



# City of Columbia, Missouri

## Meeting Minutes

### Board of Health



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Thursday, June 14, 2018

5:30 PM

Regular

Department of Public  
Health and Human  
Services  
Training Room 1  
1005 W. Worley St.

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#### I. CALL TO ORDER

Dr. Szewczyk called the meeting to order at 5:36 p.m.

Staff Present: Stephanie Browning, Scott Clardy, and Amy Larkin

**Present:** 7 - Harry Feirman, Lynelle Phillips, Jean Sax, Mahree Skala, Michael Szewczyk, Angie Bass and Leona Rubin

**Excused:** 4 - Cynthia Boley, Elizabeth Hussey, David Sohl and Mary Gadbois

#### II. APPROVAL OF AGENDA

The agenda was approved as submitted.

A motion made by Ms. Bass, seconded by Mr. Feirman and carried.

#### III. APPROVAL OF MINUTES

The minutes from the May 10, 2018 meeting were approved as presented.

A motion made by Ms. Skala, seconded by Mr. Feirman and carried.

**Attachments:** [May 10, 2018-DRAFT](#)

#### IV. INTRODUCTIONS

Dr. Szewczyk introduced Leona Rubin to the Board as the newest member and asked current members to introduce themselves.

#### V. REPORTS

##### Directors Report

At the May 21, 2018 City Council meeting, the Council unanimously adopted changes to Chapter 5 related to animal tethering. Based on the feedback received from the Board of Health, Unchained Melodies Dogs Rescue and the City Prosecutor's Office, the ordinance

was amended to include the following provisions related to tethering:

- Animals may not be tethered as the primary method of restraint;
- Animals may not be tethered for a period longer than thirty (30) minutes unless provided with adequate food, water and shelter;
- Animals may not be tethered unless supervised by a competent person physically present on the property;
- The types of tethers and harnesses to be used are defined;
- No dog under six months of age may be tethered;

The maximum reach of the tethered animal can be no closer than 10 feet from a sidewalk or property line.

The ordinance took effect immediately upon passage.

### **Legislative Report**

**Attachments:** [BOH Legislative report 06-14-18](#)

Mr. Clardy reported that none of the bills the Board had been following had passed and the 2018 session was now closed.

## **VI. OLD BUSINESS**

### **Tobacco Retailer Licensure**

**Attachments:** [BOH Questions - Draft TRL Ordinance \(2\)](#)

[Columbia- Letter to Board of Health](#)

[Columbia MO licensing ordinance with TCLC edits - updated](#)

[06112018 based on BOH questions \(1\)](#)

[Tobacco Retailer Licensure Attachments](#)

Dr. Szewczyk asked the Board members how they would like to proceed with the questions for Ms. Thompson. The Board decided to allow the public to speak first and then engage Ms. Thompson and discuss the Board's concerns.

Jenna Wintemberg, with Tobacco Free MO spoke to the Board regarding their concerns. She felt that the new ordinance would be stronger if it adopted recognized best practices based on ordinances from other municipalities, including naming an enforcement agency and having a written progressive fine structure.

Ginny Chadwick, with Tobacco 21, spoke regarding the Preventing Tobacco Addiction Foundation recommendations on the draft ordinance. Ms. Chadwick explained that in 1998, St. Louis County passed Tobacco Retailer Licensure. It has progressive retailer penalties, a fee structure which was sent to the vote of the people, annual renewal of license, the ability to revoke/suspend a license, designated enforcement within the Health Department, and two compliance checks per retailer per year. Ms. Chadwick felt this system has worked.

Ms. Chadwick explained that she had read Ms. Thompson's comments regarding progressive discipline and that it impacts discretion to impose penalties; however, research has shown that progressive discipline works to reduce violations. Ms. Chadwick stated that Columbia passed the Tobacco 21 ordinance four years ago and has had no enforcement.

James Greer, with MFA Oil, spoke saying the current ordinance is fine because it states who does the enforcing and includes the fine structure. He stated MFA does not have a problem with the licensing. The issue is with the proposed ordinance having one person having control; not stating who does the enforcing; forcing someone into an appeals process; not having a specific fine structure; an appeals process that needs clarification; and concerns about the application process.

Mr. Greer clarified that at the last meeting, he was asked about one of MFA's convenience stores that was shut down for violations, and at the time he knew nothing about the situation. Mr. Greer said that MFA was informed of the infraction six months after the date of the inspection. After that time, all the employees who sold to the minor were no longer with MFA.

Mr. Greer asked if the Board wanted tobacco licensing to make money for doing inspections. Dr. Szewczyk said the purpose was to stop retailers from selling to underage people. Further, the Board wanted progressive discipline so that after so many infractions, the license would be revoked.

Mr. Greer said that there is already an ordinance with a fee structure. He suggested simply changing the ordinance so that tobacco retailers are required to have a license. Mr. Greer said the way the proposed ordinance is written, there is no set rule as to whether or not the company will be approved. Instead, approval is up to the licensing department.

Dr. Szewczyk read an email from Karen Englert, with the American Heart Association. In her email, she encouraged best practices recommended by the Tobacco Control Legal Consortium (TCLC).

The email stated the new ordinance needs concrete enforcement mechanisms; a designated enforcement agency; and a fine/fee structure which includes revoking a license. When a policy leaves this process vague, it often leads to other issues including bias; the potential for legal challenges; confusion among retailers and enforcers; lack of enforcement because no one is responsible; and ultimately, a paper policy rather than an effective policy.

Nancy Thompson, City Counselor with the City of Columbia, spoke to the Board regarding the changes to the ordinance. Ms. Thompson explained to the Board that progressive enforcement is best practice, however legislatively mandated penalties do not allow for discretion in imposition of the appropriate penalty based on the circumstances of the violation. When setting up a fine structure, it limits the options and resources available to the City Prosecutor in seeking compliance.

Ms. Thompson mentioned that prosecution could result in the imposition of the maximum fine, depending on the severity of the violation. This would forego taking twelve months or two years to get through the graduated scales and let the offender continue to operate because there is a mandated fine structure set up. What the prosecution wants is flexibility to impose a penalty suitable with the severity of violation. A minor violation could be a minimum fine, while a serious violation could lead to a much larger fine and, perhaps, even suspension. An example she gave is selling to a 12 year old vs. selling to a 20 year old with a really good fake ID. They are both violations. One, however, is more egregious than the other and should pay a higher penalty. Ms. Thompson also noted the judge could order a suspended imposition of the fine, as long as there were no other violations.

Dr. Szewczyk asked why not use the progressive fine structure as a minimum and leave prosecutorial discretion to maximize it. He noted that not having a fine structure could make it seem unfair that one person is getting a different fine than another person and someone else may get off with just a suspended imposition of sentence. Ms. Thompson replied that

by policy, you are able to establish consistency; that is what the state does for 18 and under. The board noted that state wide inspections using funds from the FDA do follow a very specific, escalating fine schedule, including suspension of a license.

Ms. Phillips asked if the St. Louis County fine structure is in the ordinance or within policy in the Health Department. Ms. Thompson explained that St. Louis County is different because they are a county health department and Columbia is a city health department. The county in St. Louis County is the license issuing authority, where in Columbia we have the Business License Administrator. The County operates differently than the way a municipal health department operates.

Dr. Szewczyk asked if the progressive fine structure in the ordinance now has had any problems. It has been used once, and as far as it's known, there weren't any issues. The Board discussed the progressive fine structure and how much the minimum amount should be. They considered the implications of it is too low, it may not make a difference to bigger retailers.

Ms. Phillips asked if the timeline on paying a fine would be affected by whether or not it was a set or discretionary structure. Ms. Thompson replied that it would still be the same process if it goes through Municipal Court.

Mr. Feirman asked what "other remedies allowed by law" means under the penalty section, and if that would include license suspension. Ms. Thompson replied that suspension could occur on the first violation, if need be. Other remedies could include the retailer being deemed a public nuisance by continuing to sell tobacco after their license is revoked. The prosecutor could try to go after the retailer's business license, not just their tobacco retailer license.

The Board discussed the suspension or revocation of a license and the two different processes. The Business License Administrator can revoke the license. If there is an appeal, then the revocation would go to through a judicial review. Ms. Thompson explained that the reason a judge/prosecutor can't revoke the license is because only the licensing authorities are allowed to do so.

Ms. Bass asked about the current enforcement. Ms. Thompson said she

isn't sure that any violations were taken to court. There was discussion regarding the Police Department being the enforcing agent in the current ordinance and not having the time or staff to make compliance checks a priority. Ms. Chadwick asked Ms. Thompson if the ordinance could include the Health Department as the enforcing agent. Ms. Thompson said not having an enforcing agency allows delegation to a department that has the available resources and it allows flexibility in enforcement options without having to seek a city code amendment.

Ms. Browning asked if the ordinance could include language allowing that a policy regarding inspections be developed. This leaves room for a policy to be developed and modified as needed. Ms. Thompson said she would prefer to put that language in the Health Department Chapter 11.

The Board discussed not having the resources in the Police Department or Health Department and that the economics of the fines need to be able to support the resources. Ms. Chadwick asked about the fine structure going towards an enforcement fund. Ms. Thompson explained that other departments have expenses related to the imposition and collection of the fines and would have a claim to the revenue. That said, Municipal Court standards note that fines cannot be used as a revenue generator.

There was discussion regarding how many resources would be needed for a city our size. Ms. Chadwick said it cost St. Louis County \$150 per retailer for two inspections per year done through the Health Department . If it is done through the Police Department, it costs more. Ms. Thompson said that tobacco enforcement and alcohol enforcement could often be combined.

Ms. Phillips asked if there was any evidence that the discretionary process has failed. Ms. Chadwick said she hasn't seen any practices with this process. Her issue is there is no progressive fee after the minimum. Ms. Thompson also noted that the progressive fine structure was written to be within a two year period which is difficult to track.

Ms. Skala said her concern is with passing an ordinance with no fee structure, no designated enforcing agency and nothing regarding compliance checks. What will it accomplish with no one to enforce and no resources? Maybe the Board should recommend a fee structure even though it would have to be taken to an election to pass. Dr. Szewczyk

noted that the council discussed wanting to first get the license established, do some pilot testing and see how it works. Then a fee structure could be put to the voters.

Ms. Rubin asked about the application process. Ms. Thompson said they made the license to coincide with the business license and make all the licenses due at the same time.

The Board asked if there are any departments within the City that may be financially capable to conduct the inspections. Ms. Chadwick said there may be grant funding available to set up some kind of pilot inspection program. Ms. Thompson said, that if need be, we could amend the ordinance to make it possible to receive a grant.

Ms. Chadwick said she liked how Columbus, Ohio gave the Health Department authority to write their policy. The City does have other departments who write their own policies without them going to council.

The Board discussed next steps. The following options were presented.

1) Endorse the new ordinance as drafted and write a letter to the City Council recommending passage. 2) Endorse the current ordinance and recommend specific changes. 3) Collect more information including further review of ordinances in other municipalities. 4) Do nothing.

Mr. Feirman expressed concern that a series of graduated penalties would not be effective unless the fines were high. He felt that the threat of suspension or revocation of the license was more likely to increase compliance. He also expressed support for the concept of a certain number of violations, in a specified period of time, as a factor for consideration of suspension or revocation.

Ms. Bass made a recommendation that instead of a graduated fee structure, there be a minimum penalty of no less than \$1000 on every offense with consideration of revocation or suspension of license.

The Board discussed who can do the revocation since Ms. Thompson said that assessing penalties and the suspension of licenses are two different processes. With Ms. Bass' recommendation, revocation couldn't be put under penalties; it would have to be under suspension and the new ordinance would have to be updated. Ms. Thompson said you wouldn't

want to tie your suspension to the Municipal Court violation; as this would lead to waiting on the court decision before you get to the opportunity to seek the license revocation. Ms. Bass said that is why she wanted her amendment to treat every occurrence individually.

Mr. Feirman asked Ms. Bass to add a friendly amendment to her motion that after the third offense in the period of the license, the retailer's license shall be suspended.

Ms. Bass said she respected Mr. Feirman's suggestion, but did not accept his amendment.

Dr. Szewczyk noted that it was clear that the Board needed more time to review and discuss this issue. He noted we could form a sub-committee to bring specific recommendations back to board. The Board decided instead to table further discussion until the next meeting. Ms. Thompson was thanked for attending the meeting and providing input.

**Before this vote was taken Ms. Skala had already left the meeting.**

**A motion was made by Ms. Bass, seconded by Mr. Feirman that the Board recommend that the ordinance be amended to include a minimum penalty of no less than \$1000 per offense with consideration of revocation or suspension of license.**

**After this vote was taken Ms. Phillips and Ms. Sax indicated there votes were actually abstentions, however there was no re-vote taken.**

**Yes:** 4 - Feirman, Szewczyk, Bass and Rubin

**No:** 2 - Phillips and Sax

**Excused:** 4 - Boley, Hussey, Sohl and Gadbois

**Absent:** 1 - Skala

## **VII. GENERAL COMMENTS BY PUBLIC, MEMBERS AND STAFF**

None

## **VIII. NEXT MEETING DATE**

July 12, 2018

## **IX. ADJOURNMENT**

**A motion was made by Mr. Feirman, seconded by Ms. Phillips to adjourn the meeting at 7:06 p.m.**