

**COLUMBIA/BOONE COUNTY BOARD OF HEALTH
MEETING MINUTES
November 13, 2014**

The Columbia/Boone County Board of Health met for a regularly scheduled meeting at 5:30 p.m., Thursday, November 13, 2014. The meeting was held at the Columbia/Boone County Department of Public Health and Human Services, 1005 W. Worley St. Public Health & Human Services Director, Stephanie Browning, and Assistant Director, Scott Clardy, represented the staff. Senior Administrative Support Assistant, Brittany Klusman, recorded the minutes of the meeting.

MEMBERS PRESENT:

Dr. Michael Szewczyk
Jean Sax
Lynelle Phillips
Dr. Sally Beth Lyon
Dr. Beth Hussey
David Sohl
Harry Feirman
Cynthia Boley
Denise Stillson
Mahree Skala

MEMBERS EXCUSED:

Dr. Colin Malaker

**MEMBERS NOT
EXCUSED**

CALL TO ORDER

Chair Dr. Michael Szewczyk called the meeting to order at 5:30 p.m.

APPROVAL OF AGENDA

Dr. Lyon made a motion to approve the agenda, which Dr. Hussey seconded. Motion carried.

APPROVAL OF MINUTES

Ms. Stillson uncovered a spelling error in the October minutes. A portion of Dr. Cooperstock's testimony, page five, currently reads, "He explained that nicotine is a very potent nasal constrictor, meaning it clamps down the blood vessels, so it could be particularly important during pregnancy." Ms. Stillson explained "nasal constrictor" should be "vasoconstrictor". Dr. Lyon made a motion to approve the minutes with the correction, which Dr. Hussey seconded. Motion carried.

SCHEDULED PUBLIC COMMENT

Dr. Szewczyk noted that there is a time limit of five minutes for the scheduled public comment. Ms. Phillips volunteered to be the time keeper.

Ron Leone - Executive Director of Missouri Petroleum Marketers & Convenience Store Association

Mr. Leone thanked the Board for the opportunity to speak. He explained that he has members in the Columbia area, twenty-eight different locations, all of which sell tobacco and vapor products. Additionally, there are 300 plus employees in this area, all of which are paid over minimum wage. Mr. Leone explained that this ordinance, if passed, will not only have an impact on businesses, but jobs as well. He provided a memo to the Members and mentioned he would send an electronic copy to be posted online. Mr. Leone clarified that he is only testifying on the proposal to increase the age from eighteen to twenty-one to purchase tobacco and vapor products. Being an attorney, he doesn't believe city government has the statutory authority to change state law. However, city government does have the authority to more stringently implement state law. He clarified that state and federal law define the age of a minor as anyone under the age of eighteen. This proposed ordinance would conflict with state and federal law, which sets the tobacco purchase age at eighteen and older. He believes passing an ordinance that would require his members to check the identification of everyone purchasing tobacco products, no matter how old they appear, would be an example of more stringently implementing state law. Mr. Leone brought up the marijuana proposal the Board just discussed, and how a major concern with that proposal was how it conflicted with state and federal law. He believes the same thing should apply with this proposal.

Additionally, if the ultimate goal is to decrease tobacco use, Mr. Leone does not feel this proposed ordinance would be effective. He explained that tobacco and vapor product sales would just shift outside of city limits. Furthermore, e-cigarettes are often used by tobacco users to wean themselves off tobacco products, so this proposal would be counterproductive. If this passed, and a person under the age of twenty-one was addicted to tobacco, they would not have the opportunity to use e-cigarettes to stop their tobacco use. Also, the city would be the only enforcers of this policy, and state and federal officers only have authority to enforce below eighteen years of age.

Mr. Leone suggested that if the Board does make a recommendation to Council, to make sure it is equal to both the consumers and the businesses. He explained that if this is something that will be done, then it needs to be done uniformly for the sale, purchase, consumption, and possession of tobacco and vapor products. Mr. Leone ultimately believes this issue comes down to freedom. Eighteen year olds can vote, kill and die for their country, and get married, but for some reason Columbia is considering that they may not be old enough to purchase tobacco and/or vapor products. He explained that freedom is to respect those that want to do things that others won't agree with. If everyone agreed on an issue, then you wouldn't need freedom or a bill of rights because majority would rule. He asked the Board to think about that and to take a look at the document he provided to them. He then opened the floor to any questions.

It was clarified that currently there are no consequences for a minor to be in possession of tobacco and/or vapor products. Mr. Leone was asked if he had under-aged children that smoked, what would he tell them. He explained that he would not want them to smoke. He reiterated that his argument is based solely on the notion that adults should be allowed to purchase tobacco and vapor products, and he doesn't believe Columbia can change the definition of minor from eighteen to twenty-one years of age. Consumers and businesses demand and deserve uniformity, consistency, and predictability across the state. Mr. Leone suggested that this argument should be held in Jefferson City, so that way all of his members, within the boundaries of Missouri, are all playing by the same uniform rules, as they are today.

Mr. Leone was asked if any of the convenience stores had any informational materials on e-cigarettes being used as a discontinuation tool, but he did not know the answer. Mr. Leone does feel that the vapor products are healthier than tobacco products.

There being no further questions, Dr. Szewczyk thanked Mr. Leone for speaking.

DIRECTOR'S REPORT

In the interest of time, Ms. Browning passed on the report until the next meeting.

OLD BUSINESS

Dr. Szewczyk referred to the agenda items to clarify how the Board was going to proceed in their discussion. The first objective is to go through the current ordinance, which is why Nancy Thompson, City Counselor from the law department, was asked to be present during the meeting to assist with any questions. Given Mr. Leone's testimony, Dr. Szewczyk asked Ms. Thompson if Columbia has the statutory authority to move forward with increasing the age for the sale of tobacco and vapor products to twenty-one, and also adding vapor products to the smoking ordinance. Ms. Thompson explained there is a specific statutory provision, section 407.932, RSMo, which does allow political subdivisions to enact more stringent ordinances or rules. She said it is very clear in the way it is written and is specifically in the tobacco section. She clarified that she does believe increasing the age from eighteen to twenty-one would fall into the more stringent category. She explained that raising an age and providing a greater limitation would, in fact, be more stringent. Ms. Thompson stated that the only thing local political subdivisions are prohibited from doing is regulating taxes on tobacco products. There is a specific prohibition against that in state law.

Ms. Thompson also clarified that while the legislative intent would be to prohibit tobacco sales to those under 21, the legislative intent does not address the issue of minors in possession of tobacco products and currently there are no consequences for minors who are smoking or in possession of tobacco products. Mr. Feirman brought up Senate Bill 841 and how this legislation states e-cigarettes can't be regulated as tobacco products. He asked if e-cigarettes would be added to the current City ordinance, or would it have to be a separate ordinance. Ms. Thompson recommended any regulation that comes about for e-cigarettes be done in an ordinance separate from the definition of minor, whether or not it is put into the same chapter or just change the definitions in the chapter of tobacco regulations, but she will have to look into the issue more. Ms. Skala clarified that the state law states e-cigarettes cannot be defined as a tobacco product. Regulatory ordinances can be passed for vapor products as long as they are defined differently than tobacco products. She explained that several Missouri communities have already done this.

It was clarified that the goal of the Board is to provide their recommendation to Council based on the Members perception regarding the health effects of tobacco and e-cigarettes and the benefit of raising the purchase age of smoked combustible tobacco products to twenty-one, raising the purchase age of all vapor products to the age of twenty-one, raising the purchase age of only vapor products containing nicotine to age twenty-one, and restricting the indoor use of vapor products similar, or the same as, the current public smoking ordinance. The Board is not trying to write the language of an ordinance but rather provide an opinion on the merits of the legislative intent.

Mr. Sohl observed that not much is known about vapor products and their health effects, and if there is a potential for these products to be dangerous, should they be regulated. He noted that cigarette advertising used to include doctor recommendations on which brands were best to smoke. He felt that the Board needed to be concerned about history repeating itself with e-cigarettes and that it should be precautionary given preliminary data suggesting ill effects. It was felt that should e-cigarettes be proven to be safe, the policy can be re-visited.

Increasing the purchase age of tobacco to twenty-one was discussed. Mr. Feirman believes that society gives eighteen year olds certain responsibilities and adults have to be responsible for their own actions. He explained that the argument seems to be that individuals between the ages eighteen to twenty don't have the wherewithal to make informed decisions. Additionally, Mr. Feirman stated the majority of the people who smoke started before the age of eighteen, so he is unsure what raising the age to twenty-one would accomplish. Ms. Phillips respectfully disagreed.

She explained other communities have increased the tobacco purchase age to twenty-one, which ultimately reduced the smoking rate among teenagers. She explained these communities also have neighboring communities where the eighteen to twenty year olds could purchase tobacco products, but there is clear evidence that the increased age limit influenced smoking among teenagers. Additionally, keeping tobacco products out of the hands of eighteen year olds also keeps it out of the high schools all together; and that influences smoking habits among all those teenagers starting at an age where addictions are most likely to occur.

Ms. Skala agreed, noting that there are many eighteen year old high school students and very few twenty-one year old high school students, so the procurement and sharing of cigarettes within a high school would happen less if the purchase age was raised to twenty-one. She also mentioned that the Board's responsibility is to make a judgment about how this policy would affect the health of our community. The discussion of what are the rights of eighteen to twenty year old individuals needs to occur in the political arena, not within the Board of Health. Ms. Skala also noted that smoking tobacco should not be seen as a privilege or something beneficial that is being withheld from that age range, when in all actuality, it is a harmful substance that is more addictive the earlier a person starts. Mr. Sohl commented that he cannot fathom grouping the right for young adults to purchase tobacco to other rights given to them, when they may not understand the lifelong addiction and the financial consequences that coincide with the addiction. Mr. Fierman explained that society gives eighteen year olds the ability to influence public policy, which affects others, and society feels they have a mature judgment that allows them to do this. He doesn't comprehend how they would not have the same type of judgment when deciding to use tobacco products. He explained that if the City is serious in the tobacco issue, then tobacco use should be completely banned in city limits.

Dr. Lyon referred to testimony that was presented during the public hearing, regarding how there are ways to get around rules and regulations, but this tobacco issue is clearly a public health hazard for young people. Therefore, the harder it is for them to have access to it, the better. Dr. Lyon commented on the argument that eighteen to twenty year olds are given other rights and responsibilities. She referred to the public testimony where a speaker compared that argument to the decision to lower the drinking age to eighteen after the Vietnam War. As a result of that decision, there were tragic public health consequences due to the increase in fatalities from Driving While Intoxicated (DWI) motor vehicle accidents involving young people in that age group. Dr. Lyon noted that she is compelled, as a Board of Health member, to recommend to Council that restricting the purchase age of tobacco products to twenty-one and above would be to the public good.

In Dr. Malaker's absence, Dr. Szewczyk read his e-mailed response to this proposal. "I vote no to raising the age from eighteen to twenty-one. At age eighteen a person can vote, and being able to vote is being able to cast an educated opinion for who you want to govern you and why. If someone at that age can handle that responsibility, then surely they have the sense to know the health consequences of what we eat, drink, and put into our bodies. These are not children, they are adults."

Dr. Hussey explained that she has conflicting thoughts about this issue, one on a personal level and one as a Board of Health member. As a Board of Health member, she agrees that anything that would reduce smoking would be promoting health and within the Board's purview. Therefore, Ms. Hussey supports raising the purchase age of tobacco to twenty-one. Ms. Stillson supports the proposal as well, stating that anything that deters teenagers from using tobacco products would help minimize the number of adults that are later addicted. Ms. Boley commented on this being a neurological maturity issue instead of a chronological maturity issue, which is why she would support this proposal. Dr. Szewczyk agrees with Ms. Boley in that it is a neurological brain addiction, which is why it is important to keep tobacco away from the underage kids. He believes that restricting purchase to those twenty-one and over would help keep tobacco out of high schools and he supports it.

Dr. Lyon made a motion that the Board of Health recommend to City Council that tobacco product and tobacco product paraphernalia should not be sold to anyone under the age of twenty-one. Ms. Phillips seconded the motion. The Board then proceeded to vote on this issue:

- Eight in favor: Mr. Sohl, Dr. Lyon, Dr. Hussey, Ms. Boley, Dr. Szewczyk, Ms. Skala, Ms. Stillson and Ms. Phillips.
- Two opposed: Ms. Sax and Mr. Feirman.

The Board moved on to discuss adding e-cigarettes to the City Ordinance. It was clarified that the current ordinance specifically exempts offices that are not open to the public and are exclusively occupied by smokers. Mr. Sohl noted that the owner of a store selling vaping products was going to provide the Board with written information regarding how they promote and instruct users in smoking cessation and we have not yet received anything. Mr. Sohl believes that e-cigarettes are an alternative to smoking and he doesn't want to endorse their use indoors. Ms. Skala mentioned a Centers for Disease Control and Prevention (CDC) news bulletin reporting that e-cigarette use among youth is rapidly increasing, having tripled in the last two years. It was also noted that dual use of tobacco and e-cigarettes is increasing as well. She stated that it is one thing to use an approved cessation device, and another to use a product to prolong one's tobacco habit because of the convenience of smoking in public places. As a result, a smoke-free and vapor-free enforced environment would create more of an incentive to quit.

Ms. Sax asked if there was data that shows a health concern if individuals are vaping indoors. She doesn't believe in denying people their right to use these products indoors when there is no data to back up that decision. Ms. Phillips went over a summary from a report completed at the University of San Francisco, which basically proved there is nicotine discharge in the vapor that accumulates in an indoor air environment. Therefore, nonsmokers are inhaling nicotine. Additionally, the aerosol contains not only nicotine, but ultrafine particulates and low levels of toxins that are known to cause cancer. The particulate concentrations are actually higher in e-cigarettes than they are in regular cigarettes. Ms. Phillips explained that this could trigger respiratory ailments for asthmatics, or cause problems with people with heart disease. She noted that with clear data showing that some of the vapor products emit a vapor that can as second hand vapor, affect particular populations, she is going to side with the precautionary principle.

Ms. Skala reminded the Board why second hand smoke is such a health hazard. The exposure to exhaled nicotine from a burning cigarette affects cardiovascular health. The follow-up in communities that have enacted smoking policies, such as Columbia's, have shown a drop in the number of acute myocardial infarctions, heart attacks, in both smokers and nonsmokers, due to their reduced exposure to nicotine.

Mr. Sohl made a motion to recommend to City Council that e-cigarette's, defined as a battery operated portable devices whether or not they contain nicotine, should have an ordinance in effect similar to the current indoor air policy, and e-cigarettes products should not be allowed indoors in public places similar to the already current smoking ordinance. After some discussion he withdrew it. Mr. Feirman made a new motion to recommend to City Council that they enact an ordinance, similar to the current smoking in public places ordinance, for e-cigarettes and vapor products as defined by state law. Dr. Szewczyk seconded. The Board proceeded to vote on the issue:

- Ten in favor: everyone in attendance.

The Board moved on to discuss whether or not they should include vapor products in their decision to increase the purchase age from eighteen to twenty-one. Dr. Lyon, for the sake of clarity in the Board's recommendation to Council, would want to include these products in the age restriction. She explained not restricting these products could potentially force young people between eighteen and

twenty to purchase vapor products. She believes it is incumbent upon the Board to do the same thing with e-cigarettes as defined by state law.

Ms. Sax mentioned individuals can purchase e-cigarettes online, so she is not sure changing the age will be effective. Mr. Sohl feels it would prevent spur-of-the-moment purchases and serve as a deterrent. There was another discussion on how this policy could negatively affect the already addicted individuals that fall between eighteen and twenty years old.

It was clarified that the recently enacted Missouri law only refers to e-cigarettes or vapor products that contain nicotine. Therefore, if the Board wants to include all vapor products, whether they contain nicotine or not, they cannot refer back to the state definition. It would appear that nicotine free e-liquid are currently not regulated in the Missouri.

Dr. Lyon made a motion for the Board to recommend to Council to restrict the sale of e-cigarette products, containing nicotine, in the city of Columbia to persons twenty-one years of age and over. Ms. Phillips seconded. The Board proceeded to vote on the issue, Ms. Hussey was excused before the vote:

- Seven in favor: Mr. Sohl, Dr. Lyon, Ms. Boley, Dr. Szewczyk, Ms. Skala, Ms. Stillson and Ms. Phillips.
- Two opposed: Mr. Feirman and Ms. Sax.

Dr. Lyon made a motion to clarify the issue that just passed to modify the language from, "e-cigarette products containing nicotine" to "vapor products containing nicotine". Ms. Phillips seconded. The Board proceeded to vote on the issue, Ms. Hussey and Ms. Boley were excused before the vote:

- Six in favor: Mr. Sohl, Dr. Lyon, Dr. Szewczyk, Ms. Skala, Ms. Stillson, and Ms. Phillips.
- Two opposed: Mr. Fierman and Ms. Sax.

To clarify the Board's intent, Mr. Sohl made a motion that the Board's previous vote of recommending e-cigarettes being restricted indoors should be modified to include all vapor products, including those no nicotine in them as well. Dr. Lyon seconded. The Board proceeded to vote on the issue:

- Seven in favor: Mr. Sohl, Dr. Lyon, Dr. Szewczyk, Ms. Skala, Ms. Stillson, Ms. Phillips, and Mr. Feirman.
- One opposed: Ms. Sax.

Ms. Phillips made a motion that the Board recommend to Council to restrict the age of sale of any vapor product, regardless if there is nicotine in it or not, to any person under the age of twenty-one. Dr. Lyon seconded. The Board proceeded to vote on the issue:

- Six in favor: Mr. Sohl, Dr. Lyon, Dr. Szewczyk, Ms. Skala, Ms. Stillson, and Ms. Phillips.
- Two opposed: Mr. Fierman and Ms. Sax.

ADJOURN

There being no additional business, Dr. Lyon made a motion to adjourn the meeting at 7:15 p.m. Ms. Phillips seconded and the motion carried.