

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

March 5, 2024

MEMBERS PRESENT: Sara Moore, Chair, Datanis Elias, Paul Kirby

MEMBERS EXCUSED: Jeremy Schiller, Geri Yuhas

OTHERS PRESENT: David Greenbaum, Health Agent, Joyce Redford, Director, North Shore/Cape Anne Tobacco Policy Program, Elie Zeaiter, owner of Kwik Shop Market, Bethany Vasquez representing K's Konvenience/Mass Mini Mart, Parth Patel, owner of E-Market, Attorney Thomas Mixon representing Sam's Market/Mobil, Raj Pedda, Owner, Sam's Market/Mobil, Chaicha, Clerk, Sam's Market/Mobil, Tanvir Murad, Salem Shell

TOPIC

DISCUSSION/ACTION

1. Call to Order

7:14pm

**2. Approval of Minutes
(February 13, 2024)**

D. Elias motioned to approve the minutes. P. Kirby 2nd.

Roll Call Vote:

Sara Moore – Yes

Datanis – Yes

Paul Kirby - Yes

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

**3. Appeals of violations of
Regulation #24 of the City of
Salem Board of Health
Restricting the Sale and Use of
Tobacco Products and Nicotine
Delivery Products for the
businesses listed below. (Votes
Anticipated)**

**a. Kwik Shop Market &
Deli – 10 Jefferson
Ave**

Joyce Redford provided the Board with the details of the sale at this location. On January 13, 2024, at 11:36am she entered the establishment and asked for Backwoods, they were sold to her for \$7.00 by an adult female clerk, who was on the phone wearing a black Columbia zip up sweatshirt, with black curly hair in a ponytail.

Elie Zeaiter, owner of Kwik Shop appeared before the Board and admitted that he saw the clerk on video make the sale. It was a one-minute exchange between the youth and my staff, I don't sound but I have the video. The clerk described the interaction. She made up a birth date for the youth. Mr. Zeaiter stated this was wrong and he did not condone her actions. He stated he tells his employees constantly to check IDs, but he was overseas visiting his elderly father, and this happened. He stated this is his first offense in a long time and he has made all his employees sign affidavits promising they will check IDs every time for alcohol and tobacco, no matter the person's age. Mr. Zeaiter did not deny that the violation

happened.

S. Moore stated that unless you are arguing that the violation didn't happen, under the circumstances the Board doesn't have discretion in these situations based on the way the regulations are written.

D. Elias agreed with S. Moore's characterization of the regulation and that there is not any room for discretion in these instances. P. Kirby also agreed.

Mr. Zeaiter asked if he could pay the fine and not serve the 3-day suspension.

S. Moore explained that the regulations were created to have clear guidelines as far as consequences and for the first offense the penalty is a \$1000.00 fine and a 3-day suspension, you must have both.

D. Elias motioned to uphold the Health Agent's order against the appellant to pay a fine of \$1000.00 and serve a 3-day suspension for violation of Salem Board of Health Regulation #24. P. Kirby 2nd.

Roll Call Vote:

Datanis – Yes

Paul Kirby - Yes

Sara Moore – Yes

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

**b. K's
Konvenience/Mass
Mini Mart – 34
Boston Street**

Joyce Redford provided the Board with the details of the sale at this location. On January 11, 2024, at 10:57am the youth entered the establishment and asked for Crave, an e-cigarette product. The youth was not asked for an ID or her age, the sale was made by a female teen or young adult, with slicked backed, blonde, curly hair, a pink zip up champion hoodie and a black coat. The sale was made, and the price was \$24.99. Bethany Vasquez appeared on behalf of this establishment, she explained that she did not have camera footage for that day as the cameras had been down for about 30 days at that time. She did have transactions on her phone but did not have one that corresponded to this incident. She reviewed several transactions during the timeframe in question, there is one for miscellaneous that could be for anything. She also spoke to her employees, and they don't recall this transaction. She explained that her POS system requires the employee to confirm the age before the sale can be made.

S. Moore asked if there was a sale for \$24.99 in the receipts. Ms. Vasquez stated there was a transaction that totaled \$24.00 but not \$24.99. The Crave should have rung up \$24.99. She has one for \$24.99 and one for \$34.99.

S. Moore asked what is done in instances where there is no camera footage.

D. Greenbaum explained that there is still evidence of a sale, Joyce has the product purchased and the details of the sale documented.

J. Redford advised the Board that the youth must complete both DPH and FDA training prior to participating in compliance checks. This youth has worked for the program for a couple of years. The time stamp may be off by a few minutes because the youth must go into the establishment, come back to the car and the details of the transaction are transmitted in real time. Ms. Vasquez admitted that the price of the item purchased is \$24.99, that

would be an arbitrary price that the youth would have no way of knowing. Ms. Vasquez stated she does not have this sale in her transaction list and this information cannot be manipulated, it is there forever.

S. Moore asked if there was an image of the product. J. Redford provided the actual item purchased at this establishment for the Board.

D. Elias asked Ms. Vasquez if she was disputing the description of the person who waited on the minor was also at issue? Ms. Vasquez said she was not disputing that.

P. Kirby stated that because the youth that work with Joyce have extensive training, which is the evidence, and he doesn't know how the Board would handle a challenge to the factual basis of the violation.

Ms. Vasquez reiterated that she has the transaction history, and she does not have a sale for the \$24.99 Crave dated at that time.

J. Redford presented the Board with the actual physical evidence as well as a picture of the product taken at the time on the date of the sale.

S. Moore stated she believes there is evidence that the violation occurred, and she doesn't see why Joyce would be dishonest about this violation.

Ms. Vasquez asked if the only way to prove a violation didn't happen was to provide video footage and how that would be submitted.

D. Greenbaum asked if she had video footage of that day. If you have the video, you can further appeal to Superior Court. Further discussion took place on how Ms. Vasquez could appeal to Superior Court took place.

S. Moore explained that the appeal process is designed to allow people the opportunity to show that what is alleged to have happened did not happen.

J. Redford stated that this was the first time a compliance check was done at your establishment and there was a sale. The concern is that there is no way for the Board to ensure that your POS system is synchronized to the data collection that we are doing for the state and the city.

Discussion took place about the date/time stamp on receipts and video systems.

S. Moore asked if it was possible to access video footage from the time in question.

Ms. Vasquez stated she might be able to download the video to her computer but was not able to access it from the app on her phone.

Discussion took place on how Ms. Vasquez could provide the additional evidence to the Board to be presented at a future meeting.

D. Greenbaum advised Ms. Vasquez to provide video footage long enough to show transactions of at least 15 minutes on either side of the estimated transaction time.

J. Redford advised the Board that the clerk did not provide a receipt for this sale and that this was typical for all these transactions.

D. Elias motioned to table this matter until the next Board of Health meeting. P. Kirby 2nd.

Roll Call Vote:

Datanis – Yes

Paul Kirby - Yes

Sara Moore – Yes

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

**c. E-Market – 28
Norman Street**

J. Redford provided the Board with the details of the sale at this location. January 14, 2024, at 12:51pm youth entered E-Market and asked for single Backwood, and it was sold, the youth was not asked their age or for ID. The sale was made by an adult male with black hair, with a blue, gray, and white long sleeve shirt. The clerk was on facetime with a bald male. Mr. Patel did not dispute that the sale happened, however, he was disputing that this was the second violation. He later found out from Mr. Greenbaum that the previous violation occurred under the former owner. He explained the prior sale took place in June of 2021 and he purchased the store in July of 2021. Mr. Patel presented the Board with documentation showing the sale dates of the store.

S. Moore asked if the penalties were tied to the business and not the owner, and it was confirmed that was the case.

D. Greenbaum advised the Board that he spoke to Mr. Patel and explained that they would review his documents and that they could take that evidence under advisement during his hearing.

S. Moore asked if this situation was something that we had encountered before. D. Greenbaum stated he did not believe so and J. Redford added that the sale of the business and the violation took place very close in time. The Board can reduce this to a first violation; however, the penalty is usually tied to the establishment.

D. Greenbaum reviewed the regulation and provided the relevant clause to the Board for review.

The Board discussed the previous violation and advised Mr. Patel that this is a difficult situation but under the circumstances they felt they had to follow the regulation.

P. Kirby asked if the current owner would have to pay the first and second offense fines and serve the suspensions for both offenses. S. Moore also inquired if that was the case.

J. Redford stated she believed there were two issues at hand, first, what is the city's stance on outstanding fines and second, there was no suspension in the regulation for a first offense at the time of the first offense.

P. Kirby asked what the fine is the fine for the violation in 2021? It is \$1000.00.

D. Elias asked if the violations incurred by the previous owner under a previous permit that went unpaid carry on under the new owner under the business. The answer is yes.

P. Kirby asked if someone purchases a permitted establishment does the permit change or is it the same permit? It was explained that it would be a newly issued permit and that the fine is not tied to the permit, it is tied to the establishment.

Discussion took place regarding whose responsibility it would be to determine if all fines had been paid prior to the sale of a business.

S. Moore asked if the language regarding satisfying all debts for a business was written anywhere else in the regulation. J. Redford asked if there was anything similar in the Food Code. D. Greenbaum explained that this was also potentially in the Food Code, however, we probably wouldn't know of outstanding debts until after a sale.

Further discussion took place about how to categorize this violation and if the current owner should be responsible for the outstanding \$1000.00 fine of the previous owner.

D. Elias motioned to amend the Health Agent's order against the appellant to make this a first offense with fine of \$1000.00 and serve a 3-day suspension for violation of Salem Board of Health Regulation #24. P. Kirby 2nd.

Roll Call Vote:

Datanis Elias – Yes

Paul Kirby – Yes

Sara Moore – Yes

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

**d. Sam's Market/Mobil
– 94 Bridge Street**

J. Redford provided the Board with the details of the sale at this location. On January 13, 2024, at 1:31pm a youth was sent into Sam's Market/Mobil, 94 Bridge Street, the youth asked for a pack of Backwood and was not asked for ID or her age. The sale was made by an adult male clerk with black hair, a blue shirt and the youth returned to the car with more money than she entered the store with the clerk didn't charge the full price.

Attorney Thomas Mixon representing Sam's Market/Mobil. The facts of this violation that have been relayed to Attorney Mixon are not the same case as the Board has heard all night where the youth enter the store, asks for the product, the sale is made, and the youth leaves. In this instance, the youth entered the store, asked for the product and was told it was \$8.00, the youth stated they did not have enough money and left the store. The clerk went back-to-back to doing other things when the youth returned, and the sale was made. Attorney Mixon stated that it seems to him that this fact pattern was different than what had been heard previously and was fundamentally unfair, it is kind of like tricking someone.

J. Redford stated she misread the facts of the sale, she clarified, the youth entered the store with \$2.00 less than she needed, came back to the car to get more money, and returned to the store.

Attorney Mixon continued to explain that there was a gap and he felt it was fundamentally unfair when other things were going on and there was a gap in time. He explained that their practice is to ask everyone their age and for ID, which is how this will be handled going forward. Under these circumstances we are asking for consideration, this Mobil station has been there for 18 years, he is helping with the Exxon/Mobil educational school grant, he also gives coupons to all residents of the neighborhood so they can come in and get free merchandise. He believes there are some mitigating factors and would ask the Board to consider the totality of the circumstances and to find there was not a violation.

S. Moore asked what the procedure is for when a youth is asked for their ID, is it at the door or when the purchase is made.

J. Redford explained that in an adult only establishment it should be at the door because if you are not 21 you should not be allowed to enter the store. In a regular convenience store it is when the youth ask for the product. In this situation, the clerk did not ask the youth their age or for ID. In this instance the clerk had two opportunities to do the right thing and didn't in both instances.

S. Moore stated it appears the violation happened regardless of whether the youth left the store or not. It occurred when the youth entered the store and asked for the product and was not asked their age or for ID. She further

explained that whether it is busy or not or if someone came in once or twice it is up to the clerk to follow the regulation and ask for ID.

Attorney Mixon disagreed with S. Moore. His understanding of the interaction was that when the youth entered the store, they asked how much the product was, not can I get the product, this is more than a one-time transaction.

P. Kirby stated he would interpret this to mean the violation occurred when the product was sold and there was no dispute that there was a sale. S. Moore added that it is still the responsibility of the employee to ask for an ID no matter the circumstances because that is what is required under the regulation.

Attorney Mixon further argued that the gap in time of the youth entering, leaving, and returning to the store creates a problem for the clerk who is doing other things. He feels this fact pattern is unique compared to the other situations heard at the meeting and he is asking the Board to take that into consideration.

P. Kirby stated he disagreed with that assessment. He believes even though there is a slight variation, the facts are basically the same. The incident begins when the youth entered the store the second time and can purchase the product without being asked for an ID. Further discussion took place regarding the responsibility of the employee to check the IDs of individuals purchasing tobacco products.

J. Redford added that the State law reads you must check the ID of every person purchasing tobacco products every time.

Additional discussion about if the number of times an individual enters an establishment prior to a sale taking place is material to a sale to minor violation, Attorney Mixon believes it is and the Board believes it is not. The fact remained that at no time did the clerk ask the youth for an ID.

D. Greenbaum asked if the clerk checked IDs of regular customers as required by law. He stated he did check everyone's ID which removed the familiarity argument.

Attorney Mixon continued to argue that this fact pattern was unique, and the Board should take that into consideration.

D. Elias asked which part of the interaction the Attorney would consider the sale. He stated the first part was not the sale, it would have to be the second part and that the clerk did not ask for an ID. D. Elias reviewed the entire interaction with the Attorney and asked at what point during the interaction does the clerk ask for the ID. The clerk stated at the time the sale is made he would ask for the ID, and he did not ask for an ID in this instance.

S. Moore stated that the Board has heard all the reasons for why a sale happens and the fact is that does not matter, the Board does not have discretion in these cases.

D. Elias motioned to uphold the Health Agent's order against the appellant for the 2nd offense to pay a fine of \$2000.00 and serve a 7-day suspension for violation of Salem Board of Health Regulation #24. P. Kirby 2nd.

Roll Call Vote:

Datanis – Yes

Paul Kirby - Yes

Sara Moore – Yes

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

**e. Salem Shell – 200
Canal Street**

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.

Joyce provided the Board with the purchased product.

Tanvir Murad appeared on behalf of Salem Shell. He stated he was at the store and brought receipts to show how they work. He explained that when a customer purchases a tobacco or vape product the system asks for ID/date of birth and the transaction cannot go on until that is provided.

S. Moore asked if there was an option to input the date of birth manually. Mr. Murad stated that option was not available. Mr. Murad further stated that he followed all the rules and regulations of the Board and apologized but he does not believe this sale happened. He stated that he watched the video, and he did not see anything on the video that corresponded to this sale.

J. Redford asked if there is an override button on the system. He replied there is no override button, if the customer does not have an ID to scan the product cannot be sold. He apologized again for the first offense, the clerk made a mistake, and he fired him. He says he was at the store all day and did not make this sale.

S. Moore asked if there was any video footage of this incident Mr. Murad could provide the Board to show if this sale did or did not occur. Mr. Murad did not answer the question about the video and continued to talk about the POS system and the need for ID to purchase tobacco and vape products.

S. Moore continued to inquire of Mr. Murad regarding the POS system and if he brought with him a void ticket for the sale in question. He continued to be evasive in his answers.

D. Greenbaum advised the Board that Mr. Murad states he follows all the rules and regulations, but he never applied for or received either his 2023 food or tobacco permits and to date he has not applied for or received his 2024 food or tobacco permits. Additionally, flavor products were found at his store on a recent visit. His assertion that he follows all the rules is a little disingenuous. D. Greenbaum further explained to Mr. Murad that a letter from a distributor is not approval from the City to sell a flavored product.

S. Moore explained with the appeal it is incumbent on the person requesting the appeal to bring evidence, like video footage or a void ticket, to show the sale did not happen.

Mr. Murad offered to provide his sales receipts for the day in question.

J. Redford reminded everyone that the Board was there on the matter of whether this one sale happened or not. Furthermore, it has been shown that he does not follow all the rules, and the burden is on the business to bring the proof to show the sale did not happen, he has not done that.

S. Moore reiterated that regardless of whether the receipts provided are from the same day, they are not from the transaction in question, and they only demonstrate how the system works, and they are not pertinent to this

transaction.

The Board expressed that unless clear evidence was presented, they were inclined to uphold the violation.

Mr. Murad reiterated he was there all day and did not believe this sale happened. He accepted responsibility for the first offense but did not believe this offense occurred.

Further discussion ensued regarding whether there is additional evidence to be shared with the Board they would consider it at the April meeting. Specifically, the void ticket for the sale in question.

Discussion took place about youth and if there was video in the store. The youth was a female and Mr. Murad stated the video is only saved for about 2-3 weeks. It was further explained to Mr. Murad that when you appear before the Board for an appeal, that this is your opportunity to present evidence, you should bring that evidence with you.

P. Kirby reiterated that the youth working with Ms. Redford do not carry any form of ID, so it cannot be the case that they showed a minor ID during the transaction.

Mr. Murad asked if he provided the invoices for that day would that be enough evidence. P. Kirby stated the Board would need the void ticket for the transaction in question.

D. Greenbaum advised the Board that if this hearing were to be continued to the April meeting, they require video evidence be provided.

D. Elias asked Mr. Murad if the evidence presented was all the evidence he was asking the Board to review before they made their decision. He stated if he was given more time he would provide additional evidence. S. Moore stated video evidence would be crucial.

D. Elias explained that the evidence presented has not swayed her to believe this transaction did not occur, the receipts are not convincing.

Mr. Murad continued to explain the POS system, Ms. Elias stated that was exactly her point. Unless the receipt and void ticket specifically identified the product it, they would not be helpful.

D. Elias stated the Board gave another appellant the opportunity to bring more evidence to the next Board meeting and if you wanted the Board to provide the same opportunity to you. Mr. Murad agreed that he would like to continue this matter to the April meeting.

D. Elias motioned to continue this matter until the next Board of Health meeting. P. Kirby 2nd.

Roll Call Vote:

Datanis – Yes

Paul Kirby - Yes

Sara Moore – Yes

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

**f. Vapor Outlet – 103
Lafayette Street**

Mr. Stone did not appear.

D. Greenbaum asked the Board to vote to uphold the third offense with the \$5,000 fine and the 30-day suspension.

J. Redford advised the Board that this is the second appeal Vapor Outlet has failed to appear for. Vapor Outlet appealed a 60-day suspension from the Department of Revenue (DOR) and the appeal was denied, the appellate

court upheld the 60-day suspension that began on March 4, 2024. J. Redford recommends the Board make this 30-day suspension a consecutive, not a concurrent suspension, this will make the suspension a total of 90 days. Joyce reviewed the violations at this location for the Board. She also reviewed the details of the most recent sale. This included the odor of marijuana and the purchase of .5% Crave only sold at adult only establishments.

D. Greenbaum recommended the Board call him in for a suspension/revocation hearing.

D. Elias asked if J. Redford had any information regarding the DOR suspension. She provided the requested information.

D. Elias motioned to uphold the Health Agent's order against the appellant for the 3rd offense to pay a fine of \$5000.00 and serve a 30-day suspension to commence on May 4, 2024, after DOR suspension for violation of Salem Board of Health Regulation #24. P. Kirby 2nd.

Roll Call Vote:

Datanis – Yes

Paul Kirby - Yes

Sara Moore – Yes

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

**4. Public Health Announcements
/Reports/Updates**

D. Greenbaum advised the Board that he had his budget meeting with the Mayor it went fine, there was nothing of any consequences from the meeting. He informed the Board about the short-term capital request for the feasibility study to see if the fire prevention office may be a potential future office for the Board of Health staff. WB Mason is providing a quote on desks and chairs for PHE staff.

5. Chairperson Communications

NONE

6. Administrative Report

Copy available at BOH office.

7. Council Liaison Updates

NONE

**8. New Business/Scheduling of
Future Agenda Items**

NONE

**9. Items that could not be
anticipated prior to the posting
of the agenda.**

NONE

MEETING ADJOURNED:

D. Elias motioned to adjourn. P. Kirby 2nd.

Roll Call Vote:

Datanis Elias – Yes

Paul Kirby – Yes

Sara Moore – Yes

Motion passed by a vote of 3 to 0.

Meeting Adjourned: 8:50 PM

Next regularly scheduled meeting is Tuesday, April 9, 2024, 2024 at 7:00pm at City Hall Annex, 98 Washington Street, 1st Floor, Salem, MA

Respectfully submitted,

David Greenbaum
Health Agent