

**CITY OF SALEM
BOARD OF HEALTH
MEETING MINUTES**

April 9, 2024

MEMBERS PRESENT: Sara Moore, Chair, Datanis Elias, Jeremy Schiller, Geraldine Yuhas

MEMBERS EXCUSED: Paul Kirby

OTHERS PRESENT: David Greenbaum, Health Agent, Joyce Redford, Director, North Shore/Cape Ann Tobacco Policy Program, Tanvir Murad, Salem Shell, Eric Stone, Vapor Outlet, and Jack Jolly, Vapor Outlet.

TOPIC

DISCUSSION/ACTION

1. Call to Order

7:07pm

**2. Approval of Minutes
(March 5, 2024)**

D. Elias motioned to approve the minutes. J. Schiller 2nd.

Roll Call Vote:

Datanis Elias – Yes

Jeremy Schiller – Yes

Sara Moore – Yes

All in favor, Motion passed by a vote of 3 to 0.

**3. Continuation of Hearing K’s
Konvenience/Mass Mini Mart –
34 Boston Street for Appeal of
violation of Regulation #24 of
the City of Salem Board of
Health Restricting the Sale and
Use of Tobacco Products and
Nicotine Delivery Products
(Votes Anticipated)**

Appellant failed to appear for the continuation of this hearing.

**4. Continuation of Hearing Salem
Shell – 200 Canal Street for
Appeal of violation of
Regulation #24 of the City of
Salem Board of Health
Restricting the Sale and Use of
Tobacco Products and Nicotine
Delivery Products (Votes
Anticipated)**

Tanvir Murad appeared on behalf of Salem Shell. He reiterated that he was working that day, and he did not sell to any minor. He brought receipts to show how they work. He provided the Board with all the sales reports from 10am to 12pm because the sale happened at 11:46am. Mr. Murad states someone came to his store at 11:42am and tried to purchase the same item and he refused to sell it to him. He continued to insist that he did not sell tobacco products to any minor.

S. Moore asked J. Redford to provide the details of the sale for Board member J. Schiller as he was not present at the previous meeting. J. Redford provided the Board with the details of the sale at this location. On January 11, 2024, at 11:46am a youth went into Salem Shell 200 Canal Street, the youth asked for a Crave and was sold something called Nu, a

different vape product. She was not asked for ID or her age. The sale was made by an adult male clerk with short black hair, a gray zip up sweatshirt and the product was \$22.00, this is the second violation.

S. Moore asked about a void ticket in the amount of \$21.99 for Nu at 11:42am and if the purchase price listed by Joyce was the exact amount, she stated it was. J. Redford added that often the youth aren't given penny change. The purchased product was provided to the Board.

D. Elias asked Mr. Murad if he was able to provide video footage. He stated the footage is only saved for seven to ten days, we received the report on the 25th and the violation occurred on the 11th, we could never recapture that video footage. He reiterated he brought all the sales receipts for that day between 10am and noon, he remembers someone coming to the store, but he did not sell a tobacco product to them. He also stated there was another void ticket about 10:40am, and that if the person doesn't have ID, they just don't sell the tobacco product.

S. Moore asked if it was possible to make the transaction but also void the transaction.

Mr. Murad stated that no it was not possible. He further stated that anything they do on the computer, whether it is cash or credit card it should be in the report.

J. Schiller asked Joyce if the youth paid cash, she responded that the youth always pay cash.

S. Moore stated that she feels the best evidence to contradict the report from J. Redford is video evidence, and that the sales receipt reports still feel unclear. She asked the other Board members how they felt.

J. Schiller asked Mr. Murad if he was at the store on the day of the violation and he stated he was there.

D. Elias asked if the reports had a bar code or item description, if they do not have these then how can the Board match the sales report to the item that was allegedly sold. It just doesn't have any information to correlate the voided ticket to the item.

Mr. Murad stated that the system is not set up to provide a description or a bar code for every item for sale in the store. For instance, if you take Marlboro, there are about 10 Marlboro products, you can't have each item in the system so it would be under one item.

J. Redford reminded the Board that the video evidence would be necessary to overturn the violation, and that she had done an inspection on Saturday prior to the Board meeting, she observed additional violations during that inspection that are not being discussed tonight, and she reminded them that if they were coming before the Board, they would need to bring the video evidence to present to the Board.

Mr. Murad again reiterated that his system only retains video for 7-10 days, and he received the violation on the 25th, there is no way we can collect the video.

J. Schiller asked how Mr. Murad can reconcile what Joyce is saying, that the youth entered the store and was able to purchase this product? He admitted that the first time they made a mistake, they could see they sold the product, and they fired the employee in question. This time, he was there all day, and he did not sell to a minor. He explained that anyone can enter the store and ask for a tobacco, he asks for ID and if they don't have one, he tells them he cannot sell them the product.

J. Schiller explained he understood that happened if that meant that what

Joyce and the youth are reporting didn't happen? Mr. Murad stated all he could say is he didn't sell anything and that is why he brought all the reports he did. The receipts are there, some are for sales, and some are voids.

S. Moore stated she doesn't feel that without video the evidence presented is shaky. Making a decision based on shaky evidence sets a precedence that the Board can't trust the work Joyce and the youth are doing and video evidence would be the best. Again, the fact that there is nothing in the receipts connecting them to that specific purchase is troubling.

Mr. Murad stated the last time he received the violation letter was within a few days, this time it was 2-3 weeks later and if that happens there is no way they can recover the video.

D. Greenbaum stated there are 45 tobacco establishments in the city, of those 16 had violations for sales to a minor, it took a little longer for the department to get the violation letters out to those who had violations. The department strives to get the violation letters out as quickly as possible.

D. Elias motioned to uphold the Health Agent's order against the appellant for the 2nd offense to pay a fine of \$2,000.00 and serve a 7-day suspension to commence for violation of Salem Board of Health Regulation #24. J. Schiller 2nd.

Roll Call Vote:

Datanis Elias – Yes

Jeremy Schiller - Yes

Sara Moore – Yes

Geri Yuhas - Yes

All in favor, Motion passed by a vote of 4 to 0.

5. Vapor Outlet – 102 Lafayette Street – Hearing regarding repeat violations of Regulation #24 of the City of Sale Board of Health of Restricting the Sale and Use of Tobacco Products and Nicotine Delivery Products and possible additional suspension or revocation of the permit to sell tobacco products. (Vote Anticipated)

Joyce Redford provided information regarding violations at this location. History goes back to September of 2022 when the establishment had their first violation. The second violation occurred during an inspection, where retail food products, prohibited vape products, prohibited flavor products, were observed. The owner appealed these violations and failed to appear at the hearing, so the violation was upheld. The next violation occurred on January 11, 2024, when at 12:43pm a youth entered Vapor Outlet, the clerk opened the door before the youth had a chance to ring the bell. The youth asked for and was sold Crave 5% for \$20.00 resulting in the third violation. The youth stated the store smelled like weed, so much so, her clothes smelled of marijuana. The clerk had a long black ponytail, black beanie, black t-shirt with the word STAFF on it, wearing Air pods, and he had some facial hair. The clerk was an adult male. Joyce provided the product sold to the youth to the Board.

D. Greenbaum stated that there seems to be continual violations at this establishment. Joyce and he went to this establishment about a week after the last Board meeting, and observed flavor enhancers still in the store, evidence that smoking is being allowed in the store, and evidence of smoking marijuana in the store. All evidence of continual egregious violations.

S. Moore asked if this occurred after the Department of Revenue (DOR)

had also issued a suspension of their state tobacco sales permits and the appeal had been denied. Joyce confirmed that this was correct.

J. Redford explained to the Board that she follows up on the DOR suspension because when the DOR issues a suspension the local permit becomes void as it is a requirement of the local permit to maintain a valid DOR permit. Joyce also provided the Board with visual aids that all tobacco retailers were provided prior to the ban on flavor enhancers going into effect in January.

Jack Jolly of Vapor Outlet states they never received this correspondence.

Eric Stone of Vapor Outlet states that he sees in the minutes that the Board discussed the flavor enhancers, but he never received anything in the mail.

He spoke to the other two adult only establishments, and they never got anything in the mail either, so there was miscommunication. He said when he applied to have the candy, it was approved, and when he was told to remove it, he did. He said two of the four violations are for things he was never told about. He has had this store for ten years; this is his livelihood.

When the state came in, they said he needed a cigar license and gave him a warning. He said they have never been told what they can and cannot sell.

Mr. Stone provided the Board with some background. This store used to be a bar, when we were sweeping, we saw a couple of cigarette butts on the floor, there are probably thousands in the back area. Mr. Stone reiterated he did not receive the letter about the flavor enhancers and stated that we should provide him with a list of what he can and cannot sell.

Mr. Jolly provided the Board with background on the business, they started as a vape shop, when flavors were banned, they looked for any way to maintain business, food, tobacco, and cigarillos, anything to continue making a living. He said they have distributors who tell them it is legal to sell certain products in MA, but city by city telling us it is illegal, it is too confusing. He said they began selling hemp, which is a cannabinoid. He feels you are going after flavored hemp products when you have stores in the city that are giving away free marijuana.

S. Moore stated those businesses are licensed to sell marijuana. D.

Greenbaum added that the Board of Health doesn't license those businesses and has no authority to regulate them. Discussion took place regarding why the fine was issued to Vapor Outlet for having flavor enhancers, both Mr. Stone and Mr. Jolly felt they were fined for having a cannabinoid, the fine was issued because it is a flavored cannabinoid, not because it is a cannabinoid.

S. Moore addressed the issue of the businesses being told by their distributor that it is alright to sell certain products, that is not an excuse, as a business owner it is your responsibility to be familiar with local regulations. She asked if it is a legal requirement for the Board to send a letter to the businesses informing them of the changes to the regulations or is it a courtesy. D. Greenbaum responded it is a courtesy. Second, when the Board holds a meeting about changes to a regulation, it is a publicly posted meeting in accordance with the law. This is so that anyone can come and express their concerns about the changes to the regulations. Further discussion took place about how Mr. Stone felt he should be notified about changes to the regulations.

Discussion took place around whether it was legal for employees of this establishment to have marijuana in the store.

J. Redford reminded everyone that there is a MA General law in place that

governs the sale of marijuana; it is enforced by the police, not the Board of Health. Joyce further addressed the Board about conditions she has observed during visits to this establishment.

S. Moore asked Joyce to review the details of the offenses at this establishment.

Mr. Stone interjected and stated that the violations were two for sales to a minor and one for a product he could sell, and the law changed, he could no longer sell that product and he was fined. He is not disputing the sales to a minor, they happened, his employee did it, and they tried to take steps to prevent that from happening again. But he feels the flavor products are simple, just let us know what we can and cannot sell.

S. Moore reiterated that the notification to the businesses is a courtesy, and as a business owner it is incumbent on you to keep up with changes in the regulations. She further explained that this is MA General Law, and the Board is not just changing the regulations every other month. She also stated that once a notification is sent the Board is not responsible for what happens with the delivery of the mail.

J. Schiller asked why Mr. Stone and Mr. Jolly wouldn't reach out to Ms. Redford or Mr. Greenbaum as a resource to make sure they weren't in violation.

Mr. Stone stated he went to see Mr. Greenbaum and was told empty mylar bags are flavor enhancers. J. Schiller suggested that Mr. Stone should ask for staff to come to the store to address the confusion he is having around the ban on flavor enhancers.

D. Greenbaum described what happened during the conversation he had with Mr. Stone to the Board. He told the Board and Mr. Stone he was wrong about the picture he had been shown that day; it was not a flavor enhancer, however, the day he went to the store with Joyce there were still flavor enhancers on the shelves.

Discussion ensued regarding whether stores were allowed to sell flavored tobacco, hemp, or other products.

D. Greenbaum reminded the Board that when a minor update to a regulation is made that update is added to an agenda and discussed at an open public meeting. When the Board plans a major update to a regulation they hold a public hearing. This is to allow the public the opportunity to come and be heard about any changes to any regulation.

J. Jolly asked if the ban on flavor enhancers was for tobacco, and if so, how does the Board know that the flavor enhancer will be used for tobacco.

D. Greenbaum said what it is used for doesn't matter. The fact is it shouldn't be in the store. He further explained that the ban on flavors is not a Salem specific law, it is MA General Law. Mr. Jolly continued to explain that he has removed products that were once legal that are no longer legal. He has replaced them with products that the distributors have said are legal to be sold in MA. He has lost a lot of money due to flavors and he feels beaten down.

S. Moore stated she can appreciate Mr. Jolly's feelings; however, the state has a law, and the Board is in place to protect public health, not business interests. She asked if the owners would be amenable to a visit from staff to help them better understand what is and isn't allowed to be sold, and they agreed they would be amenable to that.

J. Schiller suggested they contact the department to seek the expertise of staff to assist them with what they are and aren't allowed to sell, and don't

rely on the distributor as they have an ulterior motive to sell you product that may be in violation of the regulation. Discussion continued regarding requesting assistance from staff to prevent further violations.

E. Stone explained that the state was in his store, he was told he could not sell some products, but he could sell others. Joyce went in and told him he could not sell what the state said he was allowed to sell, Fronto, a cigar-like product.

J. Redford explained that DOR doesn't confiscate, they don't consider Fronto tobacco. What was seized was flavored vape products. When she went into the store the employee explained the Fronto couldn't be sold because DOR said it needed to be a package of three. She further explained that when you apply for a DOR license, they want to know exactly what will be sold. They couldn't sell the Fronto because they didn't have a cigar license from DOR. Additionally, in Salem, you have not been able to sell Fronto leaves since 2016.

J. Jolly stated we don't want to buy something we can't sell, but we're being taxed as a cigar so why can't we sell it as a cigar? S. Moore stated that is a question this Board cannot answer for you. Mr. Jolly expressed frustration and confusion over what can and cannot be sold, and he asked for a list of things that they can't sell so they can keep them off the shelves. Joyce explained that we are not in the business of inventory control, and every single day there is a new product on the market.

G. Yuhas feels there has been no regard for the regulations many times, this is not the first offense, and it is not the responsibility of the Board to teach everybody; it is their responsibility to know the rules.

Mr. Jolly stated he is aware that they have multiple violations, it is not all the same product, we were told to stop selling flavors and we did. We've suffered a lot from the loss of the products. We believed the distributors when we were told we could sell certain products in MA, and we learned the hard way.

S. Moore brought the conversation back to the matters at hand, specifically the violations currently before the Board. Joyce explained these include the third violation and infractions observed during recent inspections.

S. Moore asked for clarification as to when the issue of the flavor enhancers was discovered. It was determined that this occurred within the prior two weeks. Conversation then ensued regarding Mr. Stone requesting hearings and ultimately not appearing at those hearings. It was explained that Mr. Stone appeared for the hearing on the first offense and that he ultimately withdrew his appeal, however he requested appeals for both the second and third offenses and failed to appear at either of those hearings. The Board ultimately upheld both violations due to the failure to appear. Joyce stated to the Board that these are requests made by Mr. Stone that he has just ignored, and they are blatantly egregious issues.

J. Schiller asked Mr. Stone why he failed to appear before the Board at the March meeting. Mr. Stone and Mr. Jolly explained that the violation in question was for a sale to a minor. They reviewed their store video and saw that the sale did happen and there was no disputing the violation, so they decided not to come to the Board meeting. Mr. Jolly stated maybe they should have withdrawn the appeal. They didn't realize they needed to do that, but they saw they were in the wrong and that is why they didn't appear before the Board.

J. Redford stated they did not appear at their requested hearing for the

violation on June 6, 2023. There was no explanation provided as to why they failed to appear for that hearing. Further discussion ensued regarding products found in the store. Joyce clarified for Mr. Jolly what she meant by roaches; she was not talking about cockroaches but rather marijuana roaches.

J. Schiller asked what is currently before the Board. D. Greenbaum explained that currently the Board is considering possibly revoking the permit to sell tobacco products at this establishment. Discussion took place to clarify that the third violation has been upheld and the owner must pay the \$5000.00 fine and serve the 30-day suspension, to be served at the conclusion of the 60-day DOR suspension.

Further discussion ensued regarding what action the Board was considering at this meeting. J. Schiller asked D. Greenbaum if he had any recommendations and he stated he was willing to work with the owners, however this would be the last chance they had to comply with the regulation; the next violation would result in revocation. S. Moore agreed and did not feel compelled to revoke the permit tonight, but this was the last chance; the Board cannot see you before them again. J. Schiller added that the Board should propose a plan of what will take place going forward. There should be an inspection within one month and a review of that inspection within six months, if there are violations during that inspection the revocation comes right back into play. J. Redford added that a sale to minor within 36 months also brings the revocation back before the Board. She also stated she appreciated the Board including the other issues like, the odor of marijuana, or the big bag of weed that was said to be for the clerk's "personal use", because these are egregious items that should be considered by the Board. The Board agreed the goal of staying the revocation is to totally clean up the store and remove all issues and violations going forward. The Board strongly feels that by not revoking the permit to sell tobacco products, this is an opportunity for you to devise an action plan to prevent these violations from occurring in the future.

D. Greenbaum reminded the owners of Vapor Outlet that effective June 1, 2024, some things we are seeing, like the marijuana issues, will be violations subject to fines at that time.

Mr. Jolly states that if they survive this meeting they will be "cleaning house", if that means firing employees they will, but they will do everything necessary to comply with the regulations.

J. Schiller reiterated there is no arguing the regulation; it is a matter of complying, not arguing the merits of the regulation.

Discussion continued regarding visiting the store, when that should happen and what that should entail was discussed at length. Joyce agreed to visits within one month, at three months and, if necessary, as products return to the store after the suspensions are complete. She was clear, however, that she could not be their inventory control.

Mr. Stone asked if there was anything else that was being considered for the regulation. Joyce explained that the regulation mentioned marijuana; if you are not a licensed marijuana establishment, you cannot have marijuana in your store. She also mentioned the regulation prohibiting synthetic cannabinoids, Delta-8, and Delta-10. Regular CBD products are ok, but you cannot have gummies. The marijuana regulation will not include paraphernalia.

J. Schiller motioned to suspend consideration of revocation of the tobacco sales permit at this time, and to instead work with Vapor Outlet on compliance in the next month with a follow up inspection in three months. D. Elias 2nd.

Roll Call Vote:

Datanis Elias – Yes

Jeremy Schiller – Yes

Geri Yuhas - Yes

Sara Moore – Yes

All in favor, Motion passed by a vote of 4 to 0.

J. Redford provided the Board with an update on the Nicotine Free Generation. A few years ago, the Town of Brookline passed a bylaw that made the sale of tobacco based on a person’s date of birth. The language said no one born on or after 1/1/2000 can purchase nicotine products in the Town of Brookline. The Supreme Judicial Court recently ruled that the Brookline bylaw was legal and valid and now the communities of Malden, Stoneham, and Wakefield have all adopted similar bylaws/regulations with a birthdate of 1/1/2025. Beverly is interested in this, and Marblehead has shown a touch of interest. This is a heavy lift; there is a great deal of public education involved and there will be a lot of public interest. Joyce wanted to make the Board aware that this is out there, and they could be hearing about it.

D. Elias asked if this type of regulation would increase tobacco and nicotine sales to neighboring cities and towns. Joyce explained that in the beginning it probably would, like smoke free workplace regulations did.

S. Moore asked about the homeless encampment and what, if any, role the Board of Health has played in that situation. D. Greenbaum updated the Board on the City Council camping ordinance, and the status of the auxiliary shelter at the Lifebridge thrift store. He also advised the Board about the current conditions at the encampment regarding rodents, syringes, and trash. Discussion continued regarding services to the homeless population.

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| 6. Public Health Announcements /Reports/Updates | NONE |
| 7. Chairperson Communications | NONE |
| 8. Administrative Report | Copy available at BOH office. |
| 9. Council Liaison Updates | NONE |
| 10. New Business/Scheduling of Future Agenda Items | NONE |
| 11. Items that could not be anticipated prior to the posting of the agenda. | NONE |

MEETING ADJOURNED:

J. Schiller motioned to adjourn. G. Yuhas 2nd.

Roll Call Vote:

Datanis Elias – Yes

Jeremy Schiller – Yes

Geri Yuhas - Yes

Sara Moore – Yes

Motion passed by a vote of 4 to 0.

Meeting Adjourned: 8:25 PM

Next regularly scheduled meeting is Tuesday, May 14, 2024, 2024 at 7:00pm at City Hall Annex, 98 Washington Street, 1st Floor, Salem, MA

Respectfully submitted,

David Greenbaum
Health Agent