

**CITY OF SALEM
BOARD OF HEALTH
MEETING MINUTES**
Virtual Meeting held via Zoom
and
Recorded by SATV
October 12, 2021

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

OTHERS PRESENT: David Greenbaum, Health Agent, Suzanne Darmody, Public Health Nurse, Maureen Davis, Clerk of the Board, Joyce Redford, Director, North Shore/Cape Ann Tobacco Control Program, Magdy Ghaly, Boston Street Liquors, Mohamed Karim, Citgo, Nilesh Patel, City Smoke, Attorney David Madoff, representing City Smoke, Tanvir Murad, Salem Shell

EXCUSED: Patricia Morsillo, City Council Liaison

TOPIC

DISCUSSION/ACTION

J. Schiller read aloud that, pursuant to Governor Baker's orders, there exists COVID-19 Emergency Open Meeting Law Guidance regarding the implementation of virtual public meetings, etc.

1. Call to Order

7:01pm

2. Approval of Minutes

**a. Special Meeting
September 17, 2021**

b. September 28, 2021

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

Roll call vote:

G. Yuhas – yes

S. Moore – yes

P. Kirby – yes

D. Elias – yes

J. Schiller – yes

Motion passed by a vote of 5 to 0.

**3. Hearings for violations of
Regulation 24 of the City of Salem
Board of Health Restricting the
Sale and Use of Tobacco Products**

**a. Boston St. Liquors –
18 Boston Street**

J. Redford provided details of the violation which included the date and time of the sale, a description of the product sold, whether the youth was male or female, and a description of the clerk who sold the tobacco product.

She said the youth in the program must pass both FDA and DPH training. They have no other money on their person except what is given to them for the sale, and they are instructed what to ask for. Once the item is purchased

an evidence label is put on the product, they call it “tag it and bag it”, and they keep it until such time as they need it for a hearing.

Magdy Ghaly, Manager of the store at 18 Boston Street since 2001, said he is not denying what happened. His issue is that he spoke to his employee when he got the letter, and he said the employee did not recognize the youth. He believes his employee made an honest mistake and has learned from his mistake. Also, he received the letter in July, almost a month after the violation. He feels he should be made aware of a serious incident immediately so he can take action and at least go to his surveillance and see what happened. He also feels the agent should go into the store after an incident, show their ID, and inform the employee that they sold to a minor. He said his store is a liquor store and he only sells cigarettes for the convenience of his customers. He struggled to stay open during the pandemic for the convenience of serving his neighbors and the City. He is not looking to blame anyone; it was an honest mistake. He is just looking for leniency since he has not had a violation in 20 years and now has a \$1,000.00 violation fine.

J. Schiller said he appreciates him staying open during the pandemic. It was a challenging and risky time. The problem is we do not have a lot of leniencies with these violations. The regulation was voted in a long time ago.

D. Greenbaum said the letter was sent by certified mail return receipt, so he had to sign for it. If he didn’t sign for it until July that is out of our control.

P. Kirby agreed that we do not have much discretion for leniency.

J. Redford said we enforced State law in this case, that is why the violation is \$1,000.00. These fees were enacted by the State on June 1, 2020. During the pandemic they were not out doing compliance checks because they did not have youth who would be vaccinated or dubbed safe enough, but she was out doing inspections. They sent out multiple written notifications that the State law was coming into play and the fines were increasing.

Establishments were told they should be hyper-vigilant. During her inspections she always brought signs. There are now six signs that are required by State law. She always made it a point to point out that the most important piece of that language, at least from their perspective, was that the fines are significantly higher. The first violation is \$1,000.00, the second violation in 36 months is \$2,000.00 and the third violation in 36 months is \$5,000.00. We know the fines are high, but that is what the State enacted. This store sells predominantly age-restricted items and should be very accustomed to checking IDs every time. The new State law actually says what they call the Fenway rule, ID every time, every sale, even if you think you know somebody. That is where the \$1,000.00 comes into play.

J. Schiller said we do not have discretion for leniency for multiple reasons. It is just a prescribed fine. He said it emphasizes the point to be hyper-vigilant.

P. Kirby said M. Ghaly made a good point and wonders if there is a way for us to improve the process to let the manager know right away.

J. Redford said in the past they would give out a violation notice and immediately notify the retailer. That changed when State law came into play because we figured the youth would be at risk if there was a call chain to the next store. She does think there is some mechanism that we can incorporate to let people know, maybe not immediately, but within a week which she thinks is reasonable. Maybe contact them by phone. Retailers

have payroll records so they can know who was working at the time of the sale if they don't have surveillance.

P. Kirby moved to deny the request of Boston Street Liquors to appeal their tobacco violation fine.

D. Elias 2nd.

Roll call vote:

G. Yuhas – yes

S. Moore – yes

P. Kirby – yes

D. Elias – yes

J. Schiller – yes

Motion passed by a vote of 5 to 0.

M. Ghaly feels it is not fair that after 20 years and after all he said at this meeting that he still has to pay \$1,000.00 fine for a mistake.

b. Citgo – 105 North Street

J. Redford provided details of the violation which included the date and time of the sale, a description of the product sold, whether the youth was male or female, and a description of the clerk who sold the tobacco product.

M. Karim, 105 North Street, said he has been running the business for almost 21 years. The first two years he had violations but has not had one since. He follows the laws. He stayed open during the pandemic. He knows most people by name. When he received the letter, he looked at his cameras five minutes before and after the time of the sale and he does not recall seeing this incident on his camera. He was behind the register at that time. He is willing to share the video.

J. Schiller asked if he was suggesting the violation didn't happen.

M. Karim said that is what he is saying, according to his video. He did not see any youth go into his store and order Backwoods. He received the letter 15 days after the fact. This could be a mistake.

He said since that incident he ordered a scanner and implemented age verification for every customer they scan to ensure either him or his employees don't make the same mistake if that mistake happened.

J. Redford said for the safety of the youth she would appreciate his not showing the video to the public. She will be happy to view the video and identify if it is her youth or not.

J. Schiller said in that case we can move to table this. He said he empathizes with him that \$1,000.00 is not a small amount.

M. Karim said he regrets what happened, but he does not have any evidence. He does not mind doing whatever it takes.

J. Schiller said this could be a learning experience and it is important to find out where a lapse could happen and how this can happen. The whole point is to limit smoking in people that are under 18.

M. Karim agreed.

S. Moore moved to table Citgo's appeal until our November meeting and pending review of the surveillance footage.

P. Kirby 2nd.

Roll call vote:

D. Elias – yes

S. Moore – yes

P. Kirby – yes

G. Yuhas – yes

J. Schiller – yes

Motion passed by a vote of 5 to 0.

J. Redford said she will call M. Karim tomorrow to arrange a time to meet with him and look at the video.

**c. City Smoke –
1 Lafayette Street**

J. Redford provided details of the violation which included the date and time of the sale, a description of the product sold, whether the youth was male or female, and a description of the clerk who sold the tobacco product.

Attorney D. Madoff introduced himself and his client, N. Patel.

J. Redford said this sale is unique in a couple of ways. The product was priced at \$26.99, and the youth only had \$25.00, and the clerk agreed to that amount. He also told the youth we do not sell flavor in MA and the youth said he understood that, and the clerk said if you want flavor I can get it for you from New Hampshire, give me your number and I will call you. They are supposed to card everyone every time. State law states that they should be verifying someone's age prior to them being able to walk into an adult-only establishment. On the video another customer came in and no one asked for his ID either. They are adult-only so they have different rules and regulations.

D. Madoff spoke about the video they submitted.

J. Redford confirmed the youth in the video was the youth involved in the sale.

N. Patel said his clerk told him it was a regular customer. He was suspicious of that and realized his employee lied to him.

D. Madoff suggested in that case they should withdraw the appeal.

N. Patel said he is trying his best to make sure people do their job. After the three-month shutdown they lost all their employees and had to re-staff. He has never been stricter. He has been trying to make sure his new employees are trained properly and making sure they understand the rules and regulations of tobacco in MA.

Attorney D. Madoff and his client N. Patel withdrew City Smoke's appeal.

**d. Salem Shell –
200 Canal Street**

J. Redford provided details of the violation which included the date and time of the sale, a description of the product sold, whether the youth was male or female, and a description of the clerk who sold the tobacco product. She said this is the second violation which carries a \$2,000.00 fine and a 7-day suspension of selling any tobacco products.

T. Murad, Manager of Shell gas station at 200 Canal Street, said he is sorry for what happened. He is studying for his PhD and took the business over

from his elderly dad eight months ago. Neither he nor his dad ever received or paid for the first violation. He got the violation letter 15 days later and talked to his employee and he denied it. He checked the camera and saw what seemed to be the violation. His employee told him that his grandma died back at home that day, so he was not focused at work and made a mistake. He has since taken a two-month leave to deal with it. He said again that he is very sorry for what happened. He follows all the rules and regulations. His clerk made a mistake. He upgraded his system after his employee made the mistake. He asked for forgiveness, if possible.

J. Redford said the Board might want to take into consideration that the first violation was blunt wrap sales which is a local regulation violation and would have been a \$100.00 fine. That occurred in September of 2020, less than six months after the State law. This is the first State violation and the first sale to a minor in 36 months.

J. Schiller said that is important information. We do have discretion in the sense that it is the first State violation.

P. Kirby said it is not even our discretion since now that we know more information, we know that it is in fact a first violation. He wants to be careful about that, so people do not feel that discretion was given to one and not another.

J. Schiller agreed and said technically this is a first violation.

D. Greenbaum said he will send hearing outcome letters to those who had hearings tonight.

G. Yuhas motioned that this is the first State violation and therefore the fine is \$1,000.00.

P. Kirby 2nd.

Roll call vote:

D. Elias – yes

S. Moore – yes

P. Kirby – yes

G. Yuhas – yes

J. Schiller – yes

Motion passed by a vote of 5 to 0.

J. Redford said she will reach out to Citgo tomorrow and will get the information back to D. Greenbaum.

D. Greenbaum asked if the State was updating a model regulation. We would like to bring the local regulation in line with the State's.

J. Redford said they are, but your local regulation states that one visit is one violation. You may want to consider stackable fines. If there were more than one violation per visit, fees would be stackable. Lynn is the only community who has currently updated their regulation and they have had a fine of up to \$8,000.00 for one visit because of the number of violations at that one visit. She will send a template incorporating what you already have with a language update.

D. Greenbaum thinks the regulation will have to be very specific about what fine is attributed to what violation.

4. Chairperson Communications

J. Schiller said he had nothing new to report since we have been having almost bi-weekly meetings.

He said NBC news had a slightly disturbing story about indoor gathering and testing that was going really well but when they showed the indoor event there were many people without masks.

D. Greenbaum said he anticipated that would happen which was part of the reason for the testing. We knew people were going to be eating, drinking, mingling and socializing. The testing has gone really well. In the first two weeks they have done about 1,200-1,300 tests. The negative rate is around 98%. Each week there has been around 11 positives. The one thing he found surprising is all of the positives are from MA. Each week we have had four Salem residents test positive. He anticipated we would see more out of state people testing positive, but we have not seen that yet. In the first two weeks we have seen 22 MA residents test positive.

P. Kirby asked if they are tracking vaccination status with tests,

D. Greenbaum said he is not sure if they are tracking vaccination status for the rapid testing site, but the Stop the Spread sites are asking vaccination status and what vaccine they got. They are tracking breakthrough infections. On average, 35-40% is breakthrough infections.

5. Monthly Reports-Updates

a. Public Health Nurse's Report

S. Darmody reported that she has been doing flu shots for a few weeks now and held clinics for first responders, the CLC and school and municipal employees.

She is expected to go on maternity leave in about two weeks. We have a part-time nurse lined up to cover MAVEN and an arrangement with the schools for a nurse to help with covering case reporting in the schools.

b. Health Agent's Report

D. Greenbaum provided updated testing numbers. He reported that testing at the rapid site is going well. Stop the Spread testing has been extended until the end of the year. There is testing at the downtown site on Saturdays from 9am-2pm now as well.

We are seeing a lot of kids in school settings testing positive so that is a bit concerning, but the schools are handling it and following DESE's requirements and in some instances doing above and beyond that.

J. Schiller said he thinks the flu shot will be really important this year more than last year given that things have opened up a little bit.

S. Moore asked if there is any plan to do flu clinics for Salem Public School kids like we did last year.

D. Greenbaum said he does not foresee us doing that because Suzanne is going to be out in a couple of weeks, and we don't have the vaccine. He would encourage parents to take their kids to their pediatrician and get their flu shot to protect them. Hopefully in the next month or so we will be seeing approval of the COVID vaccine for children 5-11 which will help a lot to pick up our vaccination rates among the younger age groups. That will be extremely helpful to get beyond the pandemic in general.

c. Administrative Report

No report available. Two reports will be submitted for the November meeting.

d. Council Liaison Updates

P. Morsillo was unable to attend tonight's meeting due to a conflict but sent an email for discussion.

J. Schiller said in her email she wrote about the "Resolution Calling for

Repeal of the Federal Faircloth Amendment”, which will be before the City Council on Thursday. In her email she explains that the resolution is asking Congress to repeal the law from 1998, which prohibits Housing Authorities from creating new affordable units. She quoted from the Mayor’s letter to the Council about how Faircloth was a “welfare reform” measure that blamed the needy, instead of supporting them. She explained that Faircloth caps the number of units and funding is held back. She urged the Board to discuss the proclamation and to strongly support its passage at Thursday night’s City Council meeting. She said everyone deserves a safe and healthy home.

J. Schiller said we can report to P. Morsillo that the Board is enthusiastically supportive of the resolution. Housing is a huge public health issue.

S. Moore agreed and said there is such a clear connection between affordable housing and health. The Mayor’s letter to the Council was compelling.

All members were in support of the resolution. J. Schiller will send a general response to P. Morsillo before Thursday that the Board is very supportive of any effort to increase public affordable housing.

D. Greenbaum informed the Board of the following:

We applied for and received a regional grant called the Public Health Excellence in Public Health Grant. It is a regional grant to help support and improve upon regional collaborations. We are in the process of hiring staff to man that grant. We will be hiring a regional public health nurse, a regional inspector, and a coordinator to oversee that staff. There are seven communities involved, including Marblehead, Swampscott, Nahant, Danvers, Peabody, Salem, and Beverly.

We have been sending all of our cases throughout the pandemic to the Community Tracing Collaborative at the State. That is going to cease to exist effective December 31st. We are really concerned about that because if we go back to where we were a year ago, we are going to be in a lot of trouble with contact tracing. The State did award contact tracing grants regionally. We are in it with the same seven communities. Peabody is going to be the lead on that grant. They are in the process of hiring staff to man that. With Suzanne being out we will have nurse coverage, but it will not be full time. He is familiar with the nurse who is covering. She was his public health nurse during his time in Saugus. She is very capable. She was a lieutenant colonel in the army. She will do a great job. The contact tracing is not going to be where we think it needs to be. He thinks there are going to be some shortfalls and he wanted the Board to be aware of that.

The Healing Communities Study, which is the opioid overdose reduction grant that we are involved with, will be doing a community forum on October 21st. It will be recorded, but if people want information on it, he can send it to them.

P. Kirby motioned to approve the reports and updates. G. Yuhas 2nd.

Roll call vote:

S. Moore – yes

D. Elias – yes

P. Kirby – yes

G. Yuhás - yes

J. Schiller – yes

Motion passed by a vote of 5 to 0.

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

D. Greenbaum made the Board aware that he has a considerable amount of time to use between now and the end of the year so he may be out of the office for the first two weeks in November. He will make himself available for the meeting on the 9th.

The Board was glad to hear he will be taking some much-deserved time.

MEETING ADJOURNED:

S. Moore moved to adjourn. G. Yuhás 2nd.

Roll call vote:

P. Kirby – yes

S. Moore – yes

D. Elias – yes

G. Yuhás - yes

J. Schiller – yes

Motion passed by a vote of 5 to 0.

8:05pm

Respectfully submitted,

Maureen Davis
Clerk of the Board

*Next regularly scheduled meeting is
Tuesday, November 9, 2021 at 7:00pm*