

**DRAFT**

November 8, 2016

To: 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. Over the last few months, the Board reviewed recent literature, best practices, other city and county ordinances including several in Missouri and held a public comment session on September 9<sup>th</sup>. A subcommittee met and a work session with the whole Board was held on October 13<sup>th</sup>. 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 5<sup>th</sup> 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 tobacco retailers or monitor their compliance with the 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 6 compliance checks. One retailer was found in violation of the

ordinance. While the Food and Drug Administration (FDA) does their own inspections, they only check for compliance with the federal 18 year old minimum age for purchase. Surprisingly the FDA has found that nearly 8% of the retailers in Columbia were in violation (second incident within 12 months), with another 6% receiving warnings (first incident). 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 locations 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 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. 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 with the compliance checks with both funding and personnel. Other cities have specifically included the ability to work with private organizations within their licensing ordinance and it would make sense for Columbia to 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.**

This was the only area of disagreement among Board members. 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 FDA fines but less than what is considered best practice by the Tobacco Control Legal Consortium (TCLC). A table with this information is attached. 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 was no reason to increase the fine structure. He observed that the City has not been doing compliance checks, so why increase the fines until it is known whether or not the current fine structure is an effective deterrent. In a vote of the Board, 6 out of 8 members voted to keep the current fine structure. The 2 who voted against it preferred increasing the fines to the level recommended by the TCLC. All board members agreed that if a retailer location has a 5<sup>th</sup> violation within a rolling 24 month period, their license to sell tobacco products should be suspended for 30 days.

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. A New England Journal of Medicine article from earlier this year notes that "new evidence greatly buttresses the case for Tobacco 21 laws" and cites the Institute of Medicine report that a nationwide Tobacco 21 regulation would result in 249,000 fewer premature deaths and 45,000 fewer deaths from lung cancer. Unfortunately we know that a significant number of retailers in Columbia are not following the law. To make the law more effective and to save more lives, tobacco retailer licensing with monitoring of compliance is the next step we should take.