

October 26, 2018

To: Mayor Treece
City Council

From: Michael Szewczyk, MD
Chair, Board of Health

Re: Licensing of Tobacco Retailers

The Board of Health thanks the City Council for moving forward with this important issue.

The benefits of preventing teenage nicotine use are well documented. We know that the vast majority of long term smokers begin as teenagers. We know that nicotine has greater addictive potential in the young developing brain. We know that 90% of adult smokers regret ever starting. With the development and promotion of vaping products that include nicotine, this only adds to the urgency. It only makes sense that we do what we can to prevent our teens from becoming addicted to nicotine.

In December of 2014, Columbia became the first public entity in Missouri to pass Tobacco 21. We led the way and other communities in Missouri followed suit. Now, nationwide, hundreds of cities and counties and six states have adopted Tobacco 21. Unfortunately we have fallen behind in terms of licensing and compliance checks.

The Board of Health has reviewed *An Ordinance Amending Chapter 11 Article X of the City Code and Enacting New Provisions Requiring the Licensure of Tobacco Retailers Within the City* and makes the following recommendations.

Board of Health Recommendations

The Board recommends that the Amendments to Chapter 11 be approved by the City Council with modification so that the retailer who sells nicotine products to a person under the age of 21, be fined no less than \$1,000 per violation.

There was much discussion by the board of what the monetary penalty should be for sale to underage customers. Based on the Board's research it was noted that many communities use an escalating fine structure based on recurrent violations. This is considered best practice by the Tobacco Control Legal Consortium. Fines can be thousands of dollars with the maximum FDA fine at \$11,000 for 6 violations in a 4 year period. Columbia currently has an escalating fine structure and the draft amendment proposes a fine of not less than \$200 or more than \$1,000. Ms. Thompson attended one of our meetings and noted that ultimately the municipal judge determines the actual fine. She felt that it would be better to not have an escalating fine structure, but leave it to the discretion of the judge.

Board members discussed this issue at length. It was felt that given the revenue generated by the sale of tobacco products, \$200 dollars is a spit in the bucket. A minimum fine of \$1,000 sends a much clearer message to the retailer. In addition, given the lack of resources available

to monitor compliance, a larger fine will be a better deterrent. A person representing local convenience stores was at the meeting. He advocated for keeping Columbia's current escalating fine system while agreeing that a retailer would take notice of a \$1,000 fine.

Board members were pleased that the proposed amendments allow suspension or revocation of the tobacco retailer license. This is not in our current ordinance but is considered best practice and is a very effective compliance tool.

Understanding fiscal constraints, the Board of Health recommends that the City initiate a program of compliance checks.

The Board recognizes the value of the City performing regular, city wide, compliance checks to confirm that tobacco retailers are being compliant with the ordinance. This is preferred to a smaller pilot program. Until funding is available, perhaps the City can seek grant money or partner with other groups to perform compliance checks. Even an occasional random, publicized compliance check will have a deterrent effect.

The Board recommends that that the City Council develop a tobacco retailer fee structure and place this amendment on a city wide ballot.

Recognizing the limits imposed by the Hancock Amendment, the Board understands that the best way to provide funding for compliance checks is through the collection of license fees. Once the licensing of tobacco retailers is in effect, the voters should be asked to approve licensing fees to cover the cost of a city wide compliance program. Current best practice is that license fees should be adequate to cover the cost of doing two compliance checks per retailer, per year.