

### Tobacco 21 (T21)

Raising the minimum legal sales age (MLSA) to 21 for tobacco purchases and sales is a public health policy approach that is predicted to prevent or delay tobacco use by adolescents and young adults<sup>1</sup>. Successful passage of Tobacco 21 (T21) in Needham, Massachusetts have resulted in a 47% reduction in smoking rates among high school students in the first five years after the law took effect<sup>2</sup>. Increasing the legal age of sale for tobacco will keep youth from starting smoking, improve the health of Americans across the lifespan, and save lives.

As an integral component of a broad tobacco prevention and control strategy that includes higher tobacco taxes, enforceable smoke-free laws, and comprehensive tobacco prevention and cessation programs, raising the minimum legal sale age for tobacco products to 21 will reduce tobacco use among youth and adults<sup>1</sup>. Because federal law has set the MLSA at 18 nationally, as written in the 2009 Family Smoking Prevention and Tobacco Control Act<sup>3</sup>, authority to raise the MLSA has been given to state and local legislators. With that authority, T21 legislation is gaining momentum at the state, regional, and local levels with over 170+ municipalities across 12 states that have adopted T21 legislation. Hawaii and California have signed bills restricting tobacco and nicotine product access to age 21 state-wide. In 2016, five out of the eight states bordering Missouri – Iowa, Illinois, Kentucky, Tennessee, Arkansas, and Oklahoma – have introduced state legislation. Kansas leads local adoption efforts, with 9 municipalities passing the measure, including Kansas City, Kansas who passed legislation in November 2015 along with Kansas City, Missouri. Since 2014, 5 Missouri cities – Columbia, Kansas City, Independence, Gladstone, and Grandview – have adopted T21 ordinances<sup>4</sup>.

Among current daily smokers surveyed in 2012, 95% reported that they first tried a cigarette before 21 years of age and the rate by which teens are introduced to tobacco is rising<sup>5</sup>. Results from the National Survey on Drug Use and Health say that the number of youth who began smoking at age 18 increased by half a million between 2002 and 2012, with the driving force that nearly everyone who buys cigarettes for minors in the United States is under 21 years of age<sup>6</sup>. A 2015 study from the Institute of Medicine (IOM) predicted that raising the MLSA to age 21 has a greater impact on reducing the initiation of tobacco use than raising it to 19<sup>1</sup>. Raising the MLSA to 21 puts individuals who can legally purchase tobacco outside of youth's social circle because most social sources are themselves younger than 21.

Support for the policy change has a long history and is far-reaching, ranging from leading medical organizations such as the American Medical Association (AMA) and the American Academy of Pediatrics to the general public<sup>7</sup>. Enforcing the MLSA for tobacco to 21 years was once the standard in a third of all states as early as 1920 and continued until the late 1940s<sup>8</sup>. Starting in the 1950s and 60s, the MLSA was lowered to 18 years of age [and younger] as a result of aggressive tobacco industry lobbying and marketing efforts despite well-documented evidence of the negative health impact and strength of enforcement at a higher MLSA. In the 1980s and 90s, tobacco companies blocked proposals to restrict tobacco promotions targeting youths, stating the proposals were a threat since smoking initiation occurs at a young age and recruitment of new, young smokers was their priority. Efforts in recent decades to

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raise tobacco MLSAs reflect increased understanding of the process by which individuals become addicted to tobacco and the younger age serving as highest target priority for tobacco companies. Starting in Needham, Massachusetts in 2005, and surrounding suburbs yearly thereafter, advocates have worked to resurrect higher MLSAs. In 2013, New York City became the 7<sup>th</sup> city in the nation to pass T21 legislation and by the end of 2014, 50 cities – including Columbia, Missouri – had successfully joined the movement<sup>4,8</sup>. In two short years, that number doubled, with Kansas City, Missouri becoming the 100<sup>th</sup> city to adopt T21 at the end of 2015. Strong support for raising the age of sale for tobacco was demonstrated across every demographic category – including those age 18-20 who would be directly impacted by the regulation – in a 2013 survey sponsored by the National Institutes of Health<sup>9</sup>. Results from a 2014 national poll asking, “Do you favor or oppose raising the legal minimum age to purchase all tobacco products from 18 to 21?” indicate that 75% of adults favor raising the MLSA to 21, even among current smokers<sup>10</sup>.

## Public Health Significance of Raising the Minimum Age of Legal Access to Tobacco Products

Tobacco use remains the leading cause of preventable death in the United States, responsible for approximately 500,000 premature deaths each year. Areas with a high smoking prevalence have greater exposure to secondhand smoke for non-smokers, which can cause or exacerbate a wide range of adverse health effects, including cancer, respiratory infections, and asthma. The direct medical cost incurred from tobacco use is approximately 170 billion dollars each year and an estimated 6 million youth aged 17 and under are projected to die prematurely from a tobacco-related illness if prevalence rates do not decrease<sup>11</sup>. The toll on Missouri residents is no different. An estimated 128,000 children now under age 18 and alive in Missouri will ultimately die prematurely from smoking. Health care costs in Missouri directly caused by smoking are \$3.03 billion annually and the state and federal tax burden from smoking-caused government expenditures is \$946 per household.<sup>12</sup>

The 2015 IOM report concluded that if all states were to raise the MLSA of sale for all tobacco products to 21, there would be a 12 percent decrease in cigarette smoking prevalence across the nation by 2100<sup>1</sup>. According to the Centers for Disease Control and Prevention (CDC), use of tobacco products other than cigarettes – electronic cigarettes, hookah, and smokeless tobacco – has increased among middle and high school students between 2011 and 2015<sup>11</sup>. The growing incidence of multiple tobacco products among youth is a strong predictor for developing nicotine dependence and continued tobacco use into adulthood<sup>11</sup>. Although changing the MLSA pertains directly to individuals 18 to 21, the largest reduction in initiating tobacco use will most likely occur among teens starting as early as age 15 due to limited tobacco product access within peer social groups. As the initial groups of adolescents affected by T21 policies age into adulthood, the benefits of reducing negative health effects from tobacco use like chronic obstructive pulmonary disease, coronary heart disease, and numerous cancers will be unmistakable. This would translate into nearly 250,000 fewer premature deaths from cigarette smoking among people born between 2000 and 2019<sup>1</sup>.

Among all 50 states surveyed in 2012 and 2013, Missouri adolescents ranked in the top 10 with the highest rates of past month cigarette use. In the same survey, Missouri was the only Midwest state and once again within the top ten whose adolescents said they perceived a low risk from smoking one or more packs of cigarettes per day<sup>13</sup>. In a more recent survey, 8% of Missouri high school students indicated they have smoked a whole cigarette before age 13, which is higher than the national average of 6.6%<sup>14</sup>. This glaring misperception and access to tobacco products among Missouri youth puts our state population in danger of experiencing decreased quality of life, higher rates of tobacco-related diseases, and increased years of potentially productive life lost. As the second largest metropolitan area comprising 17% of the total state population, St. Louis County must seize the opportunity to join our regional partners in Missouri and Kansas to reduce and eliminate tobacco use by children and youth by supporting T21 legislation<sup>15</sup>.

The public health impact of raising the tobacco sales age is dependent upon the degree to which local and state governments take up this policy as a result of existing federal restrictions. Collective, regional adoption of T21 promotes wider acceptance, widens the scope of enforcement, and impacts a greater portion of the population. Enacting T21 may raise concerns about enforcement and retailer burden, but since the 1992 Synar Amendment, it has been illegal for a retailer to sell or distribute tobacco products to persons under age 18 nationally<sup>16</sup>. Additionally, regulations under the Tobacco Control Act require retailers to check the ID of anyone attempting to purchase tobacco who appears to be under the age of 27<sup>14</sup>. Raising the minimum age for sales of tobacco to be consistent with alcohol could actually reduce the retailer's burden. In many states, including Missouri, driver's licenses for individuals under 21 look different than for those over 21<sup>7</sup>. Only 2% of cigarettes sold are purchased by 18-20 year olds, further minimizing retailer concerns over the loss of tobacco sales<sup>17</sup>. In fact, retailers – and all other employers – would be apt to support raising the MSLA to 21 if they are concerned about the bottom line. A smoking employee is estimated to cost companies nearly \$6000 annually when accounting for lost productivity due to absenteeism, presenteeism, and smoking breaks; excess healthcare costs; and defined pension plans (i.e., death benefits) annually<sup>18</sup>.

## Recommendations to Amend Existing Ordinances

The current **Prohibition of Sale of Tobacco Products to Minors ordinance**<sup>19</sup> (St. Louis County, Missouri Municipal Code § 602.300) states that **it is unlawful for any person to give, barter, sell, or cause to be sold, buy for, distribute samples of or furnish tobacco in any of its forms, or cigarette papers, to any person under eighteen (18) years of age.**

***Our Proposal:*** It is unlawful for any person to give, barter, sell or cause to be sold, buy for, distribute samples of or furnish **tobacco products, cigarette papers, alternative nicotine products, and vapor products, in addition to all FDA defined tobacco products, to any person under twenty-one (21) years of age.**

Based on best practices and model legislation, St. Louis County Department of Public Health (DPH) recommends the following County ordinance amendments on sales, enforcement, compliance, and penalties:

**Designate an Enforcement Agency:** DPH serves as the regulatory authority (St. Louis County, Missouri Municipal Code § 602.369) responsible for conducting retailer enforcement inspections, ensuring retailer licensing requirements, and conducting age-verification compliance audits to ensure that tobacco products are not sold to minors (under age 18). Per ordinance and DPH enforcement procedure (DPH Policy No. TOB 7.1), there shall be a minimum of two unannounced enforcement inspections per year at locations where tobacco products are sold. All establishments are inspected at least once every six months. Follow-up inspections are conducted within ten days of violations when applicable.

**Recommendations:** *DPH should ensure that inspection methods are standardized to improve accuracy in reporting in order to increase the number of enforcement actions. Improving the reporting mechanism will signal to store owners and citizens that sales to minors are taken seriously and repeat offenders will be identified more efficiently.*

**Identify a Dedicated Funding Source for Enforcement:** DPH has an operating budget to conduct enforcement inspections and compliance audits. Tobacco retailers are required to pay annual license fees to offset the costs of enforcement by DPH. (St. Louis County, Missouri Municipal Code § 602.361)

**Recommendations:** *DPH should sequester all annual license fees, administrative fees, and violation fines into a T21 account in order to offset the costs of enforcement by the Department.*

**Require a Specified Number of Compliance Checks:** Per DPH enforcement procedure (Policy No. TOB 7.2), each year 50% of the licensed establishments receive a compliance audit. Youth are under the supervision of an adult during minimum-age compliance audits. The establishments are randomly selected and inspections are unannounced. An additional 10% of establishments shall be selected to compensate for potential unavailable operations on the 50% list. Citations are issued if the youth is sold tobacco products. Fines not paid within 30 days will be referred to the County Counselor's Office for prosecution. (St. Louis County, Missouri Municipal Code § 602.369)

**Recommendations:** *DPH should standardize compliance audit methods to increase the number of enforcement actions when citations are issued. Stores checked for compliance should be selected in response to reports of illegal tobacco sales by concerned citizens in addition to the randomized approach. Prior violators should also be targeted for verification of compliance.*

**Use Threat of License Suspension or Revocation as an Enforcement Sanction:** St. Louis County Ordinance requires that tobacco retailers obtain a license to sell tobacco products. Failure to comply with the ordinance results in an administrative tobacco citation. Vendors in St. Louis County are required to renew licenses annually in order to keep a current census of retailers. For non-compliance, retailers are at risk of license revocation or suspension. (St. Louis County, Missouri Municipal Code § 602.362, 602.366, and 602.370)

**Recommendations:** *DPH should make penalties progressive, especially for repeat offenders. Retailers found in violation during FDA compliance checks should trigger a subsequent DPH license violation and re-inspection. Violators should be randomly re-inspected within 30 days and issued a re-inspection fee at administrative cost. The recommended fee structure for violations should be comparable to other*

counties in the region. Retailers not current on all incurred license and penalty fees prior to annual license renewal should not be allowed to renew license until all fines are paid.

**Provide for Citizen Complaints of Violations:** Retailers are required to abide by the Chapter 602.300 – 602.370 Tobacco Ordinance, which DPH enforces. DPH staff record citizen complaints in a data management system. DPH tobacco program staff report tobacco-related complaints monthly, when applicable. DPH provides for citizen responses by calling the Customer Service Feedback Line 314-615-SERV (7378) or on its public-facing website <http://www.stlouisco.com/HealthandWellness/Contact>.

**Recommendations:** DPH should provide for citizen complaints of retailer violations to the code – selling to minors and single cigarettes – by developing a website designated for the tobacco program. The website should also include educational materials, signage, and copies of the regulations for tobacco retailers. DPH should ensure that standardized procedures are followed for citizen complaints.

**Require Appropriate Signage at Retail Stores:** Citations for no signs or invalid permits are issued to permit holders. All establishments including each vending machine are required to have a DPH sign according to ordinance size, color, etc. Each establishment must post current license. (St. Louis County, Missouri Municipal Code § 602.310)

**Recommendations:** DPH should provide updated retailer display signs which indicate the ordinance language by offering a downloadable age-of-sale warning sign from its public-facing website. Example language: "It is a violation of the law for cigarettes, other tobacco products, alternative nicotine products, or vapor products to be sold to any person under 21."

**Provide for Retailer Education:** All DPH inspectors assess if each establishment has internal training compliance checks and discipline. (DPH Policy No. TOB 7.1)

**Recommendations:** DPH should distribute letters to retailers informing them of the new ordinance. Between enactment of the policy and its effective date, DPH should provide frequently asked questions guides, educational posters, and notices on its public-facing website. During enforcement inspections, DPH inspectors should ensure that store clerks are checking identification appropriately.

**Definitions:** Definition of tobacco or tobacco products currently means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco (St. Louis County, Missouri Municipal Code § 602.360).

**Recommendations:** Amend definitions pertaining to St. Louis County, Missouri Municipal Code § 602.300 (Prohibition of Sale of Tobacco Products to Minors) to include the following products in addition to the FDA defined tobacco products:

**Tobacco Product:** smokeless tobacco products, tobacco snuff, cigarettes, cigars, pipe tobacco, cigarette papers, hookah tobacco, and other tobacco products suitable for smoking.

**Alternative Nicotine Product:** any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

Alternative nicotine product does not include any vapor product, tobacco product or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

**Vapor Product:** any non-combustible product with or without nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor with or without nicotine in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a liquid solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include any alternative nicotine or tobacco product.

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## St. Louis County Action Plan

The Saint Louis County Department of Public Health (DPH) supports tobacco prevention and control using several strategies and key partnerships.

1. DPH should take the lead in bringing together all the relevant stakeholders within the county government (revenue, legal counsel, law enforcement, environmental protection) as well as private sector entities in the form of a workgroup (T21 Workgroup) to implement the T21 policy for St. Louis County.
2. If adopted, the T21 Workgroup will be responsible for ensuring DPH policies and procedures are updated in accordance with the amended ordinances.
3. The T21 Workgroup will move to support the amendment of 602.360 to expand tobacco or tobacco products definitions to include alternative nicotine products, vapor products, and FDA defined tobacco products that apply to Sections 602.300 through 602.370.

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## Community Resources

The following is an abbreviated list of smoking and tobacco cessation resources in Saint Louis County:

### Freedom from Smoking Cessation Classes

Online: [www.ffsonline.org](http://www.ffsonline.org)

*St. Louis County Department of Public Health*

Call: (314) 615-0508

*Mercy Hospital*

Call: (314) 251-4811

### Smoking Cessation Groups

*St. Anthony's Medical Center*

Nicotine Anonymous

Smoking Cessation Class

Call: (314) 525-7296

[SSMHealth.com/Classes/BecomingTobaccoFree](http://SSMHealth.com/Classes/BecomingTobaccoFree)

### Phone

*Missouri Quitline*

Call: 1-800-QUITNOW (1-800-784-8669)

Online: <https://www.quitnow.net/missouri/>  
*American Lung Association Lung Helpline and Tobacco Quitline*

Call: 1-800-LUNGUSA (1-800-586-4872)

### Online

SmokeFree.gov

Teen.SmokeFree.gov

BeTobaccoFree.gov

Quitterscircle.com

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## Suggested citation

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