

April 25, 2017

To: Mayor Brian Treece
Members of the City Council

From: Michael Szewczyk, MD
Chair, Board of Health

Re: Licensing of Tobacco Retailers

At the request of the City Council, the Board of Health (Board) has considered the public health implications of adopting a Tobacco Retail Licensing (TRL) program for the City of Columbia. The Board reviewed recent literature, best practices, other city and county ordinances, including several in Missouri, and heard public comment at its meetings. The following recommendations are made.

Summary of Recommendations

1. The Board of Health recommends that the City of Columbia require the licensing of all tobacco retailer locations.
2. Licensing fees should be based on collecting adequate funding to perform two compliance checks on each retailer location per year.
3. With program implementation, the current escalating fine structure, based on a rolling 24 months, should be retained with the addition of a 5th violation level, resulting in license revocation for 30 days.
4. The City should provide education to retailers regarding the licensing program and consider making available an online course for owners and employees.

Discussion

In December of 2014, Columbia became the first public entity in Missouri to pass Tobacco 21. With good evidence of how this legislation can save thousands of lives by preventing teens from becoming life-long smokers, seven other cities and counties in Missouri have followed suit. Nationwide, over 200 cities and counties, along with two states have adopted Tobacco 21.

Unfortunately, Columbia has no mechanism to identify retailers that sell tobacco or to monitor their compliance with the Tobacco 21 ordinance. One year after the implementation of the ordinance, the Columbia Tribune did a follow up article and noted that no municipal citations had been issued and provided anecdotal reports from underage smokers who were still able to purchase tobacco products. More recently the Board of Health received testimony that the City of Columbia has only been able to conduct six compliance checks in the last 2 years. One retailer was found in violation of the ordinance. While the Food and Drug Administration (FDA) performs inspections, they only check for compliance with the federally mandated 18 year old minimum age for purchase. The FDA found that 8% of the retailers in Columbia had 2 violations in a 12 month period and an additional 6% had one violation. This indicates that a significant number of retailers in Columbia are not only ignoring Columbia's Tobacco 21 ordinance but are actually selling to minors under the age of 18.

The Board of Health recommends that the City of Columbia require the licensing of all tobacco retailer locations.

Licensing of tobacco retailers is the obvious first step in developing a program to monitor compliance with the Tobacco 21 ordinance. It is recommended that each separate retailer location be licensed, regardless of corporate ownership. This will allow the inspection costs to be covered by the licensing fee and, if necessary, fines to be levied on a specific location. While a company with 10 locations would pay 10 licensing fees, separate licensing would insulate other locations from the escalating fines assessed for one location's failure to comply with the ordinance.

Licensing also allows geo mapping of the tobacco retailers. This will allow identification of clusters near schools or in certain neighborhoods which would be helpful with enforcement and educational programs. Some cities restrict the location of tobacco retailers, specifying a certain distance from schools. This has been done through licensing, zoning or Conditional Use Permits. At this time, it is unclear if such restrictions are necessary or would be beneficial in Columbia.

Licensing fees should be based on collecting adequate funding to perform two compliance checks on each retailer location per year.

Calculators are available for cities to use to determine what retailer licensing fee should be charged based on the particulars of the program. An example can be found at:

<http://www.changelabsolutions.org/tobacco-control/trl-fee-calculator#/page/0>

The Assistant City Attorney attended one of our meetings and expressed his belief that the charging of licensing fees would require, based on the Hancock Amendment, approval by a vote of electorate.

In other cities, tobacco retailer compliance inspections are performed by the police department or the health department or both working together. Board members felt the program would be most effective if the compliance checks were done by the police department, which currently handles alcohol compliance inspections. As a self-financed program, licensing fees could fund at least part of a police officer's salary. In addition, various private organizations are willing to assist the City with the compliance checks with both funding and personnel. Other municipalities have specifically included, within the licensing ordinance, the ability of their compliance personnel to work with private organizations. The Board recommends that Columbia do the same.

With program implementation, the current escalating fine structure, based on a rolling 24 months, should be retained with the addition of a 5th violation level, resulting in license revocation for 30 days.

Currently Columbia has an escalating fine based on the number of violations in the preceding 24 months. The fines are similar at the low end to the Food and Drug Administration (FDA) penalties but less than what is considered best practice by the Tobacco Control Legal Consortium (TCLC), which is a partnership of public and private organizations that develops tobacco control policies. The FDA imposes significant fines on retailers who are found to have repeated violations. For example, the consequences of a fifth violation in a 3 year period is \$5,000 and 30 day No-Tobacco-Sale Order (NTSO).

**FOOD AND DRUG ADMINISTRATION PENALTIES
FOR SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER THE AGE OF 18**

FDA Violation	
One	Warning Letter
Two Within 12 Months	\$250
Three Within 24 Months	\$500
Four Within 24 Months	\$2,000
Five Within 3 Years	\$5,000 plus NTSO
6 or More Within 4 years	\$10,000 plus NTSO

FDA No-Tobacco-Sale Order (NTSO)	
5 Violations Within 3 Years	NTSO Penalty
1st Violation	30 Day
2nd Violation	6 Month
3rd Violation	Indefinite

The members of the Board of Health believe that the suspension of a retailer’s ability to sell tobacco products is an important deterrent and an essential component of an effective retailer licensing ordinance. This can be done with a No-Tobacco-Sale Order, a license suspension or a license revocation with the ability to reapply after a set period of time.

Regarding penalties for noncompliance, the Board heard testimony from a representative of a company with multiple convenience stores. He stated that his company was not against licensing, but felt that there should be no change in the fine structure. He observed that since the City has not been doing compliance checks, there was no evidence that that the current fine structure would not be an effective deterrent. Six out of 8 board members agreed and recommended that the current fine structure be retained. Two board members felt that the fines should be raised to the level recommended by the TCLC, a minimum of: \$300 for the first violation, \$600 for the second violation and \$1,000 for each subsequent violation. All board members agreed that if a retailer location has a 5th violation within a rolling 24 month period, their license to sell tobacco products should be suspended for 30 days.

As detailed below, St. Louis County takes a more aggressive approach, with both monetary fines and a suspension of retail licenses occurring with just the second violation.

**COLUMBIA RECOMMENDED, CURRENT & ST LOUIS COUNTY PENALTIES
FOR SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER THE AGE OF 21**

Violations within 24 months			
Violation	Recommended	Columbia - Current	Saint Louis County
1st	\$100	\$100	\$250
2nd	\$250	\$250	\$500 + 7 Day Suspension
3rd	\$500	\$500	\$750 + 30 Day Suspension
4th	\$1,000	\$1,000	\$1000 + 120 Day Suspension
5th	\$1000 + 30 Day Suspension	\$1,000	\$1000 + Revocation

The Board also discussed who should be responsible for paying the fine. Some ordinances allow for both the owner and the employee who sold the tobacco to be fined. After much discussion, Board members agreed that it would be difficult to levy a fine against the employee and ultimately, the employee's action is the employer's responsibility.

The City should provide education to retailers regarding the licensing program and consider making available an online course for owners and employees.

Retailer education is an important component of the licensing program. It is recommended that informational material be provided to the retailer upon licensing. This material should be program specific and also include information for the retailer to better understand the significant public health benefits of Tobacco 21.

Consideration should also be given to developing an online course that employees can take and become "certified". While larger employers with multiple retail locations may have "in house" training courses, smaller retailers most likely do not. Retailers would be encouraged, but not mandated to have their employees take the course.

Conclusion

Tobacco use remains an important public health imperative and Columbia's Tobacco 21 ordinance was a great first step. The Institute of Medicine reports that if Tobacco 21 was implemented nationwide, there would be 223,000 fewer premature deaths and 50,000 fewer deaths from lung cancer and 4.2 million fewer years of life lost for those born between 2000 and 2019. In addition, there would be immediate reductions in preterm birth, low birth weight and sudden infant death.

Unfortunately, we know that a significant number of retailers in Columbia are not following our Tobacco 21 ordinance. To make this law more effective and to save more lives, we know, based on the experience of many other cities, that tobacco retailer licensing with monitoring of compliance is the next step. Should the City Council choose to implement tobacco retailer licensing, the Board of Health would be happy to work with the City Attorney to develop an ordinance.