

Ann Arbor is first city in Michigan to raise tobacco purchase age to 21

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A cigarette pack with an ominous warning label laying on the street in downtown Ann Arbor. (Ryan Stanton | *The Ann Arbor News*)

ANN ARBOR, MI – Ann Arbor is boldly going where no city in Michigan has gone before, banning the sale of tobacco to people under 21.

And city officials say they don't care if that conflicts with state law and might cause the city to end up in court.

The City Council voted 9-2 Thursday night, Aug. 4, to give final approval to an ordinance introduced by Council Member Julie Grand, D-3rd Ward, raising the minimum age to purchase tobacco products in the city from 18 to 21.

Julie Grand, D-3rd Ward, is the primary sponsor of the Tobacco 21 ordinance the Ann Arbor City Council approved on Aug. 4, 2016. Ryan Stanton | *The Ann Arbor News*

Ann Arbor is now the first city in Michigan to get behind the national Tobacco 21 movement, joining many other communities across the nation in doing so.

Supporters of the new ordinance argue it will make it harder for teens to get their hands on cigarettes, help prevent early tobacco addiction and save lives.

Opponents argue it's an overreach by the city and say people under 21 will just drive to other nearby communities to

buy cigarettes.

In any case, a majority of Ann Arbor council members decided Thursday night it was time for Ann Arbor to be a leader on the issue.

"I do sympathize with the business owners who may be affected by this in the short term, but the science is clear on this," said Council Member Kirk Westphal, D-2nd Ward, one of the co-sponsors of the proposal.

"The tobacco lobby has inflicted enough misery on this country and I'm happy to do anything we can to play a leadership role on this effort in Michigan."

Ann Arbor officials are hoping more communities in Michigan follow suit and that Tobacco 21 will become a state law eventually.

The two council members who voted against it were Jack Eaton and Jane Lumm, both of them citing concerns that state law doesn't allow it.

They point to Michigan's Tobacco Products Tax Act of 1993, which states that local governments "shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes."

Council Member Sumi Kailasapathy, D-1st Ward, said if that means the city is going to end up in court, that's a fight worth fighting. She said early addiction to tobacco is a serious issue and she carefully considered the legal risks of the ordinance, ultimately deciding it's morally and intellectually the right thing to do.

Some of the members of the anti-tobacco lobby pose for a group photo in the Ann Arbor council chambers following passage of the city's Tobacco 21 ordinance Thursday night, Aug. 4, 2016. Ryan Stanton | The Ann Arbor News
Council Member Chip Smith, D-5th Ward, another one of the co-sponsors, said he lost both of his parents to smoking-related diseases.

"It's particularly important to me," he said. "But really what compels me to support this is the fact that Ann Arbor is a leader in things, and this is exactly the type of thing we should be leading on, and I'm very happy to support this."

Council Member Chuck Warpehoski, D-5th Ward, another co-sponsor, said the question of how the new ordinance relates to state law is valid.

He cited a recent legal analysis by Sara Rosenbaum of George Washington University that was published in a public health journal, discussing state-level preemption as a barrier to Tobacco 21 laws. Rosenbaum's report indicates there is no apparent state-level preemption in Michigan, a finding some question.

"So, there's a question," Warpehoski said, adding it might ultimately be a question that gets decided in court.

"Whenever there's a situation that may go to the courts and we've got to make a call, I think about what's our likelihood of success and what's our cost of failure, and for me I think there is a risk," Warpehoski said. "It's an untested area in the state of Michigan. But as an untested one, I think the opportunity to save lives is worth taking a leadership role and pushing for better legislation."

Angela Clock, executive director of Tobacco-Free Michigan, argued at Thursday night's meeting that Michigan's Tobacco Products Tax Act of 1993 actually places limits on how tobacco distributors are regulated, not on retail sales.

"So, this ordinance would not fall under there, because this regulates retail sales of tobacco," she said.

Clock said the goal is to keep cigarettes out of the hands of high school students who go to school with 18-year-olds and have easy access right now.

Council Member Sabra Briere, D-1st Ward, another co-sponsor, said she doesn't believe state law is forcing Ann Arbor to continue allowing the sale of tobacco to 18-year-olds. She argued the law is outdated and has yet to catch up with changing times, and she called the city's move an appropriate act of civil disobedience.

Michael Miller, the regional chief mission officer at St. Joseph Mercy Health System, speaks in support of the Tobacco 21 ordinance at the Ann Arbor City Council's meeting on Aug. 4, 2016. Ryan Stanton | The Ann Arbor News
The council heard an outpouring of support from several health professionals and advocates at Thursday night's council meeting.

"Looking out across this room, I'm incredibly humbled by the opportunity to get to work with so many of these fantastic community partners," said Grand, who has a master's degree and Ph.D. from the University of Michigan School of Public Health and teaches health policy at U-M Dearborn.

"We do have disconcerting trends in our county in terms of tobacco use. To think this is an issue we've already solved, it's not the case," she said.

Eaton and Lumm both made it clear they support the intent of the new ordinance, but they still couldn't support it because of conflicts with state law.

Council Member Graydon Krapohl, D-4th Ward, said the new ordinance might conflict with state law, but at some point someone has to take the first step to change the law. He said he felt a moral obligation, and he doesn't think anything would happen if the city waited for the Legislature to act.

Chris Rosenthal, owner of Tobacco Rose Cigars on Stadium Boulevard, spoke against the ordinance Thursday night.

He noted people can legally marry and join the military at 18. He said many active service members who can't legally drink alcohol come into his store to meet up with their friends and smoke cigars.

"Am I supposed to tell them no when they get back from deployment?" he said. "I don't want to do that."

Rosenthal went on to say he has given more than \$100,000 worth of cigars to local charities, including Pioneer High School athletics.

"I don't think the issue here is whether tobacco is bad," he said, agreeing it's terrible for people. "I think the issue here is keeping a level playing field."

He argued people under 21 are still going to buy tobacco products — they're just going to stop buying from stores in Ann Arbor.

One of the additional benefits of the proposed ordinance, Grand said, is the repeal of penalties for underage possession of tobacco products. She said effective tobacco prevention policy should not punish adolescents and young adults for experimentation with or addiction to tobacco products.

Instead, penalties are limited to retailers. Penalties could be assessed up to \$500, allowing for discretionary actions, including education and warnings.

Due to certain restrictions in state law, transportation companies and vending machine operators are exempt from the proposed ordinance.

Grand said by making Jan. 1 the effective date, that allows time to conduct outreach and education to retailers.

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