

TEWKSBURY BOARD OF HEALTH

Minutes

January 16, 2014

**Call of Meeting to Order**

**MOTION** - Ms. Brothers made a motion to call the meeting to order at 7:07 PM. The motion was seconded by Ms. Kinnon and unanimously voted 5-0.

The meeting was held at the Tewksbury Senior Center. Present at the meeting were, Chairman Phillip French, Vice Chairman Charles Roux, Christine Kinnon, Kathleen Brothers, Raymond Barry and Health Director Lou-Ann Clement. Also, in attendance was Ron Beauregard, Tobacco Control Program, Bipin Icumas Patel, and Boy Scout Troop Leader William Turosz with 2 boy scouts.

**Public Hearings**

**Tobacco Suspension for Violation of Chapter 11, Tewksbury Board of Health Regulation Tobacco Control – Restricting the Sale of Tobacco Products and Nicotine Delivery Products – Location: Route 38 Smoke Shop, 553 Main Street, Tewksbury, MA owned by Sagish Patel**

Mr. French read the public hearing notice.

**MOTION** - Ms. Brothers made a motion to open the public hearing for Route 38 Smoke Shop, Violation of Chapter 11 Tobacco Control Regulations. The motion was seconded by Ms. Kinnon and unanimously voted 5-0.

Ron Beauregard from the Tobacco Control Program and Bipin Icuma-Patel appeared for the violation hearing. Mr. Beauregard stated that there will be a mandatory training for all tobacco retailers in Tewksbury. Mr. Beauregard stated that on March 21, 2013, a sale to a minor was made during a compliance check. They promptly paid the \$100 fine. A follow up compliance check was done on June 28, 2013 another sale to a minor was made. This was the second violation and the \$200 fine was paid. The regulations state that on the second violation there is a hearing before the Board and seven day suspension. Mr. Beauregard stated that instead of coming before the Board of Health, in an effort to get to the heart of the regulation of not selling to minors, himself, Ms. Clement and Mr. Bipin Patel, and Mr. Sagish Patel the owner of the store, met. In lieu of the suspension, we instituted the Fenway Park system which is to ID everyone for six months. This program started in July and ended on January 14, 2014. Mr. Beauregard stated that during the six month ID all period, he did one compliance check. An adult woman was given \$20 and went into Rt. 38 Smoke Shop. She bought a pack of Marlboro cigarettes and was not asked for her ID. He went in immediately after the sale and spoke with Mr. Patel. Mr. Patel apologized. It should be taken into consideration that if the suspension is issued, the store would essentially be closed because 99% of the business is tobacco related.

Ms. Brothers asked if Mr. Patel understood the process after the meeting was held in June. Mr. Patel replied yes, and everyone at the store read the letter. Ms. Brothers asked if Mr. Patel was familiar with the regulations especially since there were two violations. Mr. Patel replied yes. Ms. Clement added that Mr. Bipin Patel is the actual gentleman who sold the last two violations, not Mr. Patel the owner. Ms. Brothers asked if the owner explained the regulations. Mr. Patel replied yes. Ms. Clement stated that when they met in June it was with both Bipin Patel and Sagish Patel and both understood.

Mr. French stated that we are not looking to over penalize but we have regulations that were not followed. This is a different situation than a convenience store, where they have hundreds of other items to sell other than tobacco. The seven day suspension seems long but there should be some type of suspension.

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Mr. Roux asked why the owner is not here. Mr. Patel stated that he is in India. Mr. Roux stated that the employees were aware of the Fenway rules but sold anyway. Ms. Clement stated that perhaps this can wait until the owner comes back. Mr. Roux stated that he would like the owner in front of the Board. Ms. Clement asked when the owner is coming back. Mr. Patel replied he just left today and could be gone for six weeks.

Mr. French asked what the busiest days are. Mr. Patel stated that Sunday, Monday and Tuesday are the slowest days. Mr. French asked if the owner is prepared for whatever decision is made. Mr. Patel replied yes. Mr. French stated that he would suggest a two-day suspension, Sunday and Monday. He doesn't want to hurt a business but they need to enforce the regulations. He would also suggest that the Fenway Rule should be continued for another six months. Mr. Patel stated that a two day suspension would be acceptable but the continuous ID check for six months is hard. Mr. French stated that he would want both.

Ms. Brothers stated that we spent many months reviewing the tobacco regulations. The first violation is a \$100 fine, the second is a \$200 fine and a seven day suspension, now we are talking about only giving them a two day suspension. She believes that the board should stick to the regulations and give the seven day suspension. Mr. French agrees with following the regulations but this type of business is different than most tobacco retailers where almost the entire business is tobacco retail so it's reasonable for a two day suspension. The other retailers sell thousands of other products so the revenue loss is less. Perhaps the regulations should be different for this type of retailer.

Mr. Roux stated that the regulations are what they are and obviously there is a problem here. Mr. Roux agreed that the seven day suspension seems extreme for this type of business and he is ok with some flexibility. Ms. Clement stated that she spoke with the owner and she thought he was going to be here. The main goal of the program is to make retailers understand and comply with the regulations. She would concur with the two day suspension and the continuation of the ID all for an additional six months. Ms. Clement stated that she the owner should come before the Board in three months and if the Board is not satisfied then add the five additional suspension days.

Mr. Barry stated that the sole business is to sell tobacco so they should know the regulations inside and out. Everyone will be looking at this decision and if we are lenient here then other people will want leniency.

Mr. French stated that since the owner is gone for six weeks, we could continue this for two months until the owner is back and continue the ID everyone program.

Mr. Barry asked what happens if another violation occurs. Mr. Beauregard stated that if a sale to an adult without checking the ID occurred it would not be a violation but it would be considered another factor in the Boards decision. The violation is a sale to a minor and if that occurs, it would be the third violation.

Ms. Kinnon stated that she agreed with the regulations but is concerned that this is their only revenue. Ms. Kinnon added that it sets a bad example that the owner is not here tonight because it seems like he doesn't care what the suspension is. Ms. Kinnon would agree with a three day suspension with the owner coming in two months and continue with the ID all program. If the owner does not come before the Board, then the additional four day suspension would be served.

Mr. Barry asked if the mandatory tobacco training date been set. Mr. Beauregard replied yes. Mr. Barry asked if there is an absentee owner, can they send a manager or can all employees attend. Mr. Beauregard stated that the training is set up for an owner or manager to train the employees. It is not set up for clerks. Mr. Patel stated that there are only two employees including him.

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Mr. French asked if the regulations say seven day suspension or up to seven day suspension. Ms. Clement replied that the regulations say seven consecutive business days. Mr. French asked if not asking for an ID is the same as selling to a minor. Ms. Clement replied no, it is not the same. In June, the second sale to a minor occurred, in lieu of the seven day suspension, Mr. Beauregard and she offered an option to ID all customers instead. Both Mr. Bipin Patel and Mr. Sagish Patel understood what was expected. Mr. French stated that in reality the second violation occurred in June.

**MOTION** - Ms. Brothers made a motion that due to the two violations of the tobacco regulations, sales to minors, the tobacco license for Route 38 Smoke Shop should be suspended for seven days in according with the tobacco regulations. It is noted that the \$200 fine has already been paid. Mr. Barry amended the motion that the ID all customers program continue until the owner returns and have the owner appear before the Board to discuss other options. There was no second to the motion and the motion was not voted on.

**MOTION** - Ms. Kinnon made a motion to institute an immediate three day suspension of the tobacco license for Route 38 Smoke Shop due to violations, sales to minors, for a period of a Sunday, Monday and Tuesday. The ID all customers program shall continue for at least two months or until the owner returns and appears before the Board. If the owner does not return, or if there is another violation, the remaining four day suspension will be immediately started on the days of Wednesday, Thursday, Friday and Saturday. The motion was seconded by Mr. Roux and voted 3-2. Ms. Kinnon, Mr. Roux, and Mr. French voting in favor. Ms. Brothers and Mr. Barry voted against.

Mr. Beauregard stated that a violation only occurs after he presents his findings to the Board. Mr. Barry asked what happens if they sell to a minor during the next compliance check. Ms. Clement stated that would be the third violation and there would be a \$300 fine and a thirty day suspension.

Ms. Clement stated that in June 2013, a second violation occurred for selling to a minor. Both Mr. Patels came in for a meeting and were given an opportunity to ID all program instead of the suspension. Then there was a violation of agreement now they are before the Board because of the June violation. Mr. Barry stated that they sold to a minor twice. Ms. Clement replied that was correct. Ms. Clement stated that technically the meeting in July should not have happened. They should have come before the Board. Mr. Barry stated that they sold to a minor in March and then again in June. They then violated the agreement they had with us in December. Mr. Beauregard stated that he believes there has been another compliance check with minors and there was no sale but he will check and let Ms. Clement know.

Ms. Clement clarified with Mr. Patel, when the suspension would be effective. Mr. Patel replied that it would be January 26<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> would be acceptable.

**MOTION** - Ms. Kinnon made a motion to continue the public hearing until the owner returns and appears before the Board with all conditions continuing until then; (ID all customers). Mr. Bipin Patel will notify Ms. Clement when the owner returns. The motion was seconded by Mr. Barry and unanimously voted 4-1. Ms. Kinnon, Mr. Barry, Mr. Roux and Mr. French voting in favor and Ms. Brothers voting opposed.

Mr. Turosz asked how enforcements are done. Mr. Beauregard stated that we perform compliance checks to see if they sell to minors. If a sale occurs, fines and suspensions could occur but the goal of the program is to educate retailers.

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Mr. French stated that if the store wishes to remain open to sell lottery tickets it could but all tobacco products must be removed. Mr. Patel stated that they will be closed.

Ms. Clement stated that the mandatory training letters have gone out. Mr. Roux stated that he was contacted that one owner cannot make it due to scheduling conflicts. Mr. Beauregard stated that he can go onsite at another time if necessary.

Mr. Beauregard and Mr. Patel exited the meeting.

**Old Business**

**Proposed Zoning Amendments for Special Requirements for Registered Marijuana Dispensaries**

Ms. Clement presented three documents. The first contains the comments from the Board, the second was responses from Steve Sadwick and the other was the draft bylaw and zoning map. The map shows buffers from protected uses of 500', 1000' and 1500'. They are proposing the area on Main Street near Jimbo's. The Police Chief wanted the site to be visible and away from day cares, churches and schools.

Ms. Kinnon asked why parks and recreation areas are not mentioned in Section 6541. Ms. Clement stated that she will check. Ms. Kinnon stated that in Section 6572(b) it says when a facility closes they have six months to remove all material. That seems like too long of a time. Mr. Barry stated that in the same section "properly" should be added before "remove".

Ms. Brothers stated that in Sections 6551-6558, there should be no reception or sitting area. There should not be an area where the marijuana can be consumed on property. Ms. Clement stated that the regulations do not allow consumption on site and she believes there has to be a reception area.

Mr. Barry stated that in Section 6561 it states SPGA which is the Planning Board. This should be defined upfront. Ms. Clement stated that this is only a portion of the Zoning Bylaw and the SPGA could be different for different sections. Mr. Barry asked if the map was for informational purposes only. Ms. Clement replied she believes that is correct but will check with Mr. Sadwick. Mr. Barry stated that if a map is included showing the parcels this may spark more discussions of not in my back yard.

**Board of Health Medical Marijuana**

Ms. Clement supplied a template for Board of Health regulations on medical marijuana. This is a template from the MMA that was based on the tobacco regulations. Neighboring communities are also reviewing this template. She would ask the Board to review this and let her know if this is something the Board would want her to pursue. This regulation would cover some things that are missing from the State regulations such as cultivation. She would like responses within the next couple of weeks.

Mr. Barry stated that the State regulations are what we are governed by but these regulations would fill in the gaps. Ms. Clement replied that is correct, these will be more stringent requirements. Ms. Clement stated that a major deficiency is with home cultivation. Mr. Roux asked if there is a time frame requirement. Ms. Clement replied no, she would just like the Board to review this and give her direction. She has also given this to Chief Sheehan and Officer Jennie Welch. Ms. Clement stated that right now because there are no dispensaries, if someone has a medical card they can grow their own right now. The Police have the right to refer any potential problems to us and the State. Once the dispensaries are up and running, then hardships would have to apply to the State.

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**New Business**

**Synthetic Drugs**

Ms. Clement stated that there are synthetic drugs going on in Lowell and Quincy and we are getting overflow from Lowell. This is nasty stuff and she asked the Board if they would like her to monitor this or do more research. There is a push to get more Police trained on these drugs.

Ms. Brothers stated that these are chemicals in “bath salts” and then they can smoke it.

Ms. Kinnon stated that it appears that this is sold over the counter and even though it states not for consumption people are still doing it so how do we stop it.

Ms. Clement stated that she sent this information to the Police Chief to get his opinion. In her opinion, it is more important than the medical marijuana dispensary. We need to educate retailers on what happens with these products. Mr. Barry stated that we need to include public awareness first.

**Board Member Reports**

**Tewksbury CARES**

Ms. Kinnon stated that she spoke with Officer Welch to get a public meeting to try to recruit more people for Tewksbury CARES and have a membership drive. Tewksbury CARES has a lot of things in place they just need an active committee to take it to the next step.

Mr. French stated that it seems like we would have repetitious discussions with other committees such as the school PACs.

Mr. Barry stated that he also spoke with Officer Welch awhile ago and there are a lot of different groups who are focusing on the same things so he spoke with her about coordinating those groups.

Ms. Clement stated that there should be a meeting with Tewksbury CARES and Officer Welch to discuss options. Ms. Kinnon stated that we need to get younger people involved who have kids in the school system because they have more connections. Mr. French stated that Tewksbury CARES used to meet two to three times a week and he agrees that younger people are needed.

Ms. Brothers stated that we should get the school involved to send flyers out.

Mr. Barry stated that he would also like to be part of the meeting.

**Announcements**

Ms. Clement stated that the Water Treatment Plan was awarded the Fluoridation Award.

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**Other Business**

**108 Pike Street**

Mr. Roux recused himself from the discussion on 108 Pike Street and left the meeting.

Ms. Clement stated that the 8-9 unit house at 108 Pike Street came before the Board for a public hearing to appeal the order to tie into sewer because of a failed septic system. Mr. Sullivan had asked for this hearing but did not show up and asked for a continuance. The Board did not grant the continuance and ordered that the house be tied into sewer within 30 days of the date of notice. The 30 days has long expired and the house is still not tied into sewer.

Ms. Brothers stated that she knows that Mr. Sullivan's girlfriend passed away. Ms. Clement stated that was a month ago and this has been in violation for years. Several promises have been made and nothing has been done. Ms. Brothers asked if his lawyer has been in touch. Ms. Clement stated that there is now a request for public records from Mr. Sullivan. They have asked for every record from us, DPW, Town Clerk, Building and Community Development. They have also asked for her resume. This has been asked for before but there is a fee associated with these records and they have never followed through.

Mr. Barry stated that there is still human waste going into a failed septic system. Ms. Clement replied that is correct. Mr. French stated that we need to handle this as a health hazard so this needs to go to the next step.

**MOTION** - Ms. Brothers made a motion to move forward with the next step for 108 Pike Street and take this issue to Housing Court with advice from Town Counsel. The motion was seconded by Mr. Barry and unanimously voted 4-0.

Ms. Clement stated that when she speaks with Town Counsel he may suggest going to Superior Court but that will take longer. She will inform him that they will stay with Housing Court. Mr. Barry stated that time is of the essence.

**MOTION** - Ms. Kinnon made a motion to close the meeting and adjourn at 9:10 PM. The motion was seconded by Ms. Brothers and unanimously voted 4-0.

**Approved: \_\_\_\_\_ March 20, 2014**

List of documents for 1/16/14 Agenda  
Documents are located in the Board of Health's office

**Public Hearings:**

**Tobacco Suspension Hearing:**

Exhibit #1 Notice of Public Hearing dated December 23, 2013

Exhibit #2 Legal Notice

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- Exhibit #3 Memorandum dated January 2, 2014
- Exhibit #4 Agreement dated July 16, 2013
- Exhibit #5 Letter Dated March 22, 2013
- Exhibit #6 Copy of the Non-Criminal Violation Notice
- Exhibit #7 Chapter 11 TBOH regulations pages 9 to 11
- Exhibit # 16 Copy of ticket number 20645

**Old Business:**

**Proposed Zoning Amendments for Registered Medical Marijuana Dispensaries**

- Exhibit #8 Article with comments dated 12-10-13
- Exhibit #9 Revised Article named MJ Draft dated 12.10.13
- Exhibit #10 Map of Eligible Locations

**New Business:**

**Synthetic Drugs**

- Exhibit #11 Synthetic Drugs City of Quincy Ordinances
- Exhibit #12 Proposal Ban of Synthetic Drugs memo dated Nov 4, 2013
- Exhibit #13 Memo from Health Director to BOH dated Nov 4, 2013
- Exhibit #14 Memo From City Manager to Mayor dated Oct 4, 2013
- Exhibit #15 Article from the Patriot Ledger dated Oct 16, 2013

**Other Business**

- Exhibit # 16 MMA Template for Medical Marijuana BOH Regulations