pollution in areas where teenagers smoke. It might also result in fewer cigarette butts being littered, leading to less toxic run-off into local water and soils.

RATIONALE FOR RECOMMENDATION

Given the current rates of tobacco and e-cigarette use among Berkeley youth—and the known connection to adult cigarette addiction and its long-term consequences—the City must take all reasonable steps to reduce youth smoking. The state legislature has failed to act on the issue of raising the minimum smoking age, leaving cities left to act.

When Council acted in September to prohibit the sale of tobacco-related and e-cigarette products within 600 feet of any school or park, it did so by adding certain eligibility requirements for tobacco retail licenses under B.M.C. section 9.80.035. This avenue of regulating cigarette sales is appropriate here, as well. In particular, the Commission recommends the following addition:

“Effective January 1, 2017, no tobacco retailer or person shall sell tobacco-related products, including flavored tobacco products, electronic nicotine delivery systems and e-liquid, to individuals under the age of 21.”

This date—January 1, 2017—would match the effective date of the tobacco-free buffer zone enacted by Council earlier this year.

ALTERNATIVE ACTIONS CONSIDERED

The Community Health Commission considered the following alternatives:

- (1) **Raising the minimum purchase age to 21 for tobacco products only, and not e-cigarettes.** Given the well-documented increase in teen vaping, the associated health risks, and the direct connection between vaping and future smoking habits, this option would not be a comprehensive solution to reducing smoking in the long term.

¹¹ “,” Boston Globe, <https://www.bostonglobe.com/2015/06/17/smoking-among-needham-high-schoolers-plunged-after-legal-age-rose/k0KDLz110EWI7W7TxCtOXJ/story.html>

¹² Tobacco-Free Kids, page 1.

- (2) **Recommending that the City Council request that the City Manager and Attorney draft an ordinance to raise the minimum tobacco age to 21.** Given Council referred this issue to the Community Health Commission directly, the most responsive alternative was to propose a change directly.

CITY MANAGER

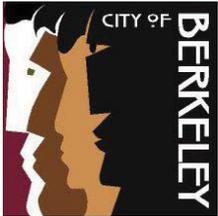
See companion report.

CONTACT PERSON

Tanya Bustamante, Community Health Commission Secretary, HHCS, (510) 981-5342

Attachments:

1: Item 44 City Council Referral on Raising the Minimum Age



Berkeley City Council

CONSENT CALENDAR
September 15, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Laurie Capitelli and Councilmember Darryl Moore

Subject: Raising the Minimum Age for Purchasing Tobacco Products to 21

RECOMMENDATION

Referral to the Community Health Commission to investigate the advisability and impact of raising the minimum age for purchasing tobacco and tobacco products, including electronic cigarettes, to 21 years of age.

FINANCIAL IMPLICATIONS

Staff time.

INTRODUCTION

The City of Berkeley has long maintained an excellent record of tobacco control legislation facilitating our consistent top grades in the American Lung Association's annual state reports (see State of Tobacco Control 2015 – California Local Grades http://www.lung.org/associations/states/california/assets/pdfs/sotc-2015/sotc-2015_ca-full-report.pdf). From regulating second hand smoke in multi-unit residences and common areas to tobacco retailer licensing, the City of Berkeley has worked hard to improve the overall health of its citizens with regards to tobacco products. And still there is work to be done, particularly as it pertains to our youth.

Though cigarette smoking rates among BUSD teens has decreased over the last several years (unfortunately coupled with the increased use of electronic cigarettes), according to the 2013/2014 California Healthy Kids Survey roughly 10% of 11th graders regularly use cigarettes, smokeless tobacco, and/or e-cigarettes. According to that same survey, 38% of students also found obtaining cigarettes very easy. As a City that prioritizes healthy citizenry, we must continue our efforts to discourage tobacco use among teens.

BACKGROUND

The Surgeon General reports that the tobacco industry continues to aggressively market and promote its products to recruit youth and young adults as new consumers.ⁱ Each day 700 kids under the age of 18 become regular smokers, 1/3 of whom will eventually die from smoking related illnesses.ⁱⁱ It is estimated that 90% of tobacco users start before the age of 21, and that 75% of teen tobacco users continue the habit into

adulthood.ⁱⁱⁱ A 2005 California Tobacco Survey study found that 82% of adolescents who have ever smoked obtained their cigarettes from others, most of whom were friends; 31.3% of these individuals were between 18 and 20 years of age. With a minimum legal purchasing age for tobacco set at 21, legal purchasers would be less likely to be in the same social networks as high school students and therefore less likely to sell or give underage people cigarettes.^{iv}

RATIONALE FOR RECOMMENDATION

Needham, MA was one of the first cities to raise the minimum tobacco purchasing age to 21 in 2005 and since that time it has seen a 50% decrease in tobacco use among teenagers. In June of this year Hawaii's Tobacco 21 legislation (raising the minimum purchasing age for tobacco) went into effect joining over 90 cities (including New York City) in eight different states in taking this important step. In California, the city of Healdsburg's Tobacco 21 legislation officially went into effect just last month, soon to be joined by Santa Clara County in 2016. On the state level, six tobacco bills (including a piece of Tobacco 21 legislation) are in special session awaiting decisions. The momentum is building, throughout the nation and within the state. If this type of legislation were feasible and passed in the City of Berkeley, we could add to that momentum while further securing the public health of our youth.

CONTACT PERSON

Councilmember Laurie Capitelli, District 5 981-7150

Councilmember Darryl Moore, District 2 981-7120

ⁱ <http://www.cdc.gov/media/releases/2015/p0707-tobacco-age.html>

ⁱⁱ <http://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>

ⁱⁱⁱ <http://www.sccgov.org/sites/opa/nr/Pages/County-Raises-Purchasing-Age-for-Tobacco-and-Electronic-Smoking-Products-from-18-to-21-in-Unincorporated-Santa-Clara-County.aspx>

^{iv} <http://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>

