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# Board of Supervisors Memorandum

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September 17, 2019

## Proposed Changes to Pima County Ordinance Chapter 8.5-Smoking

### Background

In August 2018, the Board of Health (BOH) requested that the Board of Supervisors (BOS) revise the Pima County, Arizona Code of Ordinances Chapter 8.50 – Smoking, to impose the same restrictions and prohibitions on electronic nicotine delivery systems (e-cigarettes) use as those created through the State’s Smoke Free Arizona Program. The Board of Health further recommended that the BOS raise the minimum age to purchase tobacco products from 18 to 21 and create a retail permit system that includes enforcement and regular inspection of tobacco retailers in unincorporated Pima County. This BOH action was contemporaneous with a Tucson City Council study session on August 8, 2018 that concluded with direction to the City Manager to develop legal framework related to raise the minimum age to purchase tobacco and related products, and explore a delegation of enforcement to Pima County.

The Health Department requested and received my approval in December 2018 to convene 12 community stakeholder meetings to review the BOH proposed ordinance changes, elicit stakeholder feedback and incorporate input into a proposed ordinance for consideration by the Board of Supervisors. The resulting proposed ordinance language was presented at the Board’s August 6, 2019 meeting. At that time individual Supervisors requested further clarification on the enforcement strategy, penalty structure, and permit costs. Specific requests were made to consider penalties to sales clerks and underage buyers, as well as to lessen or eliminate permit suspension provisions. Based on this feedback I instructed staff to host an additional two stakeholder feedback sessions with the goal of developing strategies that would be responsive to the Board’s comments.

### Enforcement Strategy

The Pima County Health Department would have enforcement responsibility for the proposed ordinance which falls under the Health Code. Specifically, Health staff will conduct all enforcement activities for Pima County and City of Tucson (under a separate Intergovernmental Agreement); this includes conducting site visits, compliance checks, and addressing complaints. The City would forgo its existing tobacco retail license in favor of a Health Department issued tobacco retail permit.

A single, unscheduled visit to determine code adherence will take place annually for each permitted establishment. This includes signage requirements, documentation of relevant training, and tobacco product placement. These encounters also serve as an opportunity for on-going compliance education.

Compliance checks will help to determine if retailers are selling tobacco products to persons under the age of twenty-one. Young adults working with the Tobacco and Chronic Disease Prevention unit will attempt to purchase tobacco products. Tobacco retail establishments selling to individuals under 21 are cited if they violate the ordinance. Fifty percent of permitted retailers each year (approximately 265/year) will undergo this random check.

**Permit Fees and Penalties**

Permit fees for Pima County and City of Tucson retailers will be identical and fully offset the estimated cost of permitting and enforcement. The annual permit fee will be set at approximately \$300 per year. An implementation plan, budget, and cost basis for the fees was included in our previous communication (Board of Supervisors Memorandum August 6, 2019—Attachments 2 & 3). A final fee schedule will come to the Board of Supervisors for a separate vote at a later date since it requires amendment of the Health Fee ordinance.

The table below outlines the initially proposed fees and penalties as presented to the Board Supervisors at the August 6 meeting. It also includes the proposed modifications made based on stakeholder feedback and comments from the Supervisors. The table also includes a comparison to alcohol sales statutes as requested.

	<b>BOS Ordinance (8/6/19)</b>	<b>BOS Ordinance (9/17/19 modification)</b>	<b>ARS 4-244-9, 4-210.01, 4-246 (Alcohol sales as implemented)</b>
<b>Permit Fee</b>	\$300 (Initial Permit) \$300 (Renewal)	\$300 (Initial Permit) \$300 (Renewal)	\$14,944 or \$87,291 (AZ License) \$1,550 (Annual Fee)
<b>Retail Establishment Penalties</b>			
<b>1<sup>st</sup> Offense</b>	\$0 No suspension	\$0 No suspension	\$1000-2000 No suspension
<b>2<sup>nd</sup> Offense</b>	\$600 30 day suspension	\$600 No suspension	\$2000-3000 Up to 30 day suspension
<b>3<sup>rd</sup> Offense</b>	\$1000 6 months suspension	\$1000 No suspension	\$3000 Up to 30 day suspension Revocation initiated
<b>4<sup>th</sup> Offense</b>		\$2000 Revocation	
<b>Sales Clerk Penalties</b>			
<b>1<sup>st</sup> Offense</b>		\$0/Diversion only	
<b>2<sup>nd</sup> Offense</b>		\$0/Diversion only	
<b>3<sup>rd</sup> Offense</b>		\$300	
<b>Buyer Penalties</b>			
<b>Any Offense</b>		Tobacco cessation referral	
<b>Miscellaneous</b>			
<b>Look Back Period</b>	36 months	24 months	24 months
<b>Citation Type</b>	Civil	Civil	Criminal
<b>Enforcement Agent</b>	Health Department	Health Department	Law Enforcement

**State and County Roles in Tobacco Enforcement**

The Tobacco Enforcement Unit of the Arizona Attorney General’s (AG’s) Office is responsible for overseeing tobacco enforcement efforts for the State of Arizona, particularly as they relate to youth access. This includes A.R.S. § 13-3622, which prohibits furnishing tobacco or vapor products to a minor (under the age of 18), A.R.S. § 36-798.02 which imposes restrictions on cigarette vending machines, and A.R.S. § 36-798.04 which prohibits the sale of single cigarette.

The Attorney General’s Office has two full-time staff who conduct compliance checks for the statewide enforcement of A.R.S. § 13-3622. These compliance checks occur through the Counter Strike program, which has been in place since 2002. Counter Strike utilizes youth volunteers accompanied by investigators from the AG’s Office, who enter tobacco retailers and attempt to purchase tobacco products. If a clerk sells tobacco product to the youth volunteer, they are cited for furnishing tobacco to a minor. In this case, the clerk is cited for a petty offense with a potential fine of \$300. The retail establishment is fined up to \$1,000 per offense.

The table below outlines the number of inspections conducted in Pima County for 2010-2019 as well as the failure rate. The number of inspections has continually decreased since 2010. We estimate less than 20 percent of all retailers in Pima County will undergo inspection.

<b>Pima County Retail Fail Rate (Inspections by Attorney General’s Office)</b>										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b># Inspections</b>	710	228	486	458	488	185	168	168	103	189
<b># Failed</b>	56	13	25	47	58	38	21	28	6	36
<b>% Failed</b>	8%	6%	5%	10%	12%	20.5%	13%	17%	6%	19%

The Smoke-Free Arizona Act, A.R.S. § 36-601.01, was passed in 2006 and prohibits smoking in most enclosed public places and places of employment statewide. This includes but is not limited to restaurants, bars, grocery stores, office buildings, health care facilities, enclosed common areas in hotels and motels, and enclosed common-use areas in public and private buildings such as lobbies, elevators and restrooms. Smoking is also prohibited within 20 feet of an establishment’s entrances, open windows, or ventilation systems. The statute does *not* cover electronic nicotine delivery systems, e-cigarettes or vaping.

County health departments in Arizona enforce the Smoke-Free Arizona Act by investigating complaints about potential violations of the law and assessing fines for ongoing problems. When a violation is noted, the business owner receives a warning notice and is subject to fines between \$100 to \$500 per violation per day or up to \$5,000 per violation per day if the Superior Court determines there is a pattern of noncompliance. The individual who smokes where prohibited is guilty of a petty offense and may receive a fine of \$50 to \$300. Pima County Health Department currently employs one full-time Program Service Specialist who responds to complaints and conducts inspections. For fiscal year 18-19, the Health

Department responded to 121 complaints and conducted 89 complaint-related inspections. The majority of complaints (94) and inspections (67) pertained to public buildings such as banks, government agencies and similar establishments.

PCHD's Tobacco and Chronic Disease Prevention program, in partnership with the Arizona Attorney General's Office and the Arizona Department of Health Services, offers training for individuals and retailers cited for violating the Arizona law prohibiting the sale of tobacco to minors. The Arizona Retailer Tobacco Training is a free, informative program designed to educate individuals and business retailers about state and federal laws that regulate youth access to tobacco. This free training is also open to retailers and/or their employees that want to learn how to best comply with the law. In fiscal year 2018-2019, nine individuals in Pima County attended.

### **Effectiveness of Tobacco 21 Policies**

Minimum age to purchase tobacco products has increased to 21 years in 18 states and over 480 jurisdictions, including Cottonwood, Douglas, and Flagstaff. At this time approximately 50 percent of the US population currently live in jurisdictions where 21 is the legal age to purchase tobacco.

A 2015 report from the Institute of Medicine estimates that raising the minimum legal sales age for tobacco will reduce smoking initiation by 35 percent for 15 to 17 year olds and 15 percent for 18 to 20 year olds<sup>1</sup>. The report further concludes that raising the age to 21 would result in a 12 percent decrease in tobacco use prevalence. The impact is estimated to be 223,000 fewer premature deaths nationwide (including 50,000 fewer deaths from lung cancer), and 4.2 million fewer years of life lost for those born between 2000 and 2019<sup>1</sup>.

Although these policies are a recent phenomenon, increasing the age of purchase to 21 years has already demonstrated a positive impact on reducing youth tobacco use. Chicago experienced a 36 percent decrease in 18 to 20 year olds who reported use of cigarettes following implementation of a tobacco 21 policy in 2016<sup>2</sup>. Tobacco use initiation among 13 to 17 year olds decreased from 34 percent the month before a tobacco 21 law took effect in Oregon to 25 percent nine months after<sup>3</sup>. An evaluation of California's policy found that statewide retailer violation rates decreased from 10 percent to 6 percent after increasing the tobacco minimum legal sales age<sup>4</sup>.

### **Emerging Concerns about E-Cigarette**

As of September 12, 2019, over 460 potential cases of severe lung illness were reported to the Centers for Disease Control (CDC) by 33 states. The cases have all been associated with

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<sup>1</sup> Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: The National Academies Press, 2015, <http://www.nationalacademies.org/hmd/Reports/2015/TobaccoMinimumAgeReport.aspx>

<sup>2</sup> Chicago Department of Public Health. *Healthy Chicago data brief: 2017 youth tobacco use*. [https://www.cityofchicago.org/content/dam/city/depts/cdph/tobacco\\_alcohol\\_and\\_drug\\_abuse/Data/Brief-YouthTobaccoerratum.pdf](https://www.cityofchicago.org/content/dam/city/depts/cdph/tobacco_alcohol_and_drug_abuse/Data/Brief-YouthTobaccoerratum.pdf)

<sup>3</sup> Oregon Health Authority. *Oregon's Tobacco 21 Law: Impact Evaluation*. <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/TOBACCPREVENTION/Documents/Oregon-Tobacco-21-Impact-EvaluationReport.pdf>.

<sup>4</sup> Zhang, X., et al. *Evaluation of California's 'Tobacco 21' law*. Tobacco Control, 2018

e-cigarette product (devices, liquids, refill pods, and/or cartridges) use<sup>5</sup>. Six confirmed deaths have occurred since this "outbreak". Most impacted individuals are approximately 20 years of age and 80 percent of cases are associated with the use of cannabinoid with or without concomitant nicotine use, while 10-20 percent of cases report only nicotine product use. Currently several states and local jurisdictions are considering declaring a state of emergency to help prevent further injury and death. (The State of Michigan declared a public health emergency and banned the sales of this class of products.)

At this time CDC recommends that the public consider not using e-cigarette products.

### **Outcome of Community Stakeholder Feedback**

Stakeholder engagement on this topic on the part of the Department of Health began in January 2019. A detailed report of the process and input received from various stakeholder is memorialized in my August 6 Memorandum to the Board in Attachment 1. At my request, two additional community stakeholder meetings occurred to solicit further input and to respond to the concerns articulated by the Board at the time.

These additional meetings occurred on September 3 at the Abrams Public Health Center in evening and September 10 the City of Tucson mid-day to provide additional opportunities for participation. Staff sent meeting invitations to representatives of the vaping industry, retailers and convenience store operators, and health-related and non-profit organizations. This included individuals who spoke during the Call to the Audience at the August 6 Board of Supervisors meeting. Meeting dates and locations shared on the Health Department's Facebook page, and Healthy Pima website. The public comment section was reactivated on the Health Department website, and this access point was disseminated in the press release issued on August 23 and other electronic communications. The story received significant press coverage, and there were approximately 28 media stories or mentions regarding the stakeholder meetings and/or ordinance since the beginning of August 2019, further amplifying the fact that these meetings were occurring.

In total, 42 individuals attended the in-person September stakeholder meetings and 21 additional individuals provided comment through the Health Department website. A table outlining summarizing the participants and feedback provided is found in Attachment E.

The bulk of comments from the stakeholder meetings were consistent with themes that surfaced during prior meetings (and captured in captured in the August 6 memorandum Attachment 1). Notable however is retail organizations tended to favor a penalty structure that holds the retailer, clerk, *and* buyer responsible for an underage tobacco sale. Retailers also expressed an interest in a 24-month lookback period as well as having the retailer penalty mirror existing liquor laws. Representatives of health advocates and parent/school groups expressed a preference for not penalizing the youthful buyer. Likewise, they requested that clerk penalties, if enacted, be significantly less than the retailer penalties; and buyer penalties be limited to education or referral to tobacco cessation services only. In general, parents, students and advocates favor of a 36-month lookback period and the

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<sup>5</sup> Centers for Disease Control and Prevention. *Outbreak of Severe Pulmonary Disease Associated with Using E-cigarette Products*. Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention. 2019. [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)

originally proposed penalty structure, which includes suspensions for the second and third offense. In total, there were 6 online comments in opposition to the proposed ordinance compared to 15 in favor.

#### **Proposed Ordinance Modification**

The proposed ordinance was revised based on the totality of the feedback provided by stakeholders at 14 community meetings, public feedback provided through our web portal, and comments from the public and members of the Board made during the August 6 meeting. These include the following elements:

- Retail permit suspensions were eliminated for the first, second and third offense, with permit revocation occurring at the fourth offense;
- The violation look-back period was reduced to 24 months;
- New sales clerk penalties were added, with mandated educational sessions for the first and second offense and a monetary fine of \$300 for the third offense; and
- Under-age buyers identified during the inspection and complaint follow-up process would receive a referral to free or low-cost tobacco cessation programs.

These modifications are in addition to those already incorporated in the prior August 6 version of the ordinance that included:

- Delay of implementation to January of 2020 to permit appropriate outreach and education of vendors;
- A grandfathering provision that exempts individuals who are 18 to 21 at the time of implementation; and
- Equitable treatment of smoke shop and vaping retailers with regards to the legal sampling of product on premises.

#### **Comparison of Proposed Pima County Ordinance to Other T21 Jurisdictions**

A sample of 22 communities with existing Tobacco 21 policies were surveyed to determine how these compare to Pima County. Policies from two states, three localities in Arizona, and similarly sized jurisdictions are included in this comparison.

Of the 22 jurisdictions included in this sample, 100 percent penalized the retail establishment, 30 percent penalized the clerk, and 22 percent include a penalty for the youth buyer. Additionally, 61 percent of the jurisdictions have a suspension/revocation clause between the second and fourth violation. A complete table comparing penalties across jurisdictions is included in Attachment A.

Retailer fines proposed for Pima County's proposed policies are comparable to other jurisdiction with similar policies. The minimum proposed retailer penalty for Pima County (\$600) is significantly less than the highest minimum penalty in Lane County, Oregon (\$1,650) but higher than the lowest penalty communities (\$50 in Johnson and Genesee Counties). The maximum proposed retailer penalty compares closely to jurisdictions of a similar population. St. Louis County, Missouri (population 998,551) has a maximum penalty of \$1,000 and Columbus, Ohio (population 860,090) has a maximum penalty of \$3,000

The Honorable Chairman and Members, Pima County Board of Supervisors  
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compared to \$2,000 for Pima County (population 1.023 million). Attachment C details the full comparison of minimum and maximum penalties from the 22 sample polices.

The proposed retailer penalties for Pima County are comparable to the three other jurisdictions in Arizona with a Tobacco 21 policy, particularly for the second and third offense. Cottonwood, Douglas, and Flagstaff have monetary penalties for the first offense, rather than the retailer education intervention as proposed for Pima County (see Attachment B).

The proposed use of the Health Department as the enforcement agent is consistent with other communities in our study. Of the jurisdictions surveyed 61 percent relied on a public health entity for enforcement of the policy. Nearly 22 percent delegated this responsibility to a law enforcement entity, and 17 percent relied on code enforcement or business licensing entities for enforcement.

#### **Conclusion**

The proposed revisions to Ordinance Chapter 8.50 – Smoking are responsive to the intent of the Board of Health to curb youth tobacco use and address a critical public health issue. The changes take into account community feedback, and mirror the proposed changes in the City of Tucson. The proposed penalty structure is modest compared other local jurisdictions, and aligns closely with jurisdictions of similar size. Including exemptions that would grandfather 18 to 20 year old tobacco product users, and appropriate penalties for sales clerks and referral to tobacco cessation. While youth can still obtain tobacco products though the black market, this ordinance makes youth access to tobacco products much more difficult.

#### **Recommendation**

I recommend Board approval of the submitted modification to Chapter 8.50.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/mp – September 13, 2019

c: Jan Leshar, Chief Deputy County Administrator  
Francisco Garcia, Assistant County Administrator  
Bob England, Interim Director Health Department  
Rebecca O'Brien, Tobacco Program Manager  
Jonathan Pinkney, Deputy County Attorney

ORDINANCE 2019-\_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO THE REGULATION OF TOBACCO RETAIL SALES AND SMOKING; AMENDING THE PIMA COUNTY CODE BY AMENDING CHAPTERS 8.04 AND 8.50 AND ADDING A NEW CHAPTER 8.52**

**The Board of Supervisors of Pima County, Arizona finds that:**

1. The Board of Supervisors of Pima County, Arizona, has authority under A.R.S. §§ 11-251(17) and 36-136(J) 36-186 et seq to adopt provisions necessary to preserve the health of the county and provide for the expenses thereof, and under A.R.S. § 11-251.05(A)(2) to prescribe penalties for violation of an ordinance.
2. It is in the public interest to protect youth and young adults from the health risks associated with tobacco use by encouraging responsible retailing of all tobacco products, increasing the minimum legal sales age to 21, and ensuring provisions for assurance, compliance and ongoing tobacco prevention education for the community.

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:**

**SECTION 1.** Pima County Code Section 8.04.110 is amended by adding "Tobacco retail establishments" to the list of establishments requiring an operating permit, as follows:

**8.04.110 - Operating permit required.**

...

G. An operating permit is required for the following:

...

**9. Tobacco retail establishments.**

SECTION 2. The Pima County Code is amended by adding a new Chapter 8.52 as follows:

**Chapter 8.52**  
**TOBACCO RETAIL ESTABLISHMENTS**

**8.52.010 Definitions**

- A. “Electronic smoking device” means a device that can be used to deliver aerosolized or vaporized nicotine to a person who inhales from the device, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah, and any component, part, or accessory of such a device, whether or not sold separately.
  
- B. “Operating permit” means a permit required for operating a tobacco retail establishment under section 8.04.110(G)(9) of this code.
  
- C. “Tobacco product” means:
  - 1. any product made or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including cigarettes, cigars, pipe tobacco, chewing tobacco, shisha, snuff, snus, and liquid nicotine solution; and
  - 2. any component, accessory, instrument, or paraphernalia that is used in the consumption of a tobacco product or that is solely designed for the smoking or ingesting of tobacco or shisha, including a hookah, water pipe, filter, rolling papers, pipe, or electronic smoking device; except that
  - 3. the term “tobacco product” does not include drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.
  
- D. “Tobacco retailer” means an individual engaged in selling, furnishing, giving, or providing tobacco products directly to consumers either on their own behalf or on behalf of a dealer, distributor, supervisor or employer.
  
- E. “Tobacco retail establishment” means an entity that sells tobacco products directly to consumers.

**8.52.020 Tobacco retailing – Generally**

- A. No person may sell, furnish, give, or provide tobacco products directly to consumers except on the premises of a tobacco retail establishment with a valid operating permit.

- B. It is the responsibility of the owner or operator of each tobacco retail establishment to be informed of all laws applicable to tobacco retailing, including those laws affecting the issuance of an operating permit, and to provide appropriate training to any persons who interact with customers on its premises. The issuance of an operating permit is not a determination by the county or the department that the tobacco retail establishment has complied with any laws applicable to tobacco retailing.
  
- C. During any period that it lacks a valid operating permit, a tobacco retail establishment must:
  - 1. Not sell, furnish, give, or provide any tobacco product to consumers.
  - 2. Remove all tobacco products from the relevant tobacco retail establishment's retail area.
  - 3. Remove the operating permit from public view.
  - 4. Display signage, provided by the department, in a conspicuous manner visible to the general public and within a 5 foot radius of any tobacco product point of sale area, indicating that the tobacco retailer does not possess a current permit to sell tobacco products. If multiple tobacco product point of sale areas exist in a single tobacco retail establishment, such signage must be displayed in each area.
  - 5. Remove all tobacco advertising that is not permanently affixed to the tobacco retail establishment's structure.
  
- D. It is a violation of this chapter for any tobacco retail establishment or for any tobacco retailer on its premises to violate any local or state law applicable to tobacco products or tobacco retailing.

#### **8.52.030 Accessibility of tobacco products**

- A. All tobacco products at any tobacco retail establishment to which persons under twenty one years old are permitted entry must be maintained:
  - 1. Behind a counter in an area accessible only to employees of the tobacco retail establishment; or
  - 2. In a locked container accessible only to employees of the tobacco retail establishment; or
  - 3. Otherwise out of physical reach of any consumer and only accessible to employees of the tobacco retail establishment.

#### **8.52.040 Minimum legal sales age for tobacco products**

- A. No tobacco retailer may sell, furnish, give, or provide any tobacco product to any person under the age of 21, unless the person was 18 years old before January 1, 2020.
  
- B. Before selling, furnishing, giving, or providing a tobacco product to any person who appears to be under the age of 30, a tobacco retailer must examine an approved form of identification and verify that the person is at least 21 years of age or is

exempted under subsection (A).

- C. For the purposes of this section, the following forms of identification, if valid, unexpired, and including a picture of the person and the person's date of birth, are approved for age verification:
1. A driver license or nonoperating identification card issued by any state or territory of the United States or Canada;
  2. A United States Armed Forces identification card;
  3. A passport;
  4. A resident alien card.

### **8.52.050 Signage**

- A. A tobacco retail establishment must post a clearly visible sign stating "No tobacco products or electronic smoking devices will be sold to persons under the age of 21" at every location where such products are available for purchase.
- B. The department will provide signs at the time of the operating permit approval or renewal, or upon request.
- C. Signs must be no smaller than 4 inches by 6 inches, and include the appropriate department website and phone number.
- D. Failure to comply with this section is a violation under section 8.52.060 only after the tobacco retail establishment has failed to correct any deficiency at the department's request.

### **8.52.060 Violation—Penalty.**

- A. A person violating any provision in this chapter is subject to the penalties prescribed in Chapter 8.04 of this code.
- B. If any court of competent jurisdiction determines, or the department finds, that a tobacco retail establishment with a valid operating permit, or any of its agents or employees, has violated a local, state, or federal law regulating tobacco sales or does not comply with this chapter, the following penalties also apply:
1. For a first violation at a tobacco retail establishment, the department will issue the tobacco retailer with a written notice of violation requiring the retailer, and the owner, operator, or manager of that retail establishment, as determined by the health officer, to complete a mandatory education course.
  2. For a second violation at a tobacco retail establishment within 24 months of the first violation, the department will assess a fine of \$600.
  3. For a third violation at a tobacco retail establishment within 24 months of the first violation, the department will assess a fine of \$1000.
  4. For a fourth violation at a tobacco retail establishment within 24 months of the first

- violation, the department will assess a fine of \$2000 and revoke the operating permit for that establishment. The establishment may not apply for a new operating permit for twelve months following the revocation.
5. Any such tobacco retail establishment found in violation will also be assessed a fine for a reinspection that the department will conduct within three months of the violation.
- C. If any court of competent jurisdiction determines, or the department finds, that an individual tobacco retailer has violated a local, state, or federal law regulating tobacco sales or does not comply with this chapter, the following penalties also apply:
1. For a first violation by the tobacco retailer, the department will issue the tobacco retailer with a written notice of violation requiring the retailer to complete a mandatory education course.
  2. For a second violation by the same individual tobacco retailer within 24 months of the first violation, the department will issue the tobacco retailer with a written notice of violation requiring the retailer to complete a mandatory education course.
  3. For a third or subsequent violation by the same individual tobacco retailer within 24 months of the first violation, the department will assess a fine of \$300 on the individual tobacco retailer.
- D. If any court of competent jurisdiction determines, or the department finds, that a tobacco retail establishment operating without a valid operating permit or any of its agents or employees, has violated a local or state law regulating tobacco sales or does not comply with this chapter, the following penalties also apply:
1. For a first violation, the department will assess a fine of \$1000.
  2. For a second violation within 24 months of the first violation, the department will assess a fine of \$1500 and the tobacco retail establishment will be ineligible to apply for an operating permit for six months.
  3. For each additional violation within 24 months of the first violation, the department will assess a fine of \$2500.
  4. Any tobacco retail establishment operating without a valid operating permit must also comply with section 8.52.020(D) of this chapter.
- E. If the department finds that a person who is not eligible to be sold any tobacco product under section 8.52.040 has bought such a product, the department may refer that person to a tobacco cessation program.
- F. Multiple violations of this chapter, or of any other local or state law applicable to tobacco products or tobacco retailing, identified during a single inspection are counted as a single violation with respect to penalties imposed under this chapter.
- G. All applicable fees must be paid before an operating permit is issued or renewed.
- H. A tobacco retail establishment or tobacco retailer may appeal the penalties in this section by submitting a request for appeal under section 8.04.130 of this code.

**8.52.070 Applicability of Other Laws**

The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity. Nothing in this chapter prohibits the prosecution of criminal offenses under any applicable law. The department may enforce this chapter in a civil action, including administrative or judicial proceedings, civil code enforcement proceedings, and suits for injunctive relief.

**SECTION 3.** Pima County Code Section 8.50.010 is amended by amending the definition of "Smoking," as follows:

**8.50.010 - Definitions.**

In this chapter:

...

6. "Smoking" or "smoke" means ~~the act of burning any tobacco product, weed, filler or plant of any kind in a cigarette, cigar, pipe or in any other device~~ carrying or inhaling from any lighted tobacco product or activated electronic smoking device.

**SECTION 4.** Pima County Code Section 8.50.030 is amended as follows:

**8.50.030 - Exemptions.**

A. The following places or circumstances are exempt from the provisions of this chapter:

...

5. Retail tobacco stores, including stores that primarily sell electronic smoking devices.

**SECTION 5.** This Ordinance is effective 30 days after the date of adoption, with the exception of sections 8.52.020 and 8.52.060 which take effect January 1, 2020.

**PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.**

\_\_\_\_\_  
Chairman, Board of Supervisors

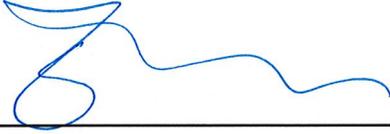
\_\_\_\_\_  
Date

ATTEST:

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Clerk of the Board

APPROVED AS TO FORM:

A handwritten signature in blue ink, consisting of a large, stylized initial 'S' followed by a series of connected loops and a trailing line.

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Deputy County Attorney

# ATTACHMENT A

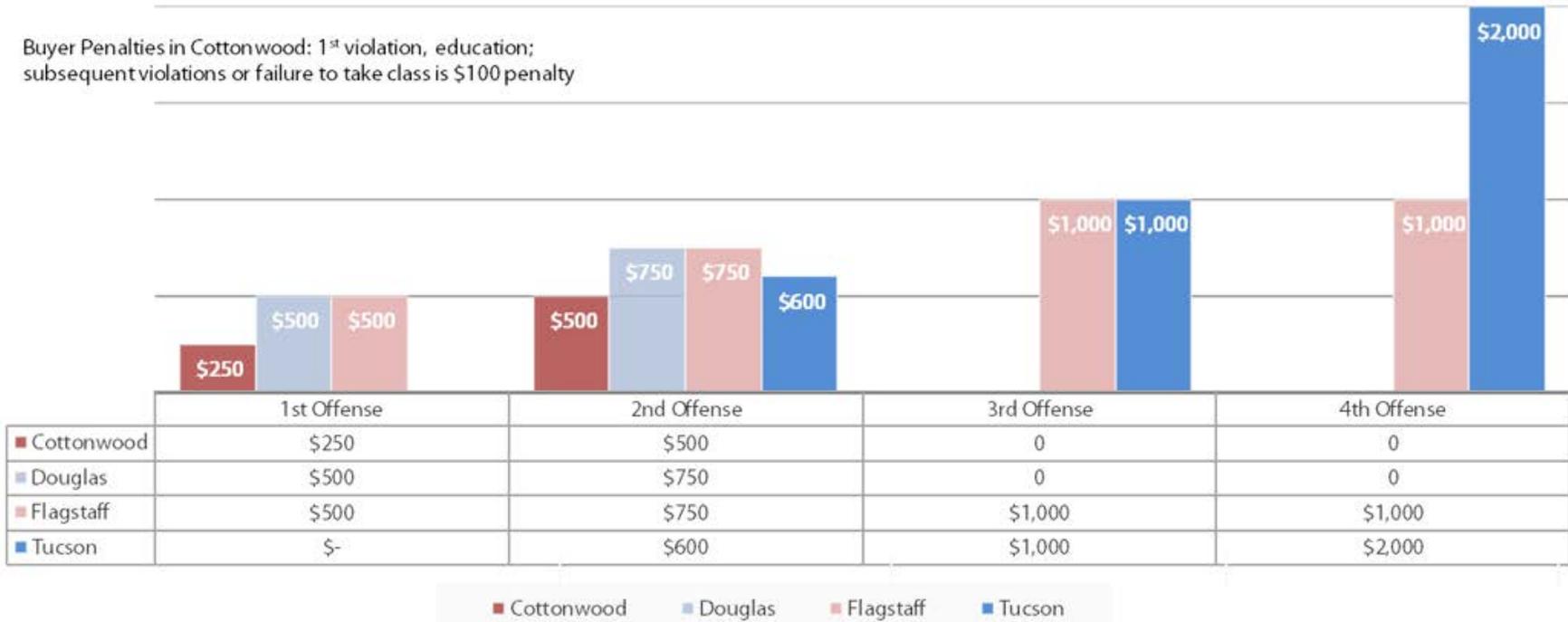
### Penalty Distribution Across Jurisdictions

<b>County/City/State</b>	<b>Youth Buyer Penalty</b>	<b>Establishment Penalty</b>	<b>Clerk Penalty</b>	<b>Suspension</b>	<b>Revocation</b>
Alachua County, FL	No	Yes	No	1 <sup>st</sup> -3 <sup>rd</sup> violation	4 <sup>th</sup> violation
Genesee County, MI	No	Yes	No		
Johnson County, KS	No	Yes	No		
Lake County, IL	No	Yes	Yes		
Lane County, OR	Yes	Yes	Yes	1 <sup>st</sup> -3 <sup>rd</sup> violation	4 <sup>th</sup> violation
Orange County, NY	No	Yes	No		
St. Louis County, MO	No	Yes	Yes	2 <sup>nd</sup> violation/30d	3 <sup>rd</sup> violation/120d
Boston, MA	No	Yes	No	2 <sup>nd</sup> violation/24 m	5 <sup>th</sup> violation
Chicago, IL	No	Yes	No		3 <sup>rd</sup> violation
Cincinnati, OH	No	Yes	No		
Columbus, OH	No	Yes	No	Any violation	Any violation/24m
Hartford, CT	No	Yes	No	2 <sup>nd</sup> violation/36m	4 <sup>th</sup> violation/36m
Kansas City, MO	Yes	Yes	No		
Minneapolis, MN	No	No	Yes	3 <sup>rd</sup> violation	4 <sup>th</sup> violation
New York City, NY	No	Yes	Yes		2 <sup>nd</sup> violation
St. Louis City, MO	No	Yes	No		
Washington, DC	Yes	Yes	No	2 <sup>nd</sup> violation	3 <sup>rd</sup> violation
Flagstaff, AZ	No	Yes	Yes	2 <sup>nd</sup> violation	4 <sup>th</sup> violation
Douglas, AZ	No	Yes	No		
Cottonwood, AZ	Yes	Yes	No		
California	No	Yes	No	3 <sup>rd</sup> violation/60m	5 violation/60m
Connecticut	No	Yes	Yes	3 <sup>rd</sup> violation	4 violation

# ATTACHMENT B

## Penalty Comparison for Jurisdictions in Arizona

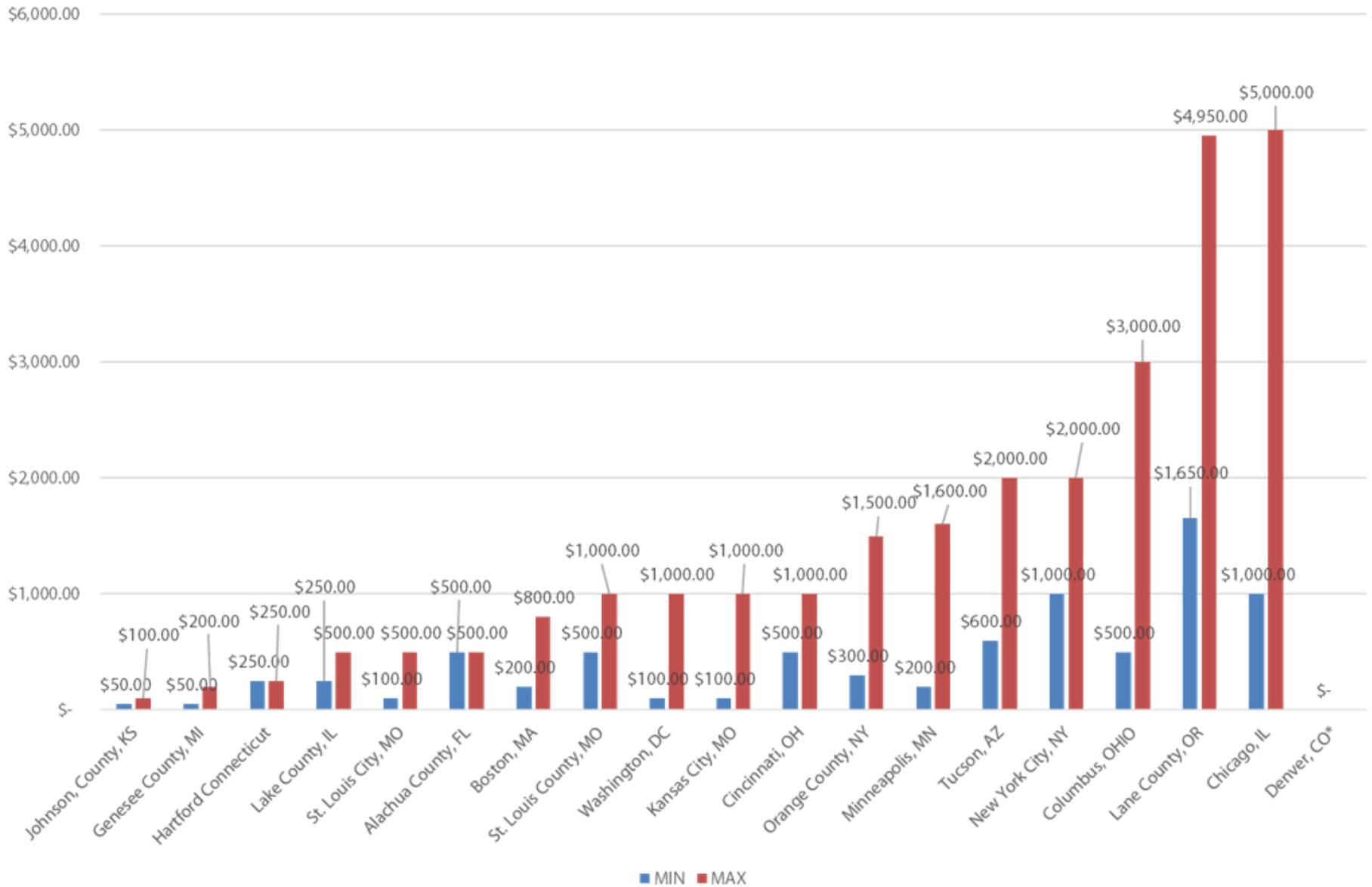
Buyer Penalties in Cottonwood: 1<sup>st</sup> violation, education; subsequent violations or failure to take class is \$100 penalty



# ATTACHMENT C

# Cross-Jurisdictional Financial Penalty Distribution to Retailers (minimum and maximum)

Cross-Jurisdictional Financial Penalty Distribution to **Retailers** (MIN / MAX)



# ATTACHMENT D

**Stakeholder Feedback - Supplemental to Summary of Community Stakeholder Meetings in  
BOS Memorandum from August 6, 2019**

Date	Location	County District	Participants	Individual or Organization Represented
8/23/19 to 9/10/19	On-line comments	Not Applicable	22	<ul style="list-style-type: none"> <li>• Anonymous in opposition (5)</li> <li>• Arizona Petroleum Marketers Association (1)</li> <li>• Anonymous in support (13)</li> <li>• Physician (1)</li> <li>• Arizona Academy of Family Physicians (1)</li> </ul>
9/3/19	Abrams Public Health Center	2	16	<ul style="list-style-type: none"> <li>• City of Tucson (2)</li> <li>• City of Tucson, Ward 3 (2)</li> <li>• Pima County (1)</li> <li>• American Heart Assoc. (2)</li> <li>• Green Valley News (1)</li> <li>• Board of Health (1)</li> <li>• Amistades, Inc. (1)</li> <li>• Tucson Metro Chamber (1)</li> <li>• BOS District 5 (1)</li> <li>• Circle K (3)</li> <li>• Volunteer (1)</li> </ul>
9/10/19	Tucson City Hall	5	24	<ul style="list-style-type: none"> <li>• City of Tucson-Ward 3 (1)</li> <li>• American Cancer Society (1)</li> <li>• Arizona Public Media (1)</li> <li>• American Heart Assoc. (2)</li> <li>• Pima County (3)</li> <li>• COT (1)</li> <li>• Retired teacher (1)</li> <li>• Board of Health (1)</li> <li>• Candidate for mayor (1)</li> <li>• Public (1)</li> <li>• American Lung Assoc. (1)</li> <li>• Green Valley News (1)</li> <li>• AFMA (1)</li> <li>• Circle K (2)</li> <li>• Pima Prevention Partnership (1)</li> <li>• T21 (1)</li> <li>• City of Tucson, Ward 3 (1)</li> <li>• Amistades, Inc. (1)</li> <li>• BOS District 5 (1)</li> <li>• Parent/PCC Faculty (1)</li> <li>• High School Students (2)</li> </ul>

Un-edited Online Feedback Comments Against the Proposed Changes

I am not in favor of changing the age from 18 to 21.

The definitions of "tobacco retailer" and "tobacco retail establishment" are much too broad.

8.52.010.D As written, a private individual in the individual's home who provides a cigarette to a guest over 21 would be considered a "tobacco retailer" and according to 8.52.020.A, the private individual becomes a tobacco retail establishment and must have a valid operating permit.

Whether or not the private individual is cited is not the point; the ordinance is written such that the private individual could be cited. As a further example, I'm sitting in a bar legally smoking a cigarette and my friend runs out of his cigarettes. The ordinance will not allow me to offer him one of mine, as I then become a tobacco retailer and I don't have a retail establishment with a valid operating permit. This is not reasonable.

Please remove the words "giving" and "providing".

8.52.040.C.1. This section does not include identification cards from Mexico citizens. Thus, Mexico citizens may not buy tobacco products in Pima County, since they don't have a valid US or Canada ID. Is this really what you mean to state?

So, Pima County is willing to violate the law and the AZ. Constitution on Civil Rights violation and pay legal challenges that may go to the US Supreme Court to come out of the budget, how about fixing the roads, like you promised.

As long as you can go online and click a box that says I am 18 or 21 and buy cigarettes or e-cig (vape products) then use a visa gift card to pay for them. with no real proof of age. this s not going help. this is an online age and online sales needs to be stopped first.

In my personal opinion if you can go to war and dye for your country at 18 then you should be able to have a beer and a cigarette. if not then the age to go into the military should also be raised to 21

The Arizona Petroleum Marketers Association is supportive of raising the age to 21 to purchase all products that contain nicotine.

However, we believe that the legal age of purchase issue is a matter of statewide concern. Ideally, the national purchase age will soon create a completely level playing field for all tobacco and vapor sellers. In the meantime, a patchwork of regulations and licenses across the state is problematic for retailers.

Our group represents tobacco and vapor retailers in Pima County who will be regulated by the proposed ordinance. The proposed changes will likely shift sales to other stores outside of the County's jurisdiction like Oro Valley, Marana, Sahuarita, South Tucson, and the Native American reservations. Additionally, when customers make the drive for their tobacco and vapor purchases, their sales tax revenues will leave with them – not just for those products alone, but for all ancillary purchases as well.

We appreciate that there have been opportunities for stakeholder input and some changes to address stakeholder feedback. If the County decides to move forward with the ordinance, additional changes we would support include:

1. There should be consequences for the sales clerk who makes the prohibited sale and the underage purchaser. As drafted, the ordinance only penalizes the store owner. There are no consequences for the sales clerk who makes the prohibited sale or the underage purchaser.
2. The proposed penalties on retail owners are extremely harsh and should be revised. As drafted, an owner of a single site where a clerk makes a mistake more than once a year will lose their license to sell tobacco for six months. Instead, the County should require education for a first offense, a fine for a second offense and then a short and temporary suspension of license for a third offense. The lookback window should be reduced from 36 months.
3. The County should add a "safe harbor" provision for owners who can document that they have provided training to their clerks to comply with the tobacco sale laws. If proper training has occurred, then the responsibility is the clerk's to follow their training and the law.

For all age-restricted products, one set of known and consistent standards is critical. We are responsible retailers and have been the front line of enforcement for age-restricted sales for decades. With a single set of laws, we can effectively train our employees, ensure our compliance with the law and reduce the number of underage sales.

We understand that the County is attempting to address a problem with these changes. We agree that the rise in youth vaping is an issue deserving of our attention and action. However, we cannot agree with the proposed piecemeal solution.

We invite the County to work with us to address the youth vaping issue at the state level and national level.

Un-edited Online Feedback Comments Against the Proposed Changes

I honestly don't agree with this. If someone is old enough to die for our country who are we to say they can't smoke or buy smokes. If that is the case why is the government ok with military being under 21 doesn't make sense!

There should be a provision in the ordinance to suspend an operating permit after multiple violations or permanently prohibit the sale of tobacco products by a retailer that consistently does not follow the rules.

This is a good idea although, similar to age 18 for buying alcohol, it may create an underground market for underage smokers. When my daughter was in high school, there seemed to be plenty of alcohol at parties and plenty of under 18 year olds smoking cigarettes. So, I am in favor of this proposal including severe penalties for retailers who sell tobacco to underage kids however i have reservations. I support the same ordinance for vaping.

I strongly support the tobacco ordinance changes to raise the minimum legal age to purchase tobacco from 18-21 years of age. As a pediatrician, I understand and have seen the impact of smoking on youth. The earlier a young person is exposed, the more likely they are to continue to smoke and be exposed to the severe health effects of tobacco. The arguments put forward by the tobacco companies are purely a way for them to continue to sell their products. Please support this commonsense measure.

I believe that if the legal age is changed to 21, that this, and the expense, will keep this younger generation from getting hooked in the first place. A win win for them and for public health.

I'd like to stress that we need the Pima County Board of Supervisors & Tucson's Mayor & Council to pass tobacco control laws that are acceptable to the public health community - because we're dealing with a VERY serious public health crisis. We can't allow the tobacco & nicotine industries to write weak, confusing and unenforceable laws that actually undermine public health. We do - eventually - need a strong statewide tobacco control law - that sets a minimum standard, not a maximum standard - to protect public health. However, we first need some additional good local tobacco control laws in Arizona - especially, at this moment - in Tucson & Pima County. If Tucson and Pima County pass good tobacco control laws, as they've done in years past, other Arizona communities will follow and also pass more good tobacco control laws. With more strong local laws - we'll have a much better chance of enacting a good statewide law that is acceptable to the public health community. If lawmakers in Arizona cave in to the tobacco and nicotine industries, there will be VERY negative & serious public relations & public health consequences! In addition, when tobacco and nicotine industry supported laws are passed, very destructive messages will be sent to the young people that we're trying to educate about the potentially devastating health effects of tobacco and nicotine  
Paul Gordon, MD, MPH

Please raise the age to purchase tobacco products to 21, and include e-cigarettes in the regs. Keep these lethal products away from as many young people as possible.

Please ensure that vaping devices are included in the ban of smoking in eating establishments. I worked for a restaurant business here in Tucson for a few years, as the public relations manager, and it was very disturbing that the owner and employees were busy vaping while handling food. I can't comprehend why the law is so outdated it doesn't include vaping as banned both for patrons and employees in eating establishments.

As a person who lost his mother at the young age of 56 because of her addiction to smoking, I think the smoking age should be raised to 35 if it was up to me. I also think smoking in public and around kids should be banned. Yes the state has a ban on smoking 20 feet from the entrances, but smokers like children ignore this and the best way to combat this is just ban it in public completely and as for banning it around children, that should be a commonsense thing.

I think the change is a great idea.

I am fully in support of this passing. The less accessible tobacco is to teenagers and young adults, the less likely that they will become users. This will better the public health for years to come.

Make them cigs illegal, I'm a smoker find a cheap way in quitting please HELP

Un-edited Online Feedback Comments Against the Proposed Changes

Dear Board of Supervisors,

I am writing to express The Arizona Academy of Family Physicians' (AAFP) support for Tucson's Tobacco 21 initiative. "Tobacco directly contributes to the deaths of more than 440,000 Americans each year according to the CDC. It represents the single leading cause of preventable death in the United States" (AAFP policy). Family physicians play a vital role in the development of policy that could prevent young people from picking up the tobacco habit.

The AAFP consistently opposes smoking in all forms and speaks out about its policies. They regularly write letters to the FDA about many topics surrounding tobacco use including flavored tobacco, cigars, illicit trade and vaping.

The AzAFP believes that there should be penalties on retailers for selling to minors. Please feel free to contact us if you need further information.

Sincerely,

Laura Dearing, EVP

Arizona Academy of Family Physicians

I agree with the 2019 Proposed Tobacco Ordinance Change.

On section 8.52.060 Violation-Penalty, the fines should be increased to \$1000(B.2) and \$2000(B.3). Smoking addiction is destroying our youth and keeping our adult population in poverty. Smoking addiction is deteriorating the health of our youth but also is one of the main reasons why we have so many people in our city experiencing homelessness.

Enacting Tobacco 21 policy is the single best thing you can do to protect the children and youth in Pima County. Tobacco products, including e-cigarettes, are not only harmful to our youth, but set a trajectory of life-long addiction and health problems for residents of Pima County. Please protect your constituents by passing Tobacco 21 legislation.

Stakeholder Meeting Comments Regarding Penalties (as written by attendees)	
Comment	Participant Category
Ok with 24 months not 36 months	Retail/Business
If mirrored to liquor law, keep citation a civil infraction	Retail/Business
Proposed modification is preferred but I still think the penalties on the retailer should reflect liquor law	Retail/Business
Suspension should factor in after the 2 <sup>nd</sup> offense-that should not be removed. Third offense-some suspension. \$ drives their business	Parent
With the retailer penalty, why was the suspension element eliminated in the modification?	School
I think the penalties should be what has been stated as far as the first offense goes. I don't think that there should be a fine or punishment just yet even though they have been told about this I still think they should go to a class to learn about these products and what they do to youth.	School
Retailer: proposed modification but I think they should be penalized for 3 <sup>rd</sup> offense with 30 day suspension. Clerk: proposed modification Buyer: proposed modification	School
Good with 24 months	School
If revocation is only 1 year then it is not revocation. It is only suspension	Healthcare/public health
\$0 clerk penalty. 3 <sup>rd</sup> offense-retailer should include "up to" 30 day suspension/\$1000.	Healthcare/public health
Needs to be 36 months	Healthcare/public health
Clerk penalty is way too high	Healthcare/public health
Mirror alcohol as closely as possible	Healthcare/public health
I think the fines are low and consequences are not bad. It would be very easy for establishment to pay a \$600 fine because they make more than that	Healthcare/public health
Must be 36 months or all retailers checked per year	Healthcare/public health
Alcohol level fines	Healthcare/public health
2 <sup>nd</sup> and 3 <sup>rd</sup> offense suspensions should remain in the proposed modifications	Healthcare/public health
36 months All retailers checked suspension on 2 <sup>nd</sup> offense	Healthcare/public health
Revocation does not mean 1 year suspension. It means revocation.	Healthcare/public health
Suspension on retailers should happen by 2 <sup>nd</sup> violation to incentivize retailer compliance with minimum number of days-the modifications are insufficient	Healthcare/public health
Suspensions even minimal like 3 days on 2 <sup>nd</sup> offense. Must actually state not "up to"	Healthcare/public health
Retailer: 1 <sup>st</sup> offense-fine, 2 <sup>nd</sup> offense-fine/suspension, 3 <sup>rd</sup> offense-fine/revocation. 36 month lookback. Annual compliance checks	Healthcare/public health