

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

June 11, 2024

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

MEMBERS EXCUSED:

OTHERS PRESENT: David Greenbaum, Health Agent, Joyce Redford, Director, North Shore/Cape Anne Tobacco Policy Program, Tanvir Murad, Salem Shell

TOPIC

DISCUSSION/ACTION

1. Call to Order

7:04pm

**2. Approval of Minutes
(May 14, 2024)**

P. Kirby motioned to approve the minutes. G. Yuhas 2nd.

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

S. Moore noted there are a few appeals of tobacco violations, but no one was present, and the third appeal had requested a continuance. D. Greenbaum informed the Board that he sent notices to each business requesting an appeal, he only heard back from Shell on North Street. S. Moore asked if they did not appear did the Board need to have any discussions regarding the violations. D. Greenbaum advised the Board, if they did not appear he would request they vote to uphold each violation. As none of the applicants for appeal were present, the Board took the agenda out of order and moved to Chairperson communications. Appellant failed to appear for this hearing.

3. 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)

J. Schiller motioned that due to absenteeism this appeal is denied and the second violation of regulation #24 at this establishment upheld. P. Kirby 2nd.

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

4. 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)

J. Redford provided the Board with the details of the violation that resulted in the 3rd offense. In response to the Board upholding the last violation, Joyce conducted an inspection of this establishment to determine compliance with the current suspension. She noted the tobacco displays were covered with black plastic and the clerk stated all tobacco products had been removed to an employee’s house. She checked the back room, there was no tobacco product there, but when she checked behind the counter, she found cartons of cigarettes as well as blunt wraps. This was the third or fourth time the prohibition of blunt wraps was discussed. The

manager was called and stated the cartons were behind the counter, but they were unopen and not being sold. The pictures show the cartons were open and packs were missing from the cartons.

Tanvir Murad appeared to represent Shell. He confronted Ms. Redford, asking if she observed any customers purchasing any tobacco products. He accused her of sitting in the parking lot for an hour watching to see if any tobacco sales occurred. He asked her if she saw any sales of cigarettes, to which she replied she had not. Mr. Murad was instructed to address all comments to the Board, not to Ms. Redford directly. Mr. Murad addressed the Board stating he had video and pictures showing the displays covered with signs stating tobacco was not available. The Board explained the issue was that the tobacco was still physically on the premises when he was expressly told to remove all tobacco from the store during the suspension. The Board continued to explain to Mr. Murad that removing the tobacco products from the display shelves was not sufficient, the products had to be completely removed from the premises during the suspension, and they were not.

Mr. Murad stated he had prepared based on the letter stating he was in violation of having blunt wraps not having cigarettes in the store. D. Greenbaum explained to him that there were two issues, having blunt wraps and not removing the tobacco products from the store as required. Mr. Murad made the argument that the blunt wraps were at the store waiting for a return to the distributor, and that they had to be there because they did not know when the distributor would come to pick up the return. He continued to explain to the Board the process he follows for holding tobacco products for return to the distributor.

S. Moore asked if the distributor prevented him from holding the products at a private residence. Mr. Murad explained that because the vendor does not provide a timeframe for pickup of returned and refunded items he cannot take those items off premises or he could miss the pick up and could potentially have to wait months to for the vendor to come back to give him the refund. He continued to make the argument that the products in the store at the time of the inspection were only there to be returned to the distributor, not to be sold to customers.

S. Moore asked Joyce Redford to explain to the Board why it was important for an establishment serving a suspension to remove all tobacco products from the store. She explained that is because inspectors cannot be there 24 hours a day. Removing the products from the store helps prevent someone from selling tobacco products during their suspension. She also addressed the allegation of her sitting in the parking lot for an hour, stating she was on a call, but it was not for an hour. She also addressed the issue of the Fronto blunt wraps, stating they had been there since an inspection several months prior in a large, open box waiting to be returned. The tobacco products involved in this violation include a smaller box of Fronto in the front of the store, and cigarettes like Marlboro. Joyce stated she has personally spoken to him about these products in the past, as well as the products that were not removed from the establishment.

Mr. Murad presented the Board with receipts for the refunds of the blunt wraps.

J. Schiller asked if this was the refund for the big box of wraps that Ms. Redford stated she saw in the store. Mr. Murad stated it was the refund. He continued to explain the process of how returns work for the Board.

There is no way I can take the product somewhere else. If the vendor comes for the return and the product is not there, he will lose the money for the return. This was a misunderstanding between me and the inspector. S. Moore questioned why he would risk the \$5,000.00 fine for a return of only a few hundred dollars when this was clearly a violation of the regulation, and when this is the third time he has come before the Board in only the last few months.

Mr. Murad continued to defend himself against not only this violation, but the previous violation.

G. Yuhas stated she was very concerned about the cigarettes that were found on the premises during the suspension. S. Moore added, and why was Ms. Redford told they were removed when they had not been.

Mr. Murad stated that when he received the suspension, because he couldn't sell them, he decided to return some additional tobacco products so they wouldn't go bad.

P. Kirby referred to a picture of cartons of Marlboro cigarettes and asked if Mr. Murad was trying to get refunds on those as well. Mr. Murad stated there were about six to seven thousand dollars in products he couldn't sell so he decided to return them for credit. Discussion ensued regarding whether the cigarettes needed to be returned, Mr. Murad stated the suspension of tobacco products also affected all other products in the store, reducing overall sales.

P. Kirby felt it wasn't believable that Mr. Murad had to return all the cigarettes in the store due to a seven-day suspension. The shelf-life of a carton of cigarettes is more than 7 days. Discussion continued regarding the validity of the necessity to return cartons of cigarettes in response to a 7-day suspension.

J. Redford stated there are pictures of over 50 cartons of cigarettes, and his argument while she was on the phone with Mr. Murad was that the cartons weren't open and that is why they were there, and now he is claiming that he was waiting to return them.

J. Schiller stated he was really trying to understand the point Mr. Murad was making but his argument that he couldn't take the tobacco products home for seven days when the return could take up to six months didn't make any sense.

Mr. Murad explained that even after the suspension people still thought he couldn't sell cigarettes, and that is why he was returning some of the cigarettes. He didn't want to have such a great inventory when he didn't think he needed it.

D. Greenbaum asked if he would receive the refund before the suspension was over. Mr. Murad again explained that not all products would be refunded before the seven days were over. D. Greenbaum responded that was the point, the tobacco products should have been removed during the suspension because it was unlikely the return would have been processed during that time. Mr. Murad again tried to defend the decision not to remove the tobacco products, stating he did not sell any tobacco products during the suspension.

S. Moore stated there is a lot of inconsistency in what you are telling the Board, and the bottom line is the product needed to be removed from the store and it wasn't.

Councillor Harvey asked if Mr. Murad has read the regulation. You could have saved yourself a lot of time by just following the regulation. There

was discussion about the return of the tobacco products and the fact that if they had been removed for the seven-day suspension they could be returned after that and sold again.

J. Schiller stated to Mr. Murad that if he is to come before the Board again he be more respectful to Joyce. She is enforcing a regulation that is widely known and based on public health. Her job is not personal, it is to enforce regulations.

J. Schiller motioned to deny the appeal and uphold the 3rd offense, to pay a fine of \$5,000.00 and serve a 30-day suspension to commence for violation of Salem Board of Health Regulation #24. P. Kirby 2nd.

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

5. Hearing Salem Shell – 111 North Street or 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 requests a continuance until the July meeting to retain legal counsel. He has been advised he will be placed on the agenda for the July meeting.

6. Chairperson Communications

S. Moore details of the upcoming longest table event sponsored by the Food Policy Council. The Board discussed the event and S. Moore answered questions regarding the event. This is a nice way to publicize the work the Food Policy Council has been doing, there will be a food resource guide available for people in English, Spanish, and Portuguese. Discussion also took place regarding the Salem meet and eat program.

7. Public Health Announcements /Reports/Updates

D. Greenbaum advised the Board regarding a conversation he had with Councillor Varela about a Council order he was bringing forth to discuss onsite consumption of cannabis, including smoking in establishments. He explained to the Board that he informed Councillor Varela that he was not in favor of this proposal as he felt this will take all the work public health has done around smoking in public places and set it back several decades. The Board of Health has a regulation that prohibits smoking indoors, this includes the combustion of any smoking materials, and this proposed ordinance would be in direct conflict with that regulation. Additionally, there is a state law that prohibits smoking indoors.

Councillor Harvey explained he spoke with Councillor Varela, his proposal is not for all establishments, but it is to create smoking “parlors”, like the old cigar shops that previously allowed smoking. He added, he asked Councillor Varela, why should people be allowed to smoke cannabis indoors and not be allowed to smoke cigarettes indoors?

P. Kirby asked if these would be licensed cannabis shops or other establishments and it was clarified they would be other establishments. Discussion ensued regarding the difference of the effects of secondhand smoke between cigarettes and cannabis. The Board discussed whether smoking bars and hookah bars are allowed under state law.

J. Redford explained that they are allowed, however there are very few of

them in the state anymore. She advised the Board that smoking indoors has been in effect since 2005 when Salem enacted the smoke-free workplace ban. She explained that onsite consumption was under consideration by the Cannabis Control Commission (CCC), but that it has not been approved yet, and that it would only be allowed in a CCC licensed establishment, this is not to allow consumption in an alternative location. Additional conversation took place regarding the ban on vaping indoors and of you can't vape or smoke how could you justify allowing onsite consumption of cannabis. Discussion took place regarding the process of how the ordinance would move forward and if a proposed ordinance or an existing Board of Health regulation would take precedence.

D. Greenbaum advised the Board that he had his budget hearing the next night, and he did not expect any major issues with the budget.

G. Yuhas asked what the outcome was regarding the Airbnb and the medical stay discussion from the prior meeting. D. Greenbaum explained that Assistant City Solicitor Wellock spoke with S. Moore, and he would be providing a response to Mr. Will regarding his appeal.

S. Moore explained that Mr. Wellock was going to ask if Mr. Will wanted to continue to operate his Airbnb in this manner, he works with an agency to manage the bookings. She and Assistant City Solicitor Wellock agree that it is not enough to just have a contract in place, but that agency be the ones to manage the bookings for these rentals.

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.**

Motion passed by a vote of 5 to 0.

Meeting Adjourned: 7:57 PM

Next regularly scheduled meeting is Tuesday, September 10, 2024, 2024 at 7:00pm at City Hall Annex, 98 Washington Street, 1st Floor, Salem, MA

Respectfully submitted,

David Greenbaum
Health Agent