

MEMORANDUM

To: Ben Martig, City Administrator **VIA EMAIL ONLY**

From: Christopher M. Hood, City Attorney

Date: November 22, 2016

Re: Tobacco Ordinance Amendments – Sales to Persons Under Age 25

The City of Northfield (“City”) City Council (“City Council”) held its regular meeting on Tuesday, November 19, 2019. At this meeting, one of the agenda items involved review/discussion of a draft ordinance containing possible amendments to the City’s tobacco ordinance as contained in Northfield City Code, Chapter 30.

During this initial Council review/discussion of the draft ordinance amendments, part of which involves changing the age from 18 to 21 for purposes of sales of licensed tobacco products, a question was raised by the City Council regarding alternatively changing the age for sales from 18 to 25 years of age, instead of the proposed 21 years of age as contained in the draft ordinance. City staff was asked to research the same and report back to the City Council.

In light of this, I was asked to undertake some research on this particular question. In that regard I contacted the Public Health Law Center (“PHLC”) located at Mitchell Hamline School of Law.

As background for the City Council, the PHLC is an organization founded in 2000 whose services, among others, include the following:

1. Creating and providing information, publications and analysis regarding the regulation of licensed tobacco products;
2. Tracking and interpreting public health laws in all 50 states;
3. Assisting government attorneys in drafting tobacco licensing and regulatory ordinances; and
4. Writing and filing amicus curiae briefs defending the aforementioned licensing regulations in various legal proceedings.

The PHLC, in collaboration with the League of Minnesota Cities, has also drafted a model Minnesota city retail tobacco licensing ordinance for use by cities and counties in drafting their own tobacco licensing regulations. Some of the elements contained in the PHLC model ordinance are included in the current draft amendments to Chapter 30 now under consideration by the City Council.

Given the knowledge, research capabilities and expertise of the PHLC regarding the above subject matter, I contacted Rachel Callanan, Senior Staff Attorney, at the Public Health Law Center on November 20, 2019. I specifically asked Attorney Callanan the following two questions:

1. Are you aware of any cities and/or counties in the state or country that have passed T25 ordinances (ordinances that would prohibit the sales of licensed tobacco products to persons under the age of 25)?
2. If the answer to number 1 is “yes”, have those cities and/or counties faced and withstood legal challenge?

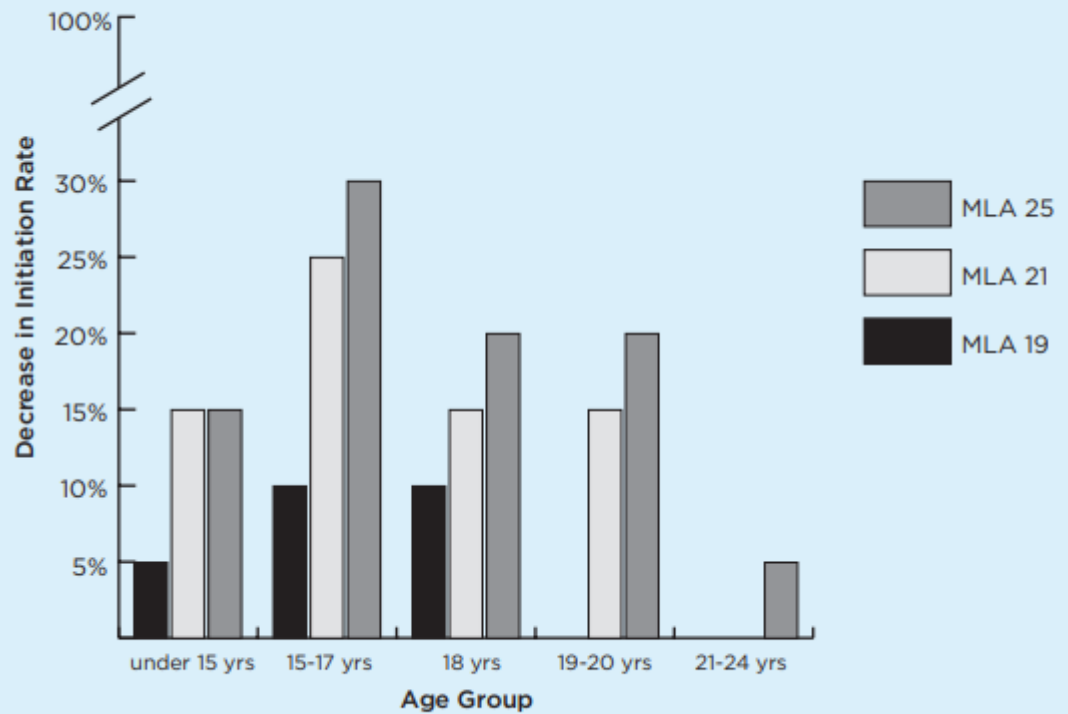
Attorney Callanan responded in part as follows:

“We are not aware of any jurisdictions within or outside Minnesota that have adopted a minimum legal sales age of 25.”

Attorney Callanan opined:

To our knowledge, this policy would withstand a legal challenge because there is evidence that adopting such a policy would reduce addiction and harms of tobacco and there is no Minnesota or federal law that preempts a local jurisdiction from setting a minimum legal sales age for tobacco products at 25. The evidentiary support for raising the minimum legal sales age is summarized well in this 2016 report to Congress by the US Department of Health and Human Services--FDA titled [Report to Congress on the Study on Raising the Minimum Age to Purchase Tobacco Products](#). And the Institutes of Medicine have more information on an MLSA of 25 in [the 2015 IOM Report](#), including this graph on effect on initiation rates:

FIGURE: Committee Estimates Regarding Effects on Initiation Rates



NOTE: This figure was created using data from Table 7-2 in the report.

In reviewing the City’s current draft ordinance, Attorney Callanan noted the following:

“I will note that as this could potentially be the first or one of the first jurisdictions to adopt a minimum legal sales age of 25, it would be particularly important to have a very strong ordinance in place in light of possible litigation.”

I also conducted my own research, which corroborates the above from the PHLC. I could not find any jurisdiction that has adopted a T25 ordinance in Minnesota or elsewhere in the country. If Northfield is the first, or one of the first in the nation to do this (T25), the current draft City ordinance will need to be amended further for this purpose and additional research and analysis will be needed to identify specific studies supporting the same including those cited by the PHLC above. This would be a significant undertaking and would likely result in scrutiny from the tobacco industry, who may be both opposed to such a change and may seek to challenge such a change in court or otherwise. Whether the Council decides to proceed with T25 is a policy issue in the Council’s discretion, but the consideration of the same should weigh carefully the foregoing.

I hope that the foregoing is helpful in your consideration of this matter. If you have any questions, please contact me at your convenience. Thank you.

CMH/kp