

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

**October 10, 2023**

**MEMBERS PRESENT:** Jeremy Schiller, Chair, Sara Moore, Geri Yuhas, Datanis Elias, P. Kirby

**MEMBERS EXCUSED:**

**OTHERS PRESENT:** David Greenbaum, Health Agent

**TOPIC**

**DISCUSSION/ACTION**

**1. Call to Order**

7:00pm

**2. Approval of Minutes  
(September 19, 2023)**

**S. Moore motioned to approve the minutes. P. Kirby 2<sup>nd</sup>.**

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

**3. Hearing Request – Robert Carp  
Bunghole – 204 Derby Street for  
violations of Regulation #24 of City  
of Salem Board of Health  
Restricting the Sale and Use of  
Tobacco Products and Nicotine  
Delivery Products.**

Mr. Robert Carp appeared before the Board to appeal a 30-day suspension of his tobacco sales permit for selling tobacco products during a 7-day suspension in August.

J. Schiller informed Mr. Carp the Board has updated the regulations so that the fines to be in line with state law and those changes will take effect on January 1, 2024.

Mr. Carp provided each Board member an envelope of information he requested not be opened until he asked the members to do so. (Enclosed) He addressed the Board telling them that he was not someone who would knowingly sell tobacco products to minors. Mr. Carp argued that there was no due process for the punishment; he stated the punishment was scheduled to start even before the period for appeal was set to expire. Mr. Carp additionally stated that the state of MA has clear due process laws, and, in this case, due process was not followed. He asked the Board to look at the information he provided; he references language from Board of Health Regulation #24 stating there is no reference to due process whatsoever.

The Board took some time to review the materials provided by Mr. Carp.

Mr. Carp reviewed the information provided and the arguments of his appeal for D. Elias.

J. Schiller asked Mr. Carp if he has complied with the regulation in terms of his suspension. Mr. Carp explained he has not served his suspension; he paid the fines but did not serve the suspension.

J. Schiller reviewed the sequence of events for this establishment, asking, in the spring, you came before the Board to appeal the violation. Mr. Carp replied he didn't remember when he appealed but he paid the fine and the City was sitting on his check.

D. Greenbaum clarified that Mr. Carp came before the Board in the spring and requested a continuance, which the Board granted. During the continuance, MR. Carp withdrew his appeal stating he would pay his fines and serve his suspension which he ultimately paid. D. Greenbaum explained to Mr. Carp that the right of appeal is at the end of the violation letter, the aggrieved clause is the due process. Mr. Carp disagreed with that explanation.

D. Greenbaum read the aggrieved clause at the end of the suspension letter dated

September 7, 2023. He further explained that language is in every order letter that is generated and issued by the Board of Health office.

The Board further reviewed documents and timelines for violations at Bunghole Liquors and appeals requested by Mr. Carp.

P. Kirby reviewed the letter dated July 19, 2023, that was delivered certified mail to Bunghole Liquors which outlined the suspension dates of August 20<sup>th</sup> through August 26<sup>th</sup>.

J. Schiller asked Mr. Carp if he was arguing that the aggrieved clause did not appear in his initial letter. Mr. Carp responded that was not his argument, he was arguing that he had 14 days to appeal but was only given 7 days, why would he appeal something in 14 days if the penalty was to start in 7 days.

Mr. Carp stated that he and D. Greenbaum had communications regarding this matter. D. Greenbaum agreed they had communicated but he could not recall the exact nature of those discussions but what he did know was that every order generated by the Board of Health office has the aggrieved clause, this outlines the right of appeal.

Further discussion about due process and what that was and how it is applied took place.

D. Elias asked Mr. Carp if he was arguing his suspension period started on the wrong date. To which he replied, that is not what I am arguing at all. He further stated that if you look at the language of the regulation there is no mention of due process at all, the regulation is constitutionally flawed.

D. Greenbaum asked Mr. Carp what he was asking the Board to do. He replied he was asking for a reconsideration, I want to review all the evidence, I wasn't in a place to do that before, and I apologize for that.

D. Greenbaum asked Mr. Carp if he was asking for reconsideration because he did not understand the reasoning the suspension went from the original 7 days to 30 days, he replied he understood that, but he did not have an opportunity to review all the evidence and wanted to do that. D. Greenbaum informed Mr. Carp that he had sent him all the information the Board had regarding his establishment.

Mr. Carp stated the suspension is set to begin on October 16<sup>th</sup> and his only recourse is to go to court to get a restraining order to prevent the suspension from taking place, which he really did not want to do, but he will if he has to.

D. Greenbaum asked if Mr. Carp was asking for no suspension whatsoever and S. Moore asked if he was asking if it had to be done at a time when he could make a lot of money. Mr. Carp stated that was part of it, but I also want to see how this whole thing works, I want to take a careful look at it.

D. Greenbaum explained that the letter does institute a start date for the suspension, but it also gives the appeal process at the end of the letter. He further explained that if there is an appeal then nothing needs to be done until the appeal is heard.

Mr. Carp stated under the rules of due process in the Commonwealth that is not due process. D. Greenbaum stated he would investigate this and if the letter is wrong, he would correct that error.

D. Elias read from the letter dated February 14, 2023, outlining the original dates of suspension of February 21, 2023, through February 27, 2023, that includes the aggrieved clause outlining the violators right of appeal.

Discussion took place around why an appeal period of 7 days was not due process and whether in the original letter it stated the appeal period was 14 days or not.

Further discussion ensued regarding the letter and the fact that it is form letter that is amended as needed to change the permit holders name and address and the detailed information about the specific violation.

Mr. Carp asked how can this be put on hold, G. Yuhas stated until after Halloween?

J. Schiller asked Mr. Carp if was disputing that the violations occurred, he stated he does not dispute the violations. He did state that due process was not followed

and if due process is not followed you cannot hold someone accountable. Additional conversation took place about what letters Mr. Carp received or didn't receive took place.

S. Moore stated that this seems like a tactic to not have to serve the suspension right now at the busiest time of year where Mr. Carp could be making a lot of money. Mr. Carp stated it is about due process to which the Board stated he has no evidence to support that claim.

S. Moore asked Mr. Carp if he thought this was all about due process, why didn't he bring the letter that states he has a 14-day appeal period. He stated he thought this was an opportunity to ask for reconsideration not a hearing where would have to present evidence.

J. Schiller read the agenda item to Mr. Carp where it states this was an appeal. Mr. Carp disagreed with this assessment, this was not supposed to be a hearing, this was supposed to be a reconsideration, that is all this was supposed to be.

J. Schiller then read the letter Mr. Carp submitted to the Board of Health requesting a hearing for the suspension of his cigarette license.

Mr. Carp stated I didn't know what kind of evidence I would need to bring to which J. Schiller responded, I would think you would bring the most relevant information to what you are disputing. He pointed out the packet of information Mr. Carp took the time to prepare and why he wouldn't bring the one document that would demonstrate the violation of his due process.

Mr. Carp continued to argue that his due process was violated and that there is no mention of due process anywhere on the website. He and D. Greenbaum had conversations and the date of the initial hearing was changed because Mr. Greenbaum realized he made a mistake.

D. Greenbaum stated he did not change the hearing date of a mistake but because a mistake but because you requested an extension due to your medical issues at the time. In the interim, Mr. Carp contacted D. Greenbaum via email and stated he was withdrawing his appeal and would pay the fines and serve his suspension. It took some corresponding back and forth but ultimately the fines were paid, and the suspension dates set. When the dates were set the suspension wasn't served.

S. Moore asked if there was any negotiation on the suspension dates. D. Greenbaum explained that he attempted to come to mutually agreeable dates with Mr. Carp but I wasn't able to coordinate with him, so I chose the dates when Joyce conducted the inspection she found they were still operating as a tobacco retailer.

D. Elias asked Mr. Carp to explain how there is no due process based on the information he provided, she summarized the language pointing out that it stated exactly the process the Board would undertake to suspend or revoke a tobacco sales permit. Mr. Carp stated there is no mention of a right to appeal in that language whatsoever. Mr. Carp continued to rehash the same arguments he made regarding the conversations he had with Mr. Greenbaum and his right of appeal.

J. Schiller asked Mr. Carp if he agreed that the letter D. Elias read to him offered due process, Mr. Carp stated he did not agree.

Further debate ensued about what is an appeal and what is a right to be heard took place. D. Greenbaum explained that when a Board of Health issues an order the appeal process is included in the order. The person who receives the order appeals to the Board of Health, if they want to appeal the decision of Board they have to go to Superior Cour, the appeal is not back to the Board of Health.

J. Schiller informed Mr. Carp that these regulations have been vetted by the City Solicitor and have been in place for many years and that Mr. Carp had no issue with his appeal in the spring because he ultimately withdrew the appeal. The real issue is that he does not want to have the suspension at the busiest time of the year. Mr. Carp agreed that is part of the problem, but he still maintains due process was not followed.

D. Greenbaum advised the Board there were two options on how to deal with this

matter, 1) allow Mr. Carp the time to provide the information demonstrating what was done wrong and 2) if they upheld the suspension his next right of appeal would be to Superior Court.

G. Yuhas stated this is the second time Mr. Carp has been before the Board and S. Moore added it seems like a stalling tactic.

J. Schiller asked Mr. Carp if he had a letter that was different than the letter the Board had, could he provide it to the Board within 48 hours, he states he could not as daughter was having a baby.

J. Schiller responded that it seems to me that if you have such a letter that is the lynchpin to your argument you should be able to provide it.

P. Kirby asked if any amount of suspension has been served. D. Greenbaum answered no.

**S. Moore motioned to deny the appeal and uphold the 30-day suspension for Bunghole Liquors to begin on October 17, 2023. G. Yuhas 2<sup>nd</sup>.**

**All in favor, Motion passed by a vote of 5 to 0.**

Mr. Carp informed the Board there was a freedom of information act request in the packet he provided. D. Greenbaum advised him to email his request to Joanne Roomey at the City Solicitor's office and she would forward it to us for completion.

**4. 5 Laurent Road – Appeal of Housing Violation Order Issued on July 25, 2023**

Postponed to the November Meeting - D. Greenbaum updated the Board on the inspection that took place at this property on 10/10/23 and the condemnation of the property.

G. Yuhas asked about this property. D. Greenbaum explained it is a property the department has been dealing with for several years that has some serious health code violations.

**5. 11 Northey Street – Appeal of Cease-and-Desist order Requiring the owner to stop providing short-term rentals at 11 Northey Street**

Postponed to the November Meeting – D. Greenbaum advised the Board that the owner of this property emailed him at 6:10pm stating he had a family emergency and would not be able to attend the meeting. D. Greenbaum will consult with the City Solicitor and notify him that the Board will hear his appeal in November but in the interim he must cease operating the short-term rental on this property.

J. Schiller asked if the City would be providing Covid vaccines. D. Greenbaum explained that we aren't doing them at this time, but we are talking about offering vaccines regionally. We are currently can't get the vaccine, so we are waiting to see what happens. We are unable to get the vaccine for free and it is very expensive, we are waiting on to see if insurance will cover the cost.

D. Greenbaum advised the Board that he is working to secure additional at home Covid tests for the community.

**6. Chairperson Communications**

NONE

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

NONE

**8. Administrative Report**

Copy available at BOH office.

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| <b>9. Council Liaison Updates</b>  | NONE |
| <b>10. New Business/Scheduling of Future Agenda Items</b>                          | NONE |
| <b>11. Items that could not be anticipated prior to the posting of the agenda.</b> | NONE |

**MEETING ADJOURNED:**

**P. Kirby motioned to adjourn. S. Moore 2<sup>nd</sup>.**

**Motion passed by a vote of 5 to 0.**

Meeting Adjourned: 7:43 PM

*Next regularly scheduled meeting is Tuesday, November 14, 2023, at 7:00pm at City Hall Annex, 98 Washington Street, 1st Floor, Salem, MA*

Respectfully submitted,

David Greenbaum  
Health Agent