

**Meeting Notes from the Regular Meeting of the Peabody Board of Health,
December 15, 2022 at 4:30 pm**

In Attendance: Chairperson Thomas J. Durkin III; Board members Anthony Carli and Julia Fleet, D.O. (via Zoom); Health Department Director Sharon Cameron; Recording Secretary Lisa Greene

The meeting was held in the City Hall Lower- Level Conference Room at 4:30 p.m.
with public access also available remotely Via Zoom

Subject: Meeting called to order

Discussion: At 4:31 Mr. Durkin opened the meeting and read the meeting notice.

HEARINGS

Hearing 1: Scheduled for 4:30 pm - Hearing re: Notice of Intention to Revoke Tobacco Product Sales Permit at Peabody Vapors, 50 Main St. Peabody – Vote anticipated to revoke or not revoke permit.

Discussion: Mr. Durkin opened the hearing and read the hearing notice at 4:32 pm and asked if owners Khang Tran and Trang Dang were present. They were not, nor were any representatives in attendance. Mr. Durkin said that the Board will hold the hearing in any case to discuss this matter. He asked if anyone on Zoom was present to speak on this issue to please use the raise hand feature. No responses were received. He asked if staff would refresh the board's memory on this matter. Inspector Suckney explained that at the beginning of November the department had received an anonymous complaint from a parent who reported that their 22- year-old son was able to buy flavored products at this location. He had noticed a different product in the house than what he buys for his son in New Hampshire, and when questioned the son said that he goes to Peabody Vapors and says he is part of their "5- star rewards" program, which is an understood code phrase, and that the owner carries the key to the locked drawers with special flavors. Mr. Suckney said that this establishment has a locked door so that customers must be buzzed in, but he was told that once someone enters it is no problem to get flavored products which are not allowed. He reported that he had, in conjunction with Ms. Joyce Redford, conducted an unannounced inspection on Thursday November 17th and weren't allowed inside at first as the owner Kevin Dang was with a customer. He said they were eventually let in and entered wearing health department hats and identified themselves and told that they were there to do a routine inspection and in response to a flavor complaint. He said that Ms. Redford asked if it would be ok to inspect, to which Mr. Dang replied that he wanted to check with his lawyer. Ms. Redford stated that was fine and reminded him that it's a violation of the permit to not allow Board of Health inspections. The owner then said it was ok to inspect.

Mr. Suckney said that the first thing he noticed was a product called Sapphire under magazines on a desk and some other flavored products, and when questioned the owner said they were for personal consumption; However, the inspector observed that there was far more product there than expected just for personal use and either way it is not allowed to be onsite even for personal use. Ms. Redford asked the owner to open some locked draws; a total of 16 draws were locked. The owner replied that he could not because when he and his business partner split up the partner took the keys so he hasn't had access for two years. Ms. Redford then informed the owner she was going to go downstairs and in doing so they found approximately 50 flavored vape products along the ridge going downstairs including Delta 8, Delta 9, and flavored products. They then contacted police headquarters who dispatched Officer Murphy who confiscated the illegal Delta 8 and 9 products. Suckney also called Director Cameron who came down as well. At this point somehow the owner found the keys to the drawers and they were opened. Inside they found large quantities of a variety of flavored products. Mr. Suckney referenced his photos of the products in the board

members' files. He went on to say that once Director Cameron showed up she made the decision to suspend the tobacco permit immediately. Redford then called the state DOR, and investigator Jennifer came and confiscated all the illegal products. Suckney added that while there several Fed Ex and UPS orders were attempted to be delivered but were refused. Mr. Suckney said he overheard the owner saying to one of the delivery people "I have an \$8,000 order coming in tomorrow, what should I do." Mr. Suckney said he asked the owner why we are back here again since this is not the first flavor violation, to which the owner replied "It's worth serving the suspension, even paying fines and violations since we make a 300% profit on these products." Mr. Suckney explained that this is a 6th violation of failure to provide the required documentation on products, and the 6th for flavor violations. This establishment had been issued \$1,000 and \$5,000 fines for previous violations. Suckney added that the owner signed the return receipt documenting that he received notice of this hearing so he is aware that it is happening.

Mr. Suckney also reported that while onsite, downstairs in a cupboard in addition to over 1,000 flavored items they also found drug paraphernalia with what appeared to be drug residue inside. He said they reported this to the police. He also said that he told the owner that he can't smoke in the workplace no matter what, and the owner said that he didn't understand why, so they explained it is not allowed. Mr. Suckney said this was a 6th violation since July 2020, and said that he had had two violations for flavor in the past, then two for allowing entrance to a minor, and now the flavor violations again and failure to produce proper documentation.

Ms. Cameron said that she did join the inspection after Mr. Suckney had called her, and she explained that after questioning the owner had said of course he has the keys to the locked cabinets. She said he had in there hundreds and hundreds of flavored products. She had asked him did you not understand the law prohibiting flavored products, to which he replied of course he understands, but it is so profitable. He explained that this is the only way this adult-only tobacco business model works, that everyone else does it, that some have bracelets, some use a special code phrase that you have to say to get access to flavored products. He was very forthcoming and stated that it is the only way an adult only tobacco permit holder can make a living. She added that he also offered the inspectors a bribe, which also speaks to his suitability to hold a permit with us.

Mr. Durkin asked if anyone present or online wishes to speak on the Peabody Vapors matter, and if online to please use the raise hand feature. No responses were received. Mr. Durkin said that he is inclined to revoke the permit. He said this is egregious behavior, with attempted bribes, lying about keys, and a 6th violation, especially since this permit holder has been before us for hearings before, and by his own admission is well aware of the rules. Dr. Fleet agreed, and said especially since this is the business model he said he wants to perpetuate.

Ms. Cameron said that she would like the discussion today to include not just the permit for Peabody Vapors but to also include a discussion of the suitability of these owners, Khang Tran and Trang Dang, as individuals as to whether they would be suitable to hold a permit in Peabody again if they were to reapply in the future. Mr. Suckney explained that Mr. Dang is also known as Kevin. Mr. Carli asked if the parties were properly informed of the hearing. Ms. Cameron explained that they sent the notice to the business and to both owners' addresses, in addition to the legally-required postings under Open Meeting Law. They have documentation that Kevin Dang received his hearing notice because he signed for it as it was sent via certified mail. She said that there is no way to know if the other owner received it. Mr. Durkin asked again if anyone wishes to speak on this matter. No responses were received. Mr. Durkin closed the hearing at 4:51. Ms. Cameron asked the board, in their deliberations, to consider making the motion in such a way as to not only revoke this business's permit but to also include reference to the owners and that they are not to be issued another such permit in Peabody as there has been sufficient evidence to show that they cannot administer such a permit within the rules of the law.

Mr. Carli made a motion to permanently revoke the tobacco sales permit that had been issued to Peabody Vapors at 50 Main Street, and further moved that this motion also apply directly to the owners, Khang Tran and Trang Dang, to no longer be allowed to hold such a permit. Dr. Fleet seconded the motion. A roll call vote was taken and it was unanimously agreed to revoke the tobacco sales permit and to include a prohibition that the owners not be allowed to hold a permit in Peabody in the future. Dr. Fleet commended the team for their work, adding that it seemed like there was some quick thinking required.

BUSINESS

Subject 1. Approval of Minutes of November 17, 2022 - Vote anticipated to approve or amend minutes.

Discussion: Mr. Durkin asked if we could hold off until next month to discuss as he hadn't seen those yet. All agreed.

Subject 2. Update on COVID-19 response actions

Discussion: Ms. Cameron asked Ms. Robinson to report on this matter. Ms. Robinson said they have continued to provide bivalent covid booster clinics twice per month. She added that they also had flu clinics and originally tried to keep those clinics separate so that there was no confusion, but said that at the last clinic they offered both vaccinations and it went just fine. She said that it was the last scheduled event until after holidays we see an increase in demand. She added that Mass General's mobile vaccination team still comes every Tuesdays to do a Covid vaccination clinic at the library and offer Pfizer vaccines. Mr. Durkin asked if people are able to get both a flu and a covid vaccination on the same day. Ms. Robinson replied yes and added that we are encouraged to not pass up an opportunity to get people vaccinated. She said that she had done a homebound visit today and will do those if requested. She explained that she is using the Moderna vaccine that is approved for people over 12. She reported that they are seeing an increase in covid cases, with half of confirmed cases reported in long term care facilities, so we are definitely seeing an increase there. She added that the numbers we see are really only the tip of the iceberg because most people are taking home tests and those are not reported. She reported that they had expected to see a bump in cases after Thanksgiving and did see it, and said that they expect to see that happen after Christmas as well. She reported that Flu cases are up. She told that there were three confirmed cases in September, seventeen in October, forty-two in November, and already up to seventy-two in December with only half a month having passed as this data is of December 15th. 43% are in people 0-18 years of age, 24% are aged 19-39 years, 11% are 40-64 years, then 22% are aged 65 and older. She reminded that we didn't see many cases of the flu last year, but this is more flu than we usually see by now, adding that it is mostly influenza type A. She said that she still has more flu vaccine, and can offer more clinics in 2023, but didn't see a whole lot of interest, but added that people might have vaccine fatigue. She reported that there is a 38% flu vaccination rate so far this year and usually we are at 64% or more, but added that they will keep at it. She explained that the reportable disease report showed nothing unusual, and added that RSV is not reportable so we won't see that on that list.

Subject 3. Environmental Updates-Conditional Approval of Cemetery at 530 Lowell St.

Discussion: Reviewed

Subject 3b. Rousselot Update

Discussion: Ms. Cameron reported that they had received no new complaints, no odor or noise complaints, She reminded the board that she had given her cell phone number to the neighbor who had called about complaints in the middle of the night and expressed her willingness to make a late/early site visit so she could hear the noise herself, but to date she hasn't been contacted.

Subject 3c. Rodent Control Update

Discussion: Ms. Cameron reported that we are continuing with SMART boxes and have 55 boxes. The fertility control program will be effective again in February or March, because the liquid bait freezes. She said that they are continuing to have a lot of rodent complaints despite our efforts.

Subject 3d. Northeast Nursery update

Discussion: Ms. Cameron reported that it is unusual to get complaints about this at this time of year, but said that we had received one, and Jon Yale investigated and issued a citation.

Subject 3e: 3rd party inspection report – Peabody landfill

Discussion: Reviewed

Subject 3f: Proposed Wood Recycling Transfer Station Organics Preprocessing and Compaction Project

Discussion: Ms. Cameron explained that this proposed project involves the processing of organic matter to a slurry. She explained that the slurry is then pumped into closed tanks and hauled off site. She explained that she asked them about odor control and they said they are doing these things inside closed spaces. She told them to be aware of noise issues. She explained to the Board that this type of project actually falls within their current site assignment because they are not changing the source, type, or quantity of incoming materials, but said that she wanted the board to know of the change in operations.

Subject 3g: Proposed revision to site assignment – ash landfill

Discussion: Jackie Cacheci from Tighe & Bond appeared via Zoom to discuss this matter. Ms. Cacheci explained that the way the site assignment is written now there is up to 15,000 tons of ash that can be dumped at the landfill per day, split between Covanta and the City of Peabody. Peabody can use any unused capacity that Covanta doesn't use, but the reverse is not true. So if the city doesn't use all of their portion of that then it is wasted and Covanta wants the language changed to make it reciprocal, but it would still never be more than 15,000 tons per day in total being disposed of. She said that this is not a discussion for today but said she just wanted to talk about how the process will go. She said Covanta would have to submit a minor modification for site assignment. She said that we went through this back in 2019 for another modification, and there is a lot of coordination to go through this process, one of which is the requirement of hiring a hearing officer. She reminded that last time you chose to use Chris Myrim, and they could determine if they were satisfied or if they would like someone else. She said that next is getting the application in, publish it, time and location included, for a public hearing, 21 days in advance, and since Peabody has more than 5% non-English speaking households, we will have to have public notice translated to Spanish. Everyone has to agree on a date and time, about a month in advance, to have all the logistics coordinated. And then an additional thing, there's a fee associated that the applicant has to pay, the third-party technical fee. Last time Covanta submitted a waiver request to waive that fee saying that they would instead just reimburse you for costs, including ads and hearing officer. She said that there is not a lot of engineering changing, and Covanta would like to submit the application for modification early next year, but want to coordinate to get what is needed lined up

and a hearing date that will work for everyone's schedule. Mr. Durkin replied yes, we can do that and asked what is the next step. Ms. Cacheci replied that it would be to get a hearing officer on board to make sure that everything is coordinated. She said that the intention is to have this application in in early January. She said that they would like to submit the waiver request at the time of applications. Mr. Durkin asked what did they need this for last time? Ms. Cacheci replied that they requested allowing different materials and dredging but this time it is just about tonnage. This is about establishing that reciprocal arrangement. Mr. Carli asked if the technical fee waiver is exorbitant. She replied that it is high, but it can also be used to cover costs for your staff time, so if we waive it, we should also include reference to them also covering our staff time and costs. She indicated that they expect to reimburse for those costs.

Subject 4. Code Enforcement Updates:

Subject 4a. Housing: 116 Foster St.

Discussion: Reviewed.

Subject 4b. Nuisances: 67 Foster St; 570 Lowell St.

Discussion: Reviewed

Subject 4c. Food: Londi's; Soul Cake

Discussion: Reviewed

Subject 4d. Hotels: Renewal of licenses

Discussion: Reviewed. Also issued for 4 rooming houses, all passed inspections as well.

Subject 4e. Other: WinWaste Innovations

Discussion: Reviewed

Subject 5. Permitting Updates: a. List of permits issued in November 2022

Discussion: Reviewed.

Subject 6. Public Health Nursing Updates: a. November 2022 surveillance report

Discussion: Reviewed.

Subject 7. School Health Updates

Discussion: Reviewed.

Subject 8. Correspondence: a. From Tighe & Bond re: Greenhouse Gas Reporting Peabody Whole Site Landfill

Discussion: Reviewed.

Other: Public Hearing re Carbon Dioxide monitoring at Peaker plant

Discussion: Ms. Cameron reported that last week DEP held a public hearing at the Council on Aging about carbon dioxide monitoring at the new proposed peaker plant. She explained that she gave testimony on the broader theme of air quality and environmental justice, and most people in attendance also commented on those issues as well. She said that she has submitted written

testimony to DEP, and looks forward to their response to those comments, as they report back out what they did with the public comments received so we'll see what comes of that.

Other: Regarding Adult Only Tobacco Permitting

Ms. Cameron said that she wanted to speak on a subject related to tonight's revocation of the tobacco permit for Peabody Vapors. She reminded that when we changed our tobacco regulations, at that time the benefits of being an adult only establishment were significant – mainly, the ability to sell flavored products. Now since the statewide flavor ban was put in place, the only two benefits of having an adults only establishment permit are the sale of products with higher levels of nicotine, and the ability for “free range shopping”- allowing them to display products out in the open and not behind locked cases. She said that to get this permit owners have to give up the sales of lottery and convenience items, which is a significant disadvantage to having it. She said that the concern we have is, after the information we received from the owner of Peabody Vapors, and from information shared by Ms. Redford from her experience in other cities, do we want to discontinue offering this type of permit since the business model clearly no longer works. She suggested that if we choose to discontinue it, we could adopt a permit retirement system, so when a permit is given up we would have it expire. Mr. Carli said he doesn't see any issue to doing this as he doesn't see any reason to issue those anymore. He asked if there has been any conversation with the last remaining adult only shop about getting a regular tobacco sales license. Ms. Cameron replied that the Board members might remember that the last time they were before us you gave them the option of giving up the adult only permit and change to the traditional tobacco permit or to give up the special lottery variance they had, and they gave up the lottery variance, and we have had no discussion with them since. Mr. Durkin said that it is difficult for him to understand, if the only advantage of adult only permits is high nicotine products and free range shopping, he is at a loss for why anyone would do it. Ms. Cameron said if you are in agreement on proceeding with this, she can draft language about retiring existing permits and issue no more adult only permits. Mr. Durkin said that the risk they run by allowing this business to continue is to possibly be facilitating similar bad behavior as Peabody Vapors. Ms. Cameron said Peabody Vapor's owner is not the first retailer who has told us it is lucrative to sell flavored products even with fines being imposed. Dr. Fleet agreed that a language change is in order. Mr. Carli said that it is very concerning hearing what this person said, and he has no reason to lie after he was already caught, and it's disheartening, even with the good work of Ms. Redford and Mr. Suckney, there is so much going on.

Other: Review tentative dates for 2023 meeting

Discussion: Ms. Cameron asked the Board to review and approve tentative dates for 2023 Board of Health Meetings. Reviewed. Proposed dates accepted for 2023 meetings, subject to change if necessary.

Discussion:

Mr. Carli made a motion to adjourn at 5:27 p.m.; Dr. Fleet seconded the motion, and all agreed to adjourn.

Next Meeting Date: January 26th, 2022 @ 4:30

Adjournment: 5:27 p.m

Respectively submitted by

Lisa Greene, Clerk to Board of Health

Approved 1/26/23