

City of Westfield, Massachusetts

Health Department

Board of Health Meeting Via Zoom video conference May 12, 2021 6:00 PM

Present: Juanita Carnes, Chair Stanley Strzempko, M.D. Margaret Doody

Ms. Carnes opened the meeting at 6:02 p.m. There was no one present wishing to speak during public participation. Minutes from the April 14, 2021 meeting were reviewed and accepted as printed. A motion was made and seconded to approve the April 14, 2021 meeting minutes.

The vote was as follows:

Carnes	–	Yes
Strzempko	–	Yes
Doody	–	Yes

All in favor, the Motion was declared passed.

Contract Signature Authority for Health Director: A motion was made and seconded to give Joseph Rouse authority to negotiate, enter into, execute and deliver any and all agreements or contracts on behalf of the Health and Sanitary Landfill Departments.

The vote was as follows:

Carnes	–	Yes
Strzempko	–	Yes
Doody	–	Yes

All in favor, the Motion was declared passed.

PUBLIC HEALTH:

COVID-19 Update and Discussion: Last week's Covid numbers were 44 new cases, no deaths, and 37 in isolation. This week the numbers dropped to 18 new cases, zero deaths and 29 in isolation. On Tuesday, May 11th, there were zero deaths in the state, which is the first time in over a year. The spike which occurred last week could be attributed to school vacations. As the numbers decrease, more people are vaccinated. Massachusetts is doing very well with almost a 50% vaccination rate. There have been no complaints regarding lack of vaccines. Mr. Rouse stated that, at this time, he does not want to add additional work to the staff. He'd like everyone to rejuvenate and take a break to prepare in the event of a resurgence of Covid. Due to limited resources, the department cannot respond to the community's requests for additional programs, etc.

INSPECTIONAL SERVICES:

Proposal to Develop a Westfield Apiary Regulation: Mr. Rouse stated that he has not heard back from the DPH Apiary Division and would like their input prior to finalizing local regulations. He

would like to see potential beekeepers notify abutters for allergy purposes, however, he did not feel the City should mandate registration. If an individual wishes to register, they can do so with the state. The MA Beekeepers Association has published a best management practices 6-page document which Mr. Rouse would like to refer to as a guide for responsible beekeeping practices. Councilor Onyski addressed the Board stating that, in some cases, the lot size requirements stated in the guide are not being met and feels that if a person is not a responsible beekeeper, lot size will not matter. Mr. Rouse will include that as a discretionary option in the regulation draft. Should beekeepers not follow the best management practices as outlined and complaints are received from neighbors, the City could declare it to be a nuisance pursuant to Mass General Laws c. 111, sec. 122. When the state returns the call/e-mail, Mr. Rouse will take their suggestions and prepare the regulations.

No Limit 2 (Whip City Smoke) Tobacco Enforcement Hearing: This hearing is held to determine whether or not there should be a permanent revocation of the tobacco license of No Limit 2 (Whip City Smoke) located at 43 Southwick Road, Westfield. Inspector Tom Hibert advised the Board that since this first began, the establishment has changed their name from No Limit 2 to Whip City Smoke, although it is owned by the same LLC. Complaints were received regarding the sale of flavored tobacco and vape products as well as sales to minors. After speaking with the police, the Health Dept. inspectors conducted their own investigation on February 26, 2021. They found an abundance of flavored tobacco and vape products for sale. Because the new regulations went into effect shortly before Covid hit and store inspections could not be conducted, only a warning was issued to the merchant as well as information regarding what could and could not be sold, etc. The inspectors filled out the inspection form, provided instructions to remove all the forbidden items, and stated they would return in approximately one week to follow up. It is also a requirement that the retail establishment selling vape products obtain a letter from the manufacturer documenting that there are no characteristic flavors in the product.

On March 4, 2021, Inspector Hibert returned with several police officers and a DOR representative. The gentleman from DOR went in first and purchased two flavored products not allowed for sale in Massachusetts. The inspector and officers entered the store and spoke to Sean Mohammed who indicated he was working on removing the forbidden items. A box labeled "Not For Sale" was on display and Sean told the inspector that, although the items were not for sale, if someone made a donation to him, they would be given some of those products. A listing of at least 20 different products was presented to the Board which were found on site. Some items were found in a locker, which Sean refused to open.

On March 12, 2021, Inspector Hibert went back with a Cease and Desist Order regarding the sale of forbidden products and to obtain valid documentation for the items which required it. The establishment was also assessed a \$1,000 fine. When this paperwork was handed to Sean, he read it and proceeded to rip it up and throw it in the trash. Mr. Hibert informed him that he may want to read it as he had 21 days in which to pay the fine or 7 days to appeal. To date the department has not received the appeal or payment.

On May 3, 2021, Mr. Hibert returned with a Notice of Intent to Suspend License for Sale of Tobacco Hearing. A new manager, Useman Butt, stated that the store was no longer owned by Sean but under the control of Sean's father, Shafi Mohammed. Shafi did contact Mr. Hibert and stated that he was not aware of the issues or the ticket. Mr. Hibert stated that on March 4th, Shafi did speak on the phone with the DOR representative, so he was somewhat aware.

On or about May 4, 2021, ownership was transferred from Sean Mohammed to Shafi Mohammed (Sean's father.)

Mr. Rouse introduced Sarah McColgan from the Massachusetts Health Officers Association/Tobacco Control and Attorney D. J. Wilson from the Mass. Municipal Association. Ms. McColgan stated that the establishment should be grateful as they could have been fined \$3,000. A fine should have been given on February 26th as there is no provision for a warning. She commended the department for their efforts during Covid. Atty. Wilson informed the Board that under state law, the first offense is a fine of \$1,000; second offense is a 1-7 day suspension. Although there is no provision for revocation, it is a long-held understanding that whomever issues the license has the right to take it away as long as you give correct due process, which the City has done.

The current owner, Shafi Mohammed, stated that he had trusted his son who had just graduated from college. He also indicated that Sean was addicted to drugs, became mentally ill and, as a result, ran the business improperly. Shafi also stated that Sean has moved out of his home and is not allowed to go back into the store. Sean is currently receiving treatment in upstate New York. He also stated that he has paid the \$1,000 fine and that the check is in the mail. Shafi apologized and promised that this will never happen again as he will now run the business properly.

Massachusetts regulations state that, for a second violation, a suspension of at least one day and up to seven consecutive business days should be implemented. For a third violation, it would be seven days. Two violations were noted.

Mr. Rouse stated that a suspension is in order and an agreement should be made between the Board and owner that Sean not be allowed on the premises to sell age-restricted products at that location. If there is a subsequent infraction within a 36-month period, the establishment would be subject to the state's fine of \$5,000 for a third offense, license suspension and possibly a revocation.

Mr. Hibert also indicated that the DOR confiscation a number of products while there. Although Shafi stated that vape products were stored in a bathroom, Mr. Hibert found them prominently displayed on the shelves for sale. Ms. McColgan indicated that these were egregious offenses. Shafi indicated that he was not aware of any of these issues and he is now trying to correct them.

Ms. Carnes stated that if Sean were present, there would be a revocation; but, because the father has taken over, perhaps a suspension is more in order. The Board agreed that Whip City Smoke should receive a one-day license suspension and that Sean Mohammed not be allowed to sell age-restricted products at that establishment, which Shafi Mohammed confirmed would not happen.

A Motion was made and seconded to suspend the license of Whip City Smoke for one day and be contingent on the language and discussion that has been incorporated in these minutes.


The vote was as follows:

Carnes	-	Yes
Strzempko	-	Yes
Doody	-	Yes

All in favor, the Motion was declared passed.

With no further items on the agenda to discuss, the meeting was adjourned at 7:12 p.m.

Minutes approved by:



Margaret M. Doody

S. Strzempko MD

/cam

Next anticipated meeting date: June 9, 2021