

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

July 16, 2024

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

MEMBERS EXCUSED: Geraldine Yuhas

OTHERS PRESENT: David Greenbaum, Health Agent, Joyce Redford, Director, North Shore/Cape Anne Tobacco Policy Program, Kristina Sidiropoulos, Shell, North Street

TOPIC

DISCUSSION/ACTION

1. Call to Order

7:03pm

**2. Approval of Minutes
(June 11, 2024)**

P. Kirby motioned to approve the minutes. J. Schiller 2nd.

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

**3. Hearing Salem Shell – 111
North 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. As part of an inspection for the prior suspension it was determined that the tobacco products were not removed from the premises, they had been relocated to the back storage room. They did remove the products from the front of the store and covered the display cases with black tarps or covers, but did not remove the products from the premises, only to the back room.

Kristina Sidiropoulos appeared on behalf of Shell at 111 North Street. She explained that it was true they did not remove the products from the premises. She wanted to apologize for that, they did remove the products from the shelves but misunderstood that the products had to be physically removed from the premises. They take all tobacco violations very seriously. She stated that they thought by removing the products to the locked back office they were complying and that is why the employee showed Joyce where the products were stored during the suspension period. We felt this was sufficient, and there was some confusion about whether putting the product in a car and removing it was what was required. We understand that removing the products to the backroom is not what was required, and she apologized for the confusion and stated this will not happen again. She added that if they are faced with another suspension, they have informed all employees what the requirements and expectations are during the suspension period. Ms. Sidiropoulos state unequivocally that they did not sell any tobacco products during this time, she has her laptop, and can log into the registers to show the sales during this time, as well as she brought printouts of the sales receipts for this time for the Board to review. This was not us trying to sell anything during this time, it was a bad misunderstanding, that we acknowledge.

J. Schiller asked Joyce Redford to remind the Board what the previous

violations were.

J. Redford informed the Board the previous violations occurred on 6/15/21 there was a sale to a minor, and on 1/13/24 there was another sale to a minor. In preparing for this hearing what we discovered was this store was fined for a second violation for the offense on 6/15/21. Joyce explained to the Board this should have been a first offense and this was a clerical error on her part. Joyce explained that under the tolling period it is not impossible for an establishment to have two second violations, however this was not the case in this instance, this was legitimately their first offense. Because they suffered penalties in 2021 that they should not have suffered Joyce recommended that if it was the intention of the Board to uphold this offense, they reduce the fine from \$5,000.00 to \$4,000.00 and reduce the suspension from 30 days to 23 days to offset the penalties incurred for the offense on 6-15-21 was that was penalized as a second offense.

Discussion took place regarding how the first offense could have been mistaken for the second offense under the regulation and the rules of the tolling period.

J. Schiller asked if the store owner is specifically notified that during the suspension all tobacco products must be removed from the premises.

J. Redford explained the letter does state specifically state that.

Ms. Sidiropoulos acknowledged the letter did state “removed from the premises”, and that it was just a misunderstanding on their part.

J. Schiller asked if they appealed the two prior violations and she stated they had not.

Discussion took place regarding the process for notifying the business what was required to be done regarding the tobacco products during the suspension. It was suggested that updating the language in the letter to clarify exactly what “off premises” means would be helpful to business owners.

Ms. Sidiropoulos asked for clarification on the tolling period. J. Redford explained how the tolling period worked when violations occur and how they are counted toward fines and suspensions.

Ms. Sidiropoulos added that they take the sales to minors very seriously. They employ a 3rd party program, the BARS Program, that audits all their stores for compliance with tobacco control regulations. J. Redford added many corporations do this type of 3rd party audits, it the mom-and-pop stores that don’t do this type of thing.

P. Kirby stated the Board rewrote these regulations to take away a lot of the discretion and now we have a case where he wishes the Board did have some discretion, as we have a case where it seems there was legitimately misunderstanding about what off premises meant.

J. Redford stated the Board has enforced this on others. D. Greenbaum added that due to the clerical error of the first offense there is a way to provide a little relief in this case.

Additional discussion took place regarding the use of ID scanners and date of birth check systems on the POS machines. This is something this establishment already employs in their store.

S. Moore stated similarly to the other Board members she feels the same, unfortunately the Board does not have discretion in these cases, and as has been stated to other business owners it is incumbent on the owner to be familiar with the rules and regulations of doing business in Salem.

J. Schiller motioned to deny the appeal and uphold the 3rd offense, but due to the past clerical error, adjust the fine from \$5,000.00 to \$4,000.00 and reduce the 30-day suspension by seven days to a 23 day suspension for violation of Salem Board of Health Regulation #24. D. Elias 2nd.

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

4. 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)

Failed to appear for the hearing again. D. Greenbaum informed the Board that after the scheduled hearing in June Ms. Vasquez sent two emails, one stating she missed the hearing due to an emergency with her daughter and another email stating she was not aware of the hearing because she never received the "hand delivered" letter.

J. Redford requested that it be put on record that this is the third time she has requested a hearing that she has failed to appear at. This will be noted in the record.

J. Schiller motioned to deny the appeal based on the third absence at the requested hearing and uphold the second violation of regulation #24 at this establishment upheld. P. Kirby 2nd.

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

5. Chairperson Communications NONE

6. Public Health Announcements /Reports/Updates

7. Administrative Report ON FILE

8. Council Liaison Updates NONE

9. New Business/Scheduling of Future Agenda Items NONE

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

In response to a request from Board member J. Schiller regarding water quality, S. Moore stated she contacted the Salem/Beverly Water Board and received their water quality report. She received it the day before the meeting and has not done a thorough review. She also received an email regarding pond treatments near Tedesco at the Marblehead town line. D. Greenbaum informed the Board regarding the inquiry about water quality and bathing beaches that the beach water quality has been very good so far this season. There has been only one beach closure to date and that was out on Children's Island. The department did contact the beaches program at the state regarding the foam people have seen on the surface of the water, we have not received a response from them yet. We think it has

something to do with the excessive heat that is causing the froth on the surface of the water.

J. Schiller stated he is on the water every day and he sees this yellowish foam on the surface of the water. Also, the water temperature is extremely cold this year, the water temperature in the harbor has been about 55°F. Additional discussion took place regarding the condition of the ocean water.

J. Redford recommended contacting a local meteorologist to see if they have any insight as to why these conditions exist, J. Schiller suggested contacting NOAA. He will send D. Greenbaum a picture of the froth for follow up with the beaches program

MEETING ADJOURNED:

J. Schiller motioned to adjourn. P. Kirby 2nd.

Motion passed by a vote of 4 to 0.

Meeting Adjourned: 7:37 PM

Respectfully submitted,

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

David Greenbaum
Health Agent

DRAFT