

**Dustin J. Williams**  
Superintendent of Schools

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To Board of Supervisors,

I am writing to express my strong support for the proposed changes to the Pima County, Arizona Code of Ordinances regarding curbing youth tobacco use, as outlined in the attached memorandum from County Administrator, C.H. Huckelberry. During my term as Superintendent of Schools, it has been a key focus of my office to **respond to the critical health emergency that underage tobacco/electronic cigarette use has become in our schools.**

In my role, I am charged with ensuring the safety and well being of our Pima County students. **I am alarmed to learn that 95 of adult smokers began smoking before 21 years of age.** In addition, statistics show the increased use of e-cigarettes by middle schoolers from 3.3 to 4.9 percent and for high schoolers from 11.7 to 20.8 percent. **This means that currently one out of every five high school students now partakes in the use of electronic cigarettes.**

Efforts to highlight this crisis by my office include holding a **press conference**, in partnership with the Pima County Health Department and Pima County Sheriff's Department entitled "The Real Deal on Vaping." I received a **huge response from constituents in support of this shared concern for student health.** In addition, I have traveled to Phoenix to hold a press conference with Senator Carter in an effort to **raise awareness statewide.** My office staff and I have also met with **administration from multiple Pima County school districts** to discuss the concern regarding impact of underage tobacco/electronic cigarette use on student health and development.

In closing, **I fully support the proposed revisions to Chapters 8.5 and 8.04 of the Pima County, AZ Code of Ordinances and the new Chapter 8.52 referring the intent of the Board of Health to curb youth tobacco use.** Please don't hesitate to call on me if I can share any of the additional input that I have received from my Pima County constituents and members of the education community.

Sincerely,



Dustin J. Williams

Pima County Superintendent of Schools

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# Board of Supervisors Memorandum

August 6, 2019

**Proposed Changes to Pima County, Arizona Code of Ordinances, to Amend Chapter 8.04 – Health Provisions Generally and Chapter 8.50 – Smoking, and to add a New Chapter 8.52 – Tobacco Retail Establishments**

## Background

The Pima County Health Department, Tobacco and Chronic Disease Prevention Program (TCDP) supports measures that help prevent nicotine addiction among youth, reduce the number of adult tobacco users and protect the community from harms associated with secondhand smoke and vapor exposure. These efforts are particularly important as we recognize the impact of tobacco products on youth. Currently, 95 percent of adult smokers began smoking before 21 years of age.<sup>1</sup> The increasing popularity of e-cigarettes among youth creates additional concern, as e-cigarette use is strongly associated with the use of other tobacco products (including combustible tobacco) among young adults.<sup>2</sup>

Between 2017 to 2018, e-cigarette use nationwide has increased from 11.7 percent to 20.8 percent among high school students and from 3.3 percent to 4.9 percent among middle school students.<sup>3</sup> The 2018 Arizona Youth Survey estimates that 40.7 percent of Pima County youth in grades 8, 10 and 12 used electronic cigarettes at least once in their lifetime, an increase from 36.4 percent in 2016. Of these youth, 19.7 percent used electronic cigarettes on one or more occasions during the past 30 days, compared to 14.9 percent in 2016.<sup>4</sup> The 2018 survey shows that 21.2 percent of the Pima County youth surveyed had smoked cigarettes on one or more occasions during their lifetime.<sup>5</sup>

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<sup>1</sup> Substance Abuse and Mental Health Services Administration. *National Survey on Drug Use and Health*. 2014.

<sup>2</sup> US Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_sgr\\_entire\\_report\\_508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf)

<sup>3</sup> Centers for Disease Control and Prevention. *Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018*. 2019. Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention. DOI: <http://dx.doi.org/10.15585/mmwr.mm6806e1>

<sup>4</sup> Arizona Criminal Justice Commission. *2018 Arizona Youth Survey State Report*. [http://azcjc.gov/sites/default/files/pubs/AYSReports/2018/2018 Arizona Youth Survey State Report.pdf](http://azcjc.gov/sites/default/files/pubs/AYSReports/2018/2018%20Arizona%20Youth%20Survey%20State%20Report.pdf)

<sup>5</sup> Ibid.

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The Centers for Disease Control recommends restricting minors' access to tobacco products in combination with stronger local laws directed at retailers, active enforcement of retailer sales laws and retailer education, as best practices for preventing tobacco use among youth.<sup>6</sup>

In August 2018, the Board of Health (BOH) requested that the Board of Supervisors (BOS) consider revising 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 BOH 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. The 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 approval from the County Administrator in December 2018 to convene a series of community stakeholder meetings to review the BOH proposed ordinance changes, elicit stakeholder feedback and incorporate input into a proposed ordinance for consideration by the BOS.

### Discussion

#### *Community Stakeholder Meetings*

Twelve community stakeholder meetings occurred from February 8, 2019 to March 4, 2019 to discuss proposed tobacco ordinance changes and specifically, the three key elements proposed by the BOH:

1. Raise the minimum legal age to purchase tobacco products from age 18 to 21 years old;
2. Create a retail permit system for tobacco retailers in unincorporated Pima County; and,
3. Amend language of the current ordinance to include electronic nicotine delivery systems (electronic cigarettes).

The Health Department hosted one-hour meetings in each of the five BOS Districts including metro and rural locations. Staff sent meeting invitations to representatives of the vaping industry, retailers and convenience store operators, health-related and non-profit organizations. The information was also shared with City of Tucson staff and BOS staff,

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<sup>6</sup> Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014*. Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention. 2014.

[https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/pdfs/2014/comprehensive.pdf](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf)

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and on the Health Department Facebook page and Healthy Pima website. The meetings included a welcome and introduction, overview of the proposed ordinance changes and time for stakeholder feedback. Community members also had the opportunity to submit feedback online via the Health Department webpage, or the HDCommunicate email.

In total, 89 individuals attended 12 meetings, with representation from 21 organizations. Additionally, of 41 responses provided through online feedback mechanisms (21 responses were in favor of moving forward with the proposed changes and 20 were not.) Letters of support from the Professional Fire Fighters of Arizona, as well as a joint letter from the American Cancer Society Cancer Action Network, American Lung Association, American Heart Association, Americans for Nonsmoker's Rights and Campaign for Tobacco Free Kids, are provided for the record. As are 1,368 signatures in opposition to the proposed change provided in the form of a petition from the operators.

The following suggestions emerged from the stakeholder feedback process and have been incorporated into the proposed ordinance language:

- **Age restrictions:** Individuals, 18 to 21 years old at the time of ordinance adoption, are exempted. These grandfathered individuals may continue to purchase any tobacco related product. Individuals under 18 however, would not be able to make such purchases until they were 21.
- **Exemption for indoor vaping at vaping retail establishments:** Age appropriate customers of vape shops should have the ability to sample product in such establishments at the owner's discretion. This is currently the case with combustible tobacco products. This change provides parity among retailers and allows customers to try the products before purchasing.

A full summary of community stakeholder input may be found in the attached Community Stakeholder Feedback Summary (Attachment 1).

*American Heart Association Polling*

The American Heart Association joined with CityHealth, an initiative of the de Beaumont Foundation and Kaiser Permanente, to commission a survey in Pima and Maricopa counties. OH Predictive Insights polled likely voters from March 8 to 11, 2019. The survey looked at both the City of Tucson and Pima County to determine respondent attitudes about increasing the legal smoking age from 18. A representative sample of likely voters produced 402 completed surveys from the City of Tucson residents and 401 from Pima County.

When asked about both combustible tobacco and electronic cigarette products, 64 percent of Pima County residents favored an increased purchase age, 29 percent opposed. Among Tucson voters the margin of approval was even higher, with 68 percent in favor compared to 28 percent opposed (see Table 1 below). In general, the proposed increase in age to

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purchase was supported across demographic groups. In particular, 70 percent of Pima County female respondents and 75 percent of female City of Tucson respondents were in favor of raising the age. This was also true for men, 50 percent in Pima County supported increasing the age to purchase, compared to 61 percent in the City of Tucson.

**Table 1: Raising the Legal Smoking Age: By Jurisdiction**

	<b>Pima County</b>	<b>City of Tucson</b>
<b>In favor of raising the age</b>	64 percent	68 percent
<b>Oppose raising the age</b>	29 percent	28 percent
<b>No opinion</b>	7 percent	4 percent

**Proposed Implementation Plan**

Health Department staff have worked in partnership with the City of Tucson to gather community feedback and solicit legal input from both the County and City attorneys to prepare revisions to Chapters 8.50 and 8.04 and draft a new Chapter 8.52 – Tobacco Retail Establishments. Proposed updates add language pertaining to electronic nicotine delivery systems, raise the minimum legal sales age for tobacco products to 21, and create a tobacco retail permit for unincorporated Pima County.

Discussions are ongoing with City of Tucson staff to discuss permitting and outline enforcement responsibilities. These conversations have resulted in the development of a proposed implementation timeline (Attachment 2) and proposed budget (Attachment 3). Key elements of a future intergovernmental agreement will include the following:

1. The City of Tucson intends to delegate the enforcement of its tobacco ordinance to Pima County, with an effective date of January 1, 2020.
2. Under such an agreement, Pima County will issue tobacco permits for both the City of Tucson and Pima County. This ensures the entity issuing permits is also responsible for enforcement, eliminates the need for data sharing across systems and provides uniformity of both permitting and enforcement across the two entities.
3. Pima County would assume responsibility for conducting all enforcement activities inclusive of retailer site visits, compliance checks and responding to complaints.
4. The revenue generated from permit fees will offset enforcement costs.
5. An Ordinance establishing the exact amount of the fee associated with the tobacco retail permit will be brought to the Board of Supervisors for consideration.
6. The legal jurisdiction for enforcement will be in a Pima County Court.

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**Recommendation**

The proposed revisions to Chapters 8.50 and 8.04 and the new Chapter 8.52 – Tobacco Retail Establishments are responsive to the intent of the Board of Health to curb youth tobacco use. The changes take into account community feedback and mirror the proposed changes in the City of Tucson. Third party polling indicates strong levels of support among Pima County voters to raise the minimum legal sales age to purchase tobacco from 18 to 21.

Staff recommends Board approval of the submitted modifications to Chapters 8.50 and 8.04 and the new Chapter 8.52 – Tobacco Retail Establishments.

Sincerely,



C.H. Huckelberry  
County Administrator

CHH/lab – July 16, 2019

**Attachments**

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