



## Legislation Text

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**File #:** Ord. 1009, **Version:** 1

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**City Council Meeting Date:** January 21, 2020

**To:** Mayor and City Council

**From:** Ben Martig, City Administrator  
Monte Nelson, Chief of Police

Consider Ordinance Amending Northfield City Code, Chapter 30 - Health Care and Sanitation, Article II. - Tobacco (Tobacco 21 Ordinance)

**Action Requested:**

The Northfield City Council considers approving the Second Reading of an Ordinance Amending Northfield City Code, Chapter 30 - Health Care and Sanitation, Article II. - Tobacco (Tobacco 21 Ordinance).

**Summary Report:**

The City Council is asked to approve the second reading of the proposed revised Tobacco Ordinance, enacting restrictions for the sale of tobacco to those under 21, (T21). The City Council approved the first reading of the proposed Tobacco Ordinance on January 7, 2020.

At the November 19, 2019 Council meeting, Northfield City Council received a presentation and information on proposed changes to the Northfield Tobacco Ordinance, making it illegal to sell tobacco products to anyone under 21 years of age. The proposed ordinance changes also include modifications to server/clerk training and administrative fines that align with the current City alcohol ordinance. Council approved the advancement of the proposed ordinance and a 30-day notice to tobacco licensees. City Clerk Deb Little sent 30-day notices of the proposed ordinance changes to all Northfield Tobacco licensees on December 4, 2019 (attachment 4).

The Northfield Alliance for Substance Abuse Prevention (NASAP) has worked hard to bring the proposed T21 ordinance changes to Council. Members of NASAP and supporting partners presented information at the November 19 Council Meeting. Their PowerPoint presentation is attached for review (attachment 5). City staff supported and continue to support the proposed ordinance changes for T21.

At the November 19 meeting, Council requested additional information on several aspects related to T21 and tobacco regulation. Council asked for information on the possibility of raising the tobacco purchase age to 25 and potential restrictions on flavored tobacco products.

City Attorney Chris Hood researched changing the legal tobacco sales age to 25 (T25). Staff also received information from public health partners. Attorney Hood conferred with staff from the Public Health Law Center (PHLC) and checked available information. The consensus was that no other entity has passed T25 ordinance or statute yet. Attorney Hood and those he spoke to, believe a legally defensible ordinance could be created, but it would require significant additional time and effort to create such an ordinance. Such an

ordinance would also very likely be challenged by tobacco companies. See the attached memo from Attorney Hood (attachment 6).

Staff also received information from public health officials including the attached 2015 brief by the Institute of Medicine on the expected impacts on youth (under 18) tobacco use initiation by raising the age of purchase for tobacco. In the brief, it is pointed out that the potential impact of raising the legal age for tobacco purchase from 18 to 21 is much higher than the expected impact of raising the purchase age from 21 to 25. See the attached "T21-T25 Implications" brief for additional information (attachment 7).

Based on the mentioned information, staff does not recommend consideration of T25 restrictions.

Some cities in Minnesota (approximately 11) have passed restrictions on flavored tobacco products, most including menthol, mint, and wintergreen-flavored products, but it does vary. Recently, several cities have been legally challenged regarding their passage of flavored tobacco products. There is also considerable latitude regarding definitions of what constitutes "flavored tobacco products".

Staff is concerned that trying to pass flavored tobacco product restrictions would create several challenges. Some concerns are regarding the actual definition of "flavored tobacco products", and related to the increased scrutiny by tobacco businesses and legal counsel. There is not yet standard or widely accepted flavored tobacco product language as related to these types of restrictions. There is much concern about flavored vaping products that target youth, but those types of restrictions are relatively new. For all of these reasons, Chief Nelson believes it would be difficult for staff to continually monitor various "flavored" products as related to any potential ordinance definition.

Staff believe the proposed T21 ordinance changes would reduce youth access to flavored tobacco products, because no one under 21 would be able to legally purchase *any* tobacco products, including flavored products. These products are restricted for sale under 21 whether they have nicotine in them or not. Staff also think it is prudent to wait for more clarity, examples, and possibly state legislation that may address flavored tobacco products. For the previously listed reasons, staff does not recommend passage of flavored tobacco product restrictions at this time. Staff has agreed to work with the Northfield ASAP on the development of a resolution advocating for state to develop restrictions of flavored products in addition to other potential amendments of state law. We are anticipating that resolution to be provided for council consideration at the February 4<sup>th</sup> Council meeting.

Since T21 was last discussed with the Council, the federal government has passed T21 legislation. The information on this law has been unclear and widely misunderstood by tobacco distributors and retailers.

Staff have researched information and opinion on the new federal T21 legislation. Since the law has been passed, the process may now take up to 270 days (from December 20, 2019) for the regulations to be properly created, published, and go into effect. In other words, the federal T21 law is not able to be enforced now, and it may be much later in 2020 before it is in effect.

Staff also checked with the League of Minnesota Cities. LMC staff said they saw no reason to let the passage of federal legislation delay passing a local T21 ordinance. Related to enforcement, the Chief believes it is more effective and efficient to utilize state and local regulations for local tobacco enforcement.

Staff believe the passage of federal T21 legislation is very helpful in setting a nationwide expectation regarding tobacco regulations, but it will still be important to have strong local and state regulation of tobacco products.

Staff recommend the City Council move forward with first reading of the proposed tobacco ordinance changes as previously presented and discussed, without T25 or flavored tobacco products language. City staff will be presenting this ordinance along with members of NASAP, Northfield Public Schools, and other local partners will be present at the Council Meeting. A presentation will be forthcoming.

Key components and reasons for T21 are as follows:

- Raises the legal purchase age from 18 to 21 for all tobacco products.
- Sets minimum age of 18 for retailer staff to sell tobacco.
- Requires all licensees and sales staff to have tobacco sales education within 30 days of licensing or hire.
- Requires proof of age for tobacco sales.
- Limits avenues of tobacco access for youth under the age of 21.
- Maintains current accountability for tobacco retailers while expanding the age to 21.
- Focus on Retailers, Tobacco Industry, and Social Sources (i.e peers, friends).

**Alternative Options:**

The Council could suggest changes to the proposed ordinance for further review and discussion by NASAP. The proposed timelines can also be amended.

After the proposed ordinance has been passed, Northfield City Council could choose to pass a resolution to send to state legislators, showing support for state legislation related to vaping and flavored products. This is planned for Council review on February 4th.

**Financial Impacts:**

N/A

**Tentative Timelines:**

November 19, 2019 - NASAP Presentation & Council discussion setting date for first reading.

December 4, 2019 - Proposed ordinance changes mailed to license holders.

January 7, 2020 - First Reading of Ordinance.

January 21, 2020 - Second Reading of Ordinance & Approve summary publication (by separate action).

January 29, 2020 - Publication of Summary Ordinance.

February 28, 2020 - Ordinance becomes effective (30 days following publication)