

**Worcester Board of Health
Meeting Minutes
Meeting Held at 25 Meade St. Room 109
Monday, September 11th, 2023**

Moment of Silence for 9/11 Victims

Welcome and Introductions

Dr. Tran took a roll call

Members Present: Khanh-Van Tran, MD, Chairperson, Ms. Frances Anthes, Mr. Gary Rosen, Ms. Chareese Allen

Staff Present: Matilde ‘Mattie’ Castiel, MD, Commissioner of HHS; Dr. Mike Hirsh, Medical Director; Cherry Tangri, Tobacco Prevention Specialist; Soloe Dennis, Director of DPH and CMRPHA, Ian L. Wong, Deputy Director of DPH; Matthew Moore; Staff Writer for City Manager

Guests: Niavkumar Patel, Park Avenue Smoke Shop; Yash Naik, Park Avenue Smoke Shop; William Kiritsy, Olympic Wine & Liquors; Unknown Attendee, 961 Lounge and Smoking Bar

Guests via Teams: Antonetta Oteri, Shaws in Worcester Area; Oliveira Senior Category Manager Yatco Energy; Wajdi Hamza, 7-Eleven; J. Suarez, Badoux Lounge; Hedro, Hedro’s Smoke Shop

Review and Approve June and July Meeting Minutes

-Ms. Anthes moves to accept the minutes as written for June and Ms. Allen seconds

-Gary Rosen votes aye, Frances Antes votes aye, Chareese Allen votes aye, Dr. Tran votes no

-June Minutes are approved 3-1

-Ms. Anthes makes a motion to approve the July 31st meeting minutes and Ms. Allen seconds (Mr. Rosen abstains from vote since he was not present at that meeting)

- Frances Antes votes aye, Chareese Allen votes aye, Dr. Tran votes no

-July Minutes are approved 2-1

Covid Update

-Dr. Tran asked medical director Dr. Hirsh to provide an update on Covid-19.

- We still have to deal with Covid for the rest of our lives. It’s part of the panoply of viruses that we are going to be exposed to every year. About 20% of patients have Covid without realizing it. The prevalence of Covid is probably higher than we’re measuring due to lower testing.

Dr. Hirsh concluded that it was very unlikely that we were going to get overwhelmed the way we have in the past COVID outbreaks and that a protocol for city employees has been created. A lot of tests are about to expire but they’re still good for over a year past the expiration date.

Dr. Hirsh believes we’re not going to see mask mandates. The masks that we recommend are a good fitting KN95 or N95 mask.

FDA approved a new vaccine for Covid. This one is specifically designed for one of the Omicron offspring in the XPP family. It's going to be reviewed by the CDC on September 12th. The preliminary information seems to be that people over the age of 60, people with comorbidities like immune problems, cardiovascular disease, obesity, and diabetes should be the ones to take this first,

The flu season starts in October. Dr. Hirsh recommended getting the Covid vaccination, and flu shot at the same time. There's an RSV vaccination that is out there for adults and it will be advisable if you have any of those risk factors or if you are equally around children, the children are much more at risk of getting RSV than adults. It may be a good idea to get all three vaccines at once if possible.

End of Dr. Hirsh's Report

-Mr. Rosen asked what the percentage of our population got the last two boosters.

-Dr. Hirsh replied that 28% of the city took advantage the bivalent booster that came out last fall. And it was recommended that after you get it again within 6 months of getting it and only 14% got it a second time.

-Mr. Rosen and Dr. Hirsh agree that it is reasonable to predict that very few people in Worcester will get the new vaccine given the numbers we have seen for previous boosters.

-Ms. Anthes asked if the BOH should be recommending to put the masks back out at the Worcester Senior Center?

-Dr. Hirsh emphasized the importance of being a mask friendly community. Having boxes of them readily available is a great idea. Wearing a mask is a safe thing if you're in the right population, but I don't think we will recommend it in schools though teachers may wear masks in schools.

-Ms. Allen asked if there is a way we could push out a PSA telling people to be mindful of their symptoms and that they may want to wear a mask since we are seeing a lot people not testing because they assume they have allergies or a cold. We've got to bring awareness to the public and remind them on an annual basis that it's cold season and masks are helpful against the spread.

-Dr. Hirsh said it's a great idea and once they get clarification from the CDC we'll have backup and we should blast that out.

Outcome: No action needed.

Tobacco Regulations Public Hearing and Vote

-Dr. Tran opened the public hearing by reading the following statement. Copies of the regulations have been made available on our website through the Division of Public Health Office and at City Hall.

“The Board of Health is a 5-member board that is elected or appointed for five year term and the duty level is to promote and protect the public health of the residents of Worcester. The board derives its authority from the Massachusetts Legislature. The members are Dr. Khanh-Van Tran, MD, Vice Chairperson, Chareese Allen, Frances Anthes, Gary Rosen, and a Vacant Chair seat.

Mr. Dennis is the Health Director for the Worcester Division of Public Health. The Health Director is an employee of the City of Worcester. His Duties are to carry out the wishes of the Board, assist in the enforcement of our regulation and deal with the day-to-day operation of the Board of Health.

With the exception of Title V regulations, it is not legally required for the Board of Health to hold a public hearing on proposed regulation before them, even though all proposed regulation are addresses at meetings to which the public is always invited.

However, because of the broad interest in tobacco control, every effort has been made to provide a public forum. As the purpose of the public hearing is to collect information and opinions, the Board will not ask for a vote from the audience nor will the Board itself vote on the proposed regulation at this public hearing. The Board will announce the meeting date at which they will discuss and vote on the proposed regulations. This meeting will be public; however, the Board will not provide time for further public testimony unless a Board member has a specific question to which an audience member can offer some clarification.

The Board accepted written testimony until 6:00 PM on Sept. 8, 2023. Letter were to be emailed, mailed or deliver to 25 Meade Street, Worcester, MA.”

-Dr. Tran read the rules for the public hearing, statement of purpose, and the proposed regulations which attached at the end of the meeting minutes. See attached.

Public Hearing Begins

Dr. Tran made a motion to begin the public hearing and Mr. Rosen seconded

-Mr. Patel owner of Park Avenue Smoke Shop asked how far the number will go down with license seizure in the advanced cap option.

-Mr. Kiritsy, owner of Olympic Wine and Liquors, stated he has several questions. As a single business owner he is concerned about how as you diminish the number of licenses allowed a person with multiple licenses may control the majority. He wonders if there should be limit to how many licenses a person can have and believes two is a fair number.

My concern is that these regulation in these proposed caps don't address some of the bigger inequities and how certain license should not be owned by individuals and without enforcement you're not going to get rid of these licenses.

-Ms. Oteri representing Shaw's at 68 Stafford St. asked if there is any limit to how much tobacco product the retailer can have at any given time.

-Owner of Smoke Vibes on Park Ave. asked what the new regulations were besides density.

-Mr. Hamza asks questions about violations which are not being discussed tonight.

-Ms. Tangri states that we currently have 233 permits out which leaves 1 permit for retail and 1 for a smoking bar. The establishment mentioned earlier by Mr. Patel is one that has not applied for a permit, so if they do, they will take last retail spot.

Dr. Tran summarizes the major concerns.

Adoption of an advanced cap is there a lower limit which we might go for licenses?

Will we decrease the cap so much to where it leads to a situation where few owners have all licenses, and this creates an unfair monopoly?

How would we enforce these regulations?

-Dr. Tran brings up a write in from Mr. Mark Diarbakerly brought to the board's attention the pressing need for enhanced enforcement of existing laws.

-Mr. Kiritsy is concerned about how the 500 ft regulation will impact his ability to open a new shop near his current location to meet the needs of his customers. He believes there are people selling prohibited items in nearby shops and wonders how the capping would potentially impact his ability to complete his plans. He thinks that people selling legally should be rewarded by allowing them to continue to operate legally. Those who should close down and maybe that will help with a lot of the illegal product selling.

-Dr. Tran said that she would like more details about the location from the division.

-Ms. Tangri said that this specific location she had communication with 1 or 2 years ago but then there was no communication. I think if you are ready to open soon, it's up to the board to modify the cap. That would be a recommendation from me to include.

-Ms. Anthes asked if she was correct in assuming that there was one smoking shop permit left and Ms. Tangri replies yes.

-Ms. Tangri would like to clarify that with the store that she was just told about would have to apply for a permit to continue operation. It is within the board to modify the proposed cap and the law department advised we adopt a basic cap as opposed to advanced cap because basic cap is more in line with the city's practices. The legal opinion says that they are able to justify the basic that on the public health ground as whereas with the advanced cap since not many cities have done it in the past.

Ms. Anthes makes a motion to close the public hearing and Ms. Allen seconds

Board Member Discussion

-Ms. Allen says she is comfortable with capping it at 235. She agrees that enforcement is an issue but that it is not one we are addressing with these regulations.

-Mr. Rosen says he is not against that cap but wonders if the number is arbitrary.

-Ms. Tangri says that it has to do with access and with the cap we are limiting access for the use. As we have discussed in the prior meeting that the density if tobacco retailer are highest in low income communities and with a lot of people of color. The strategy is to reduce retailers, so that's why we proposed the density strategy and around the schools. This will keep the competition low and make the value of permit higher.

Ms. Tangri said they got the number 235 because we have been accommodating the retailers who are applying. The deputy solicitor agrees that the board was the authority to modify the cap at anytime.

-Mr. Rosen is in favor of discussing the possibility of lowering the number

-Dr. Tran said the goal is not to harm the small businesses. This issue came up because there is ample evidence that tobacco is associated with negative health outcomes. A lot of kids start smoking when they are young and with the density issue in some neighborhoods it provides increased access.

The monopoly aspect that was brought up does not seem likely with the basic cap. And most of the licenses are owned singularly, so that's unlikely to happen at the current state.

The other issue brought up was enforcement. The division does compliance check to make sure businesses aren't selling to minors. So, we do have some enforcement in terms of fines and suspensions. The point that they could use some improvement is true.

The final point that was brought up is how this will affect us economically and will cycle businesses. As a community we want to invest in public health policies and encourage other modes of business that could be healthier.

-Ms. Allen asked if there is a penalty for a business operating without a license.

-Ms. Tangri responded that when they find out a store is operating without a license, they are given a chance to apply. She notifies the license commission that they are operating without one and have been told of next steps. We have given them enough opportunities and they haven't applied yet. So now moving forward the steps for those stores would be that their license would be cancelled, and they would have to permanently shut down. There is a process to have store shutdown. We believe that we have to give them enough opportunities to cooperate with us.

-Ms. Allen asked if going forward anyone that wants to transfer the license because their lease got cancelled would have to ensure the 500 feet density rule is being followed?

-Ms. Tangri said once the vote happens and the regulations go into effect retailers will have to follow all the regulations.

-Mr. Rosen had a question about the section on transferring permits. The statement applicants who purchase or acquire existing an existing business that holds a valid tobacco sales permit at the time of sale or acquisition may apply within 60 days for a transfer. "It's very strong language that says they may apply and that doesn't mean they going to get it. I am looking to protect such a business, by buying an establishment that already has a license a that's part of sale and one of the reasons I'm buying the business. I think we need language that says if they hold a tobacco permit at time of sale or acquisition and they apply within 60 days they will be granted the permit."

-Ms. Tangri said that in her understanding this only applies if there is an advanced cap because we're talking about if nobody acquires the business within 60 days the cap gets reduced. If we have a basic cap instead of retiring any permits, we could create a waiting list.

-Ms. Anthes motions to table discussion and Ms. Allen seconds.

Outcome: DPH will talk to the Law department about the section regarding those who purchase or acquire a business with an active tobacco permit. DPH will also have the Law Department draft the regulations with a basic cap.

New Tobacco Protocol Discussion

Presented by Ms. Tangri

The below is the current process for tobacco enforcement regarding local permit suspensions:

- BOH must conduct a hearing for each individual business at risk of having their permit suspended. Each establishment will be notified individually that they will need to appear before the BOH for a hearing to determine the suspension duration for their permit.

-The hearing is an opportunity for the retailer to be heard regarding the violation that occurred before a decision is made by the BOH

-Only after that hearing has occurred, and the business owner has had a chance to be heard, the board may

make a decision.

-Next step would be sending a decision letter in the mail.

Process to determine guidelines for permit suspension

- Discussion and Public hearing must be conducted prior to amending any changes in the regulation for the topic

- Chapter 8 section 3, Worcester Ordinances, state the director shall provide notice of intent of the board of health to suspend or revoke any permit, which notice shall contain the reason therefore together with documentation of the alleged violations. The notice shall establish a time and date of a hearing which date shall be no earlier than seven days after the date of said notice.

- The hearing shall be conducted by the board of health, or its designee, as the board in its sole discretion may determine

-Under Ch 270 sec 6, 105 CMR.665

- 1st violation (permit suspension only in case of sale to a minor, the board voted for 5 days in July 2022) \$1000 fine

- For 2nd violation – suspension at least 1-day up to 7 days - \$2000 fine within 36 months of first violation

- For 3rd violation – suspension at least 7 days up to 30 days - \$5000 fine if within 36 months of first violation

The final page in the printed our document is the guide to what other towns and cities are doing for suspension. Most of our alliance towns have their regulations set seven days for the second time and 30 days for the third time.

-Ms. Anthes asked if the BOH needed to vote on the second and third suspension dates.

-Ms. Tangri replied yes, but we also will need to advertise and have a public hearing. The BOH can also designate Mr. Dennis as the person conducting the hearing. The violators will be on the agenda which is posted on our website.

-Unknown attendee said that there should be different penalties depending on the age of the “minor.” If someone is 16 years old there should a be a harsher penalty than if the person is 19.

-Dr. Tran said from this public hearing we will have our people discuss what we talked about and then come back with the cap and the next hearing. The next public hearing will be for the 2nd and 3rd violations.

-Ms. Anthes stated that the number may change next month because we haven’t voted as of tonight.

-Dr. Tran said it will be difficult to delay the vote after all the discussions take place. They would like the division to tell the board who has existing licenses and what is legitimately pending. That is the number they would like to go on.

-Ms. Tangri explained that the process for smoking bars is a lot more extensive which is why they have allowed two on conditional approval.

-Ms. Anthes makes a motion that the board supports the division proposed 235 cap and that they start enforcing this now.

-Mr. Rosen states that since they are not voting tonight, they cannot do that because legally the cap has been accepted.

Outcome: The BOH will hold a public violation hearing on Oct. 2nd for permit suspensions. The BOH will also vote on cap and density regulations as well as the second and third 2nd and 3rd suspension dates at the same meeting.

Next Meeting Date and Topics

-Next standing meeting and public hearing will be held October 2nd

-Next meeting will feature vote on today's tobacco regulations topic and the proposed violations

-Dr. Tran would like to revisit the issues surrounding mental health and overdose. She asked Mr. Dennis if he can invite Community HealthLink to come talk about their progress on reopening.

- Dr. Castile says that CHL detoxes are still closed but that the crisis intervention is currently operating in its pilot phase.

Adjourn

- Dr. Tran makes a motion to adjourn and Mr. Rosen seconds

Meeting was adjourned at 8:43pm